

## AGENDA

### BOARD OF RECREATION AND PARK COMMISSIONERS OF THE CITY OF LOS ANGELES

Wednesday, April 2, 2014 at 9:30 a.m.

EXPO Center, Comrie Hall  
3980 S. Bill Robertson Lane  
Los Angeles, CA 90037

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LYNN ALVAREZ, PRESIDENT  
IRIS ZUÑIGA, VICE PRESIDENT  
KAFI D. BLUMENFIELD, COMMISSIONER  
SYLVIA PATSAOURAS, COMMISSIONER  
MISTY M. SANFORD, COMMISSIONER

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EVERY PERSON WISHING TO ADDRESS THE COMMISSION MUST COMPLETE A SPEAKER'S REQUEST FORM AT THE MEETING AND SUBMIT IT TO THE COMMISSION EXECUTIVE ASSISTANT PRIOR TO THE BOARD'S CONSIDERATION OF THE ITEM.

PURSUANT TO COMMISSION POLICY, COMMENTS BY THE PUBLIC ON AGENDA ITEMS WILL BE HEARD ONLY AT THE TIME THE RESPECTIVE ITEM IS CONSIDERED. ALL REQUESTS TO ADDRESS THE BOARD ON PUBLIC HEARING ITEMS MUST BE SUBMITTED PRIOR TO THE BOARD'S CONSIDERATION OF THE ITEM. COMMENTS BY THE PUBLIC ON ALL OTHER MATTERS WITHIN THE SUBJECT MATTER JURISDICTION OF THE BOARD WILL BE HEARD DURING THE "PUBLIC COMMENTS" PERIOD OF THE MEETING

1. APPROVAL OF THE MINUTES:

Approval of the Minutes of the Meeting of March 19, 2014

2. GENERAL MANAGER'S REPORTS:

- |        |  |
|--------|--|
| 14-078 | Dearborn Park – Irrigation and Field Improvements (W.O. #E170332F) Project – Approval of Final Plans and Call for Bids   |
| 14-079 | 1 <sup>st</sup> and Broadway Civic Center Park – Park Development (PRJ20655) Project – Authorization to Demolish, Approval of Demolition Plans, Allocation of Quimby Fees, and Exemption from the California Environmental Quality Act |
| 14-080 | Greek Theatre Concession – Amendment to Contract No. 3444 with Strategic Advisory Group LLC (Consultants)  |
| 14-081 | Travel Town Museum Gift Shop Concession – Amendment No. 2 to Concession Contract Number 262 and Donation of a New Modular Building   |
| 14-082 | Summer Lunch Program – National Recreation and Park Association 2014 Out-of-School Time Programs Grant – Authorization to Submit Grant Application; Acceptance of Grant Funds  |
| 14-083 | Various Donations Operations Branch – Metro  |

April 2, 2014

14-084 Various Communications

3. UNFINISHED BUSINESS:

Memorandum: Los Angeles Police Department – Proposed Memorandum of Agreement  
**Item to be Continued** (Original Date – 4/17/13)

14-009 Parks Initiative – Laurel Canyon/Mulholland Open Space Acquisition Project, 8100 West Mulholland Drive – Request for Final Authorization to Acquire Property – Escrow Instructions and Legally Obligated Acquisition Costs, Purchase and Sale Agreement, Allocation of Proposition K Funds, and Exemption From the California Environmental Quality Act  
(Original Date – 1/22/14)

14-047 Playground and Recreation Related Equipment, Accessories, and Supplies Contract – Use of the National Joint Powers Alliance (NJPA) Selection Process for Playground and Recreation Related Equipment, Accessories, and Supplies with Playpower, Inc.  
(Original Date – 3/5/14)

14-048 Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services Contract – Use of the State of North Carolina, County of Mecklenburg Selection Process to Provide Playground Equipment, Surfacing, Site Furnishings and Related Products and Services (Contract No. 110179) with Playcore Wisconsin, Inc. dba Gametime  
(Original Date – 3/5/14)

14-049 Recreation and Parks Equipment Contract – Use of Houston-Galveston Area Council Selection Process for Recreation and Parks Equipment, Service and Installation with Landscape Structures, Inc.  
(Original Date – 3/5/14)

14-050 Alternative Energy Equipment Contract – Use of Houston-Galveston Area Council Selection Process for the Purchase of Alternative Energy Equipment and Installation Services with SolarWorld Americas LLC  
(Original Date – 3/5/14)

14-061 Griffith Park Crystal Springs – New Baseball Fields (W.O. #E170110B) Project – Certification of the Final Environmental Impact Report and Approval of the Project  
(Original Date – 3/5/14)

14-062 Griffith Park – Performing Arts Center (W.O. #E170202A) Project – Adoption of the Initial Study/Mitigated Negative Declaration and Conceptual Approval  
(Original Date – 3/5/14)

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4. COMMISSION TASK FORCES:

- Commission Task Force on Concessions Report - Commissioners Patsouras and Zuñiga
- Commission Task Force on Facility Repair and Maintenance Report - Commissioners Blumenfield and Sanford

5. GENERAL MANAGER'S ORAL REPORT:

Report on Department Activities and Facilities

6. PUBLIC COMMENTS:

Any comments which require a response or report by staff will be automatically referred to staff for a report at some subsequent meeting.

7. FUTURE AGENDA ITEMS:

Requests by Commissioners to Schedule Specific Items on Future Agendas

8. NEXT MEETING:

The next scheduled meeting of the Board of Recreation and Park Commissioners will be held on Monday, April 14, 2014 at 9:30 a.m., at Northridge Recreation Center, 18300 Lemarsh Street, Northridge, CA 91324.

9. ADJOURNMENT:

Under the California State Ralph M. Brown Act, those wishing to make audio recordings of the Commission Meetings are allowed to bring tape recorders or camcorders in the Meeting.

Sign language interpreters, assistive listening devices, or any auxiliary aides and/or services may be provided upon request. To ensure availability, you are advised to make your request at least 72 hours prior to the meeting you wish to attend. For additional information, please contact the Commission Office at (213)202-2640.

Finalization of Commission Actions: In accordance with City Charter, actions that are subject to Section 245 are not final until the expiration of the next five meeting days of the Los Angeles City Council during which the Council has convened in regular session and if Council asserts jurisdiction during this five meeting day period the Council has 21 calendar days thereafter in which to act on the matter.

Commission Meetings can be heard live over the telephone through the Council Phone system. To listen to a meeting, please call one of the following numbers:

from Downtown Los Angeles	(213) 621-CITY (2489)
from West Los Angeles	(310) 471-CITY (2489)
from San Pedro	(310) 547-CITY (2489)
from Van Nuys	(818) 904-9450

For information, please go to the City's website: <http://ita.lacity.org/ForResidents/CouncilPhone/index.htm>

Information on agenda items may be obtained by calling the Commission Office at (213) 202-2640. Copies of the agenda and reports may be downloaded from the Department's website at [www.laparks.org](http://www.laparks.org).

REPORT OF GENERAL MANAGER

NO. 14-078

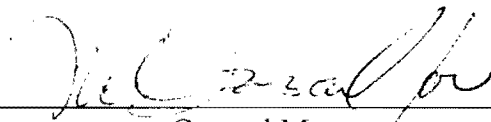
DATE April 2, 2014

C.D. 12

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: DEARBORN PARK – IRRIGATION AND FIELD IMPROVEMENTS (W.O. #E170332F) PROJECT – APPROVAL OF FINAL PLANS AND CALL FOR BIDS

R. Adams	_____	V. Israel	_____
*R. Barajas	<u>anf</u>	K. Regan	_____
H. Fujita	_____	N. Williams	_____

  
 \_\_\_\_\_  
 General Manager

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

That the Board:

1. Approve final plans and specifications for the Dearborn Park – Irrigation and Fields Improvements (W.O. #E170332F) project; and,
2. Approve the date for receipt of bids to be advertised as Tuesday, April 29, 2014, at 3:00 P.M. in the Board Office.

SUMMARY:

The Dearborn Park - Irrigation and Field Improvements (W.O. #E170332F) project is located at 17141 Nordhoff Street, Northridge, California 91325. This project is funded by Proposition LA for Kids Funds. Final plans and specifications for Dearborn Park – Irrigation and Fields Improvements (W.O. #E170332F) project are complete. The project is funded by Proposition K funds and Quimby Funds. Plans and Specifications for this project were prepared by the Department of Public Works, Bureau of Engineering (BOE), Architectural Division.

The scope of work, as described in the Proposition K Ballot measure, is "construct public restroom, irrigation." The scope of work was further developed with input and subsequent approvals from the Department staff and the Local Volunteer Neighborhood Oversight Committee (LVNOC).



REPORT OF GENERAL MANAGER

PG. 2                      NO. 14-078

The proposed scope is to replace an existing irrigation system, which is located in approximately three (3) acres of the nine (9) acre park. The replacement system will include the installation of a new standard two (2) wire SMART irrigation controller, the installation of approximately 2,700 linear feet of non-pressurized piping, 310 linear feet of new piping and other related installations. Department of Recreation and Parks (RAP) staff also requested adding the following to the scope: the installation of eight (8) new picnic tables and concrete pads; of which six (6) will be regular picnic tables, and two (2) will be Americans with Disabilities Act (ADA) compliant.

The City Engineer's estimate for the additional construction costs of this project is \$200,000.00. Funds are available from the following sources:

<u>Funding Source</u>	<u>Fund/Dept./Acct. No.</u>
Proposition K - Year 17	43K/10/10K866
Quimby	302/89/89460K-DC
Total:	

RAP's environmental staff has determined that the project will consist of alterations of existing facilities; involving negligible or no expansion of capacity. Therefore, the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 1 (1, 32) and Class 4 (3), of the CEQA Guidelines.

The bid package has been reviewed and approved by the City Attorney's Office.

Council District 12 supports the recommendations set forth in this Report.

FISCAL IMPACT STATEMENT:

The construction of this project will be funded by a combination of Proposition K funds and Quimby funds. There is no immediate fiscal impact to RAP's General Fund. The assessments of the future operations and maintenance costs have yet to be determined and will be addressed in future budget requests.

This report was prepared by Ray Araujo, Project Manager, Recreation and Cultural Facilities Program, Department of Public Works, Bureau of Engineering (BOE). Reviewed by Neil Drucker, Program Manager, Recreational and Cultural Facilities Program, BOE; Ted Allen, Acting Deputy City Engineer, BOE, and Cathie Santo Domingo, Superintendent, Department of Recreation and Parks, Planning, Construction and Maintenance Branch.

REPORT OF GENERAL MANAGER


NO. 14-079

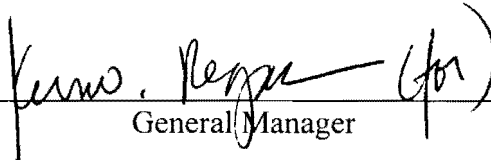
DATE April 2, 2014

C.D. 14

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: 1<sup>ST</sup> AND BROADWAY CIVIC CENTER PARK – PARK DEVELOPMENT (PRJ20655) PROJECT – AUTHORIZATION TO DEMOLISH, APPROVAL OF DEMOLITION PLANS, ALLOCATION OF QUIMBY FEES, AND EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

R. Adams	_____	V. Israel	_____
*R. Barajas		K. Regan	_____
H. Fujita	_____	N. Williams	_____

  
 \_\_\_\_\_  
 General Manager

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

That the Board:

1. Authorize the demolition of the remnants of the former building at 1st and Broadway Civic Center Park;
2. Approve the demolition plans substantially in the form on file in the Board Office;
3. Authorize the Department's Chief Accounting Employee to transfer \$4,306,294.00 in Quimby Fees from the Quimby Fees Account No. 89460K-00 to the 1st and Broadway Account No. 89460K-RX;
4. Approve the allocation of \$4,306,294.00 in Quimby Fees from 1st and Broadway Account No. 89460K-RX to the Park Development (PRJ20655) Project at 1st and Broadway Civic Center Park, as described in the Summary of this report; and,
5. Find that the actions taken by the Board herein are exempt from the California Environmental Quality Act (CEQA).

## REPORT OF GENERAL MANAGER

PG. 2                      NO. 14-079

### SUMMARY:

The 1st and Broadway Civic Center Park is located at 217 West 1st Street, in the Civic Center area of the Downtown Los Angeles area, on an approximately 1.96 acre or 85,377 square feet parcel. The 1st and Broadway Civic Center Park site formerly was the site of a thirteen (13) story State office building that was constructed in 1931 as part of the Public Works Programs. The State building was occupied until the mid-1970's, and was demolished in 1976 due to systemic damage suffered in the 1971 San Fernando Sylmar earthquake. The site is currently vacant and fenced off, but the remnants of the former building (i.e., lobby floor, basement, and subterranean parking garage) remain on site.

On March 20, 2013, the Board approved the acquisition of the 1st and Broadway Civic Center Park site and approved the allocation of a total of \$9,950,069.62 in Quimby and Zone Change Fees, Quimby and Zone Change Fee Interest, and Department of Recreation and Parks (RAP) Capital Park Development B Special Funds for pre-acquisition, acquisition, site preparation, and pre-development expenses related to the project (Board Report No. 13-072). The City closed escrow on the site in June 2013, and the final acquisition cost for the site, not including closing costs, was \$7,500,000.00. Since acquiring the site, the City has spent approximately \$400,000.00 to secure the site, conduct preliminary investigations, and complete remediation and removal of the contaminated soil and standing water in the underground parking structure.

The Department of Public Works Bureau of Engineering has recently completed the demolition plans for the removal of the remnants of the former State building. The demolition scope of work is to demolish and excavate the remnants of the former building (i.e., lobby floor, basement, and subterranean parking garage), shore the site, recycle and dispose of all underground materials, import and placement of engineered backfill, and grading and recompaction in order to level the site. The estimated cost for the demolition of the site, backfill, and grading, is \$3,500,000.00.

Upon approval of this report, \$4,306,294.00 in Quimby Fees can be transferred from the Quimby Fees Account No. 89460K-00 to the 1st and Broadway Account No. 89460K-RX and allocated to the Park Development (PRJ20655) Project at 1st and Broadway Civic Center Park. These Quimby Fees were collected within two miles of 1st and Broadway Civic Center Park, which is the standard distance for the allocation of the Quimby Fees for community parks and recreational facilities. The total funding allocation for the Park Development (PRJ20655) Project at 1st and Broadway Civic Center Park would be \$14,271,363.62.

Although sufficient funds are not currently available for the design and construction of the future park and park improvements, there is sufficient funding available for the demolition of the remnants of the former building. As those building remnants are blighted and dilapidated, staff recommends they be removed as soon as possible.

REPORT OF GENERAL MANAGER

PG. 3                      NO. 14-079

Staff has determined that the subject project will consist of the demolition and removal of an accessory structure and grading. Therefore, the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 1 (11) and Class 4(1) of the City CEQA Guidelines.

FISCAL IMPACT STATEMENT:

There is no immediate fiscal impact to RAP's General Fund. Operations and maintenance costs for the planned park at this site are yet to be determined and will be included in future budget requests.

The estimated costs for the demolition of the remnants of the former building at 1st and Broadway Civic Center Park and for the design, development, and construction of the future proposed park improvements are anticipated to be funded by Quimby Fees or funding sources other than RAP's General Fund.

This report was prepared by Darryl Ford, Management Analyst II, Planning, Construction, and Maintenance Division.

REPORT OF GENERAL MANAGER

NO. 14-080

DATE April 2, 2014

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GREEK THEATRE CONCESSION – AMENDMENT TO CONTRACT NO. 3444 WITH STRATEGIC ADVISORY GROUP LLC (CONSULTANTS)

R. Adams \_\_\_\_\_  
H. Fujita \_\_\_\_\_  
V. Israel \_\_\_\_\_

K. Regan \_\_\_\_\_  
R. Barajas \_\_\_\_\_  
\*N. Williams NW

  
\_\_\_\_\_  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

That the Board:

1. Approve a proposed Amendment to Contract No. 3444, substantially in the form on file in the Board Office, between the City of Los Angeles Department of Recreation and Parks and Strategic Advisory Group LLC, for professional consulting services, to extend the term of the contract from one (1) year to two (2) years, subject to approval of the Mayor, and of the City Attorney as to form;
2. Find, in accordance with Charter Section 1022, that the Department does not have personnel available in its employ with sufficient time and expertise to undertake these specialized professional tasks and that it is more economical and feasible to secure these services by contract;
3. Direct the Board Secretary to transmit forthwith the proposed Amendment to the Mayor in accordance with Executive Directive No. 3 and, concurrently to the City Attorney, for review and approval as to form; and,
4. Authorize the Board President and Secretary to execute the Amendment upon receipt of the necessary approvals.

SUMMARY:

The Greek Theatre is located at 2700 North Vermont Avenue in Griffith Park and has provided entertainment and cultural events to the public since it was officially dedicated in 1929.

## REPORT OF GENERAL MANAGER

PG. 2

NO. 14-080

The Greek Theatre Concession (Concession) has been operated by Nederlander-Greek, Inc. (Concessionaire) under Concession Agreement Number 245 (Agreement) since May 21, 2002. The Agreement will expire on October 31, 2015. There are no renewal options to extend the contract in the Agreement.

On February 18, 2011, the Board approved the release of the Request for Proposals (RFP) for a Consultant to Conduct a Best Business Practice Study of The Greek Theatre Concession (Board Report No. 11-057). The RFP was released on April 11, 2011; seven (7) proposals were received on October 25, 2011. Proposals were then evaluated, and a recommendation was made to the Board for award of the contract to Strategic Advisory Group LLC (SAG).

On December 10, 2012, the Board awarded a one (1) year contract for professional consulting services to SAG to conduct a best business practices study of the Concession (Board Report No. 12-328). The one (1) year contract, No. 3444 (Contract), was executed on May 7, 2013, and will expire on May 6, 2014.

Although the work of SAG is currently proceeding in a timely manner, the process from the release of the upcoming Request for Proposals for the Operation and Maintenance of the Greek Theatre Concession to execution of the next agreement could take between twelve (12) to eighteen (18) months. Per Section I.A.3 (“Scope of Work” / “Contractor” / “Phase III – Administration of RFP”), the consultant is contracted to provide an evaluation panel to evaluate, rank, and score the proposals received (I.A.3.b) and to assist the Department in formulating “a recommendation for award of the new Concession Agreement for the Operation and Maintenance of the Greek Theatre.”

In order for SAG to assist the Department in the above actions, it is necessary to extend the contract term. As the RFP has yet to be released, and as the award for the next agreement will not occur until several months after the release, the Department needs to extend the Contract term to cover this time and keep the consultant available to complete the original Scope of Work in the Contract. The cost of the Contract will not be increased, as it is included in the not-to-exceed price of \$257,400 per Section III, “Compensation and Schedule of Payment.”

Staff therefore recommends an amendment to the Contract to increase the term from one (1) year to two (2) years. The new expiration date will be May 6, 2015.

### Charter Section 1022

Los Angeles City Charter Section 1022 prohibits contracting out work that could be done by City employees unless the Board determines it is more economical and/or feasible to contract out the service.

REPORT OF GENERAL MANAGER

PG. 3

NO. 14-080

On January 26, 2011, the Personnel Department completed a Charter Section 1022 review (attached) and determined that while the Department had City classifications that could perform some of the work, there are no “City classifications whose core duties are to study the entertainment, leisure, and recreational trends for profit making opportunities,” which are the main duties of SAG.

The Department lacks the personnel with the expertise to provide the professional consulting activities in the Contract. It would therefore be more feasible to secure the services by an independent contractor.

FISCAL IMPACT STATEMENT:

There is no fiscal impact to the General Fund, as the cost of the Contract will not increase, and the Contract is paid from the Concession Improvement Account (Fund 302, Department 89, Account 70K, Sub-Account CO).

Report prepared by Désirée Guzzetta, Management Analyst II, Concessions Unit, Administrative Resources Section, Finance Division.

## PERSONNEL DEPARTMENT CONTRACT REVIEW REPORT

1. Requesting Department: Department of Recreation and Parks

2. Contacts:

Department: Robert Morales Phone No. (213) 202-4384 Fax No. (213) 202-3213

CAO: Veronica Salumbides Phone No. 213 473-7561 Fax No. 213 473-7514

3. Work to be performed:

The Department of Recreation and Parks seeks to contract services of a consultant who specializes in market studies of concert venues. The Consultant will provide the current market trends in the concert concession industry. The consultant will also develop and administer a Request for Proposals for a new concession agreement at the Greek Theatre.

4. Is this a contract renewal? Yes  No

5. Proposed length of contract: One year.

Start Date: August 2011

6. Proposed cost of contract (if known): Not known.

7. Name of proposed contractor: Not known.

8. Unique or special qualifications required to perform the work:

The contractor must have expertise in analyzing trends in the concession business that caters to the concert or entertainment industry.

9. Are there City employees that can perform the work being proposed for contracting?

Yes  (*some of the work*) No

If yes,

<i>Classification</i>	<i>Departments</i>	<i>List Expires</i>
Management Analyst	Various	Reserve list
Senior Management Analyst	Various	Reserve list

If yes,

a. Which class (es) and Department(s): See above.

b. Is there sufficient Department staff available to perform the work? Yes  No

c. Is there a current eligible list for the class(es)? Yes  No  Expiration Date: see above.

d. Estimated time to fill position(s) through CSC process? Unknown due to hiring freeze.

e. Can the requesting department continue to employ staff hired for the project after project completion? Yes  No

f. Are there City employees currently performing some of the work? Yes  No



10. Findings



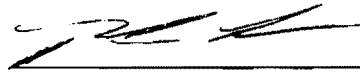
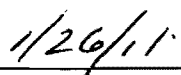
- City employees DO NOT have the expertise to perform the work
- City employees DO have the expertise to perform **some of** the work

Check if applicable (explanation attached) and send to CAO for further analysis

- Project of limited duration would have to layoff staff at end of project
- Time constraints require immediate staffing of project
- Work assignment exceeds staffing availability

**SUMMARY:**

The Department of Recreation and Parks seeks services of a consultant to provide market and business analyses of operating an outdoor amphitheatre. The consultant will also develop a Request for Proposals for concessions at the Greek Theatre in Griffith Park. Although there are classes such as Senior Management Analyst and Management Analyst in the City that could perform some of the duties, the project is for a limited duration. There is not a civil service classification whose core duties are to study the entertainment, leisure, and recreational trends for profit making opportunities.

			
Submitted by	Reviewed by	Approved by	Date
Cathy T. Tanaka	Shelly Del Rosario	Raul Lemus	
Sr. Personnel Analyst I	Sr. Personnel Analyst II	Chief Personnel Analyst	

REPORT OF GENERAL MANAGER

NO. 14-081

DATE April 2, 2014

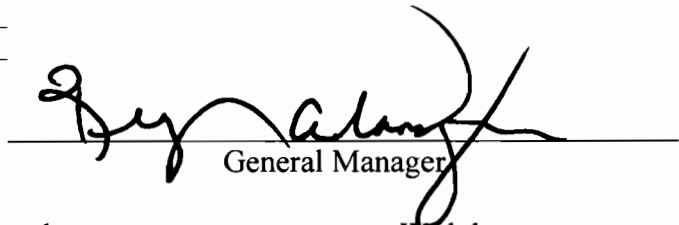
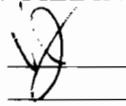
C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: TRAVEL TOWN MUSEUM GIFT SHOP CONCESSION – AMENDMENT NO. 2 TO CONCESSION CONTRACT NUMBER 262 AND DONATION OF A NEW MODULAR BUILDING

R. Adams \_\_\_\_\_  
R. Barajas \_\_\_\_\_  
H. Fujita \_\_\_\_\_

\*V. Israel \_\_\_\_\_  
K. Regan \_\_\_\_\_  
N. Williams \_\_\_\_\_

  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

That the Board:

1. Approve a proposed Amendment to Concession Contract Number 262 (Amendment), substantially in the form on file in the Board Office, between the City of Los Angeles Department of Recreation and Parks (RAP) and the American Southwestern Railway Association, Inc., dba Travel Town Museum Foundation (TTMF), a California 501(c)(3) non-profit educational organization, for the operation of a gift shop at the Travel Town Museum, subject to the approval of the Mayor, the City Council, and the City Attorney as to form;
2. Find, in accordance with Charter Section 1022, that RAP does not have personnel available in its employ with sufficient time and expertise to undertake these specialized professional tasks and that it is more feasible to secure these services by contract;
3. Direct the Board Secretary to transmit the proposed Amendment concurrently to the Mayor in accordance with Executive Directive No. 3 and to the City Attorney for review and approval as to form;
4. Authorize the Board President and Secretary to execute the Amendment upon receipt of the necessary approvals; and,
5. Accept the donation of a new modular building from TTMF, subject to the condition that TTMF assume all costs and liabilities associated with the procurement, permitting,

REPORT OF GENERAL MANAGER

PG. 2

NO. 14-081

delivery, and installation of the new modular building.

SUMMARY:

The Travel Town Museum (Museum) is located at 5200 Zoo Drive in Griffith Park and is host to a display of trains and train cars, and other vehicles that represents the history of transportation. The RAP Park Services group operates and maintains the Museum which is open to the public free of charge. The Museum is visited each week by hundreds of youths and adults who are interested in the history of trains.

The American Southwestern Railway Association, Inc., dba Travel Town Museum Foundation (TTMF) is a 501(c)(3) non-profit educational organization, and began its partnership with the Museum in 1987 by providing volunteers for docent tours and general maintenance and restoration of the trains and train cars.

TTMF currently operates the Travel Town Gift Shop Concession through Concession Agreement No. 262 which was executed on September 23, 2009, for a term of one-year with five (5) options to renew. TTMF also provides volunteers for tours, grounds maintenance, Museum events, and train restorations. Miniature Train Rides and a Snack Stand are operated through concession agreements with different business entities.

On January 4, 2013, TTMF submitted an unsolicited proposal to donate and install, at no cost to RAP, a new modular building for use by TTMF as the Travel Town Gift Shop (Attachment A). RAP entered into discussions with TTMF regarding specific terms of the donation which produced several counter-offers. On December 26, 2013, the General Manager sent written correspondence to TTMF with a final proposal (Attachment B). On January 7, 2014, TTMF accepted the final proposal (Attachment C).

As part of the proposed Amendment, TTMF will donate a new modular building to RAP to be used as the new gift shop building for TTMF during the extended term of the Concession Agreement. TTMF will pay all costs to procure, deliver and install the building and obtain all required permits and licenses. TTMF will also be responsible for all liabilities associated with the delivery and installation of the new modular building.

Revenue generated from the Gift Shop is used by TTMF to fund train restoration projects, educational programs, and for operating expenses.

Amendment to Concession Agreement No. 262

The current contract is termed to expire on September 22, 2015. TTMF currently pays 5% of total gross receipts to RAP as rent. In 2013, TTMF paid \$13,231 as rent to RAP. The Amendment will revise the following sections of the current contract:

REPORT OF GENERAL MANAGER

PG. 3

NO. 14-081

1. Term

The term of the contract will be extended by twenty (20) years effective the date of execution of the Amendment.

2. Rent Payment to RAP (Flat-Fee)

Contract Years 1 through 3	\$ 1,250 per month	(\$15,000 annually)
Contract Years 4 through 6	\$ 1,550 per month	(\$18,600 annually)
Contract Years 7 through 10	\$ 1,850 per month	(\$22,200 annually)
Contract Years 11 through 15	\$ 2,050 per month	(\$24,600 annually)
Contract Years 16 through 20	\$ 2,250 per month	(\$27,000 annually)

3. Premises

The Premises for the Travel Town Museum Gift Shop will be revised to include the site for proposed for the modular building by TTMF in the January 4, 2013, unsolicited proposal.

4. Donation of New Modular Building

TTMF will donate a modular building to RAP as described in the January 4, 2013, unsolicited proposal (Attachment A). The City and/or RAP will bear no costs or liabilities associated with the donation, including, but not limited to: design, permits, licenses, delivery, installation, and/or site preparation. The installation of the modular building will be completed within twelve (12) months from the execution of this Amendment. Failure to complete the installation of the modular building will be a material breach of contract, in which case RAP may terminate the contract.

5. Existing Modular Building

TTMF will cease using the Existing Modular Building as a Gift Shop immediately upon occupancy of the donated modular building. TTMF will be responsible for any and all costs of repairs, upkeep, maintenance, and operation of the existing modular building. Before TTMF is allowed to “reuse” the existing modular building, RAP must approve all upgrades performed to ensure compliance with Department standards and with the Americans with Disabilities Act (ADA) regulations.

6. Museum Volunteer Program

Under the direction of the designed RAP Representative, TTMF will provide oversight of the Museum Volunteer Program, to include: 1) docent tours; 2) educational and informational outreach; 3) grounds maintenance to supplement RAP maintenance; and, 4) exhibit maintenance. TTMF will actively assist RAP in creating awareness of the Museum Volunteer Program, to include outreach, training, and retention of volunteers.

## REPORT OF GENERAL MANAGER

PG. 4

NO. 14-081

### 7. Museum Restoration Program

All new restoration projects require TTMF to submit a written proposal for consideration by the RAP General Manager. Proposed restoration projects will not commence until written approval by the RAP General Manager is obtained by TTMF.

All current restoration projects will be completed within twelve (12) months of execution of the proposed Amendment. Any current restoration project not completed within the twelve (12) month timeframe will require TTMF to submit a written proposal for consideration by the RAP General Manager. The proposed continuation of an existing restoration project will not continue until written approval by the RAP General Manager is obtained by TTMF.

A list of current restoration projects is included as an exhibit to the proposed Amendment. The City and/or RAP will bear no costs associated with any current or proposed Museum Restoration Program project and is not obligated to fund or provide any form of service for such projects, unless approved in writing by the RAP General Manager.

### 8. Utilities

TTMF will assume any and all costs to install or provide electrical hook-up or connections to the new modular building. RAP will not be responsible for any costs associated with the installation of utility hook-ups, including installation of dedicated electrical meters or for any other utilities (e.g., water, gas, telephones) which may or may not be used at the donated modular building (gift shop). As stated in the current contract, RAP will incur the monthly electrical costs subsequent to the installation of the electrical meter by TTMF.

Staff recommends the approval of the Amendment in order to allow TTMF to donate the new modular building and continue providing tours, education programs, grounds maintenance, and restoration projects at the Museum.

The Office of Councilmember Tom LaBonge (Fourth Council District), has concurred with RAP staff's recommendations regarding accepting the donation of the modular building and provided \$20,000 in AB 1290 funds to TTMF to help purchase the modular building to replace the existing gift shop (Council Motion No. 13-0634).

### Charter Section 1022

Los Angeles City Charter Section 1022 prohibits contracting out work that could be done by City employees unless the Board determines it is more economical and/or feasible to contract out the service.

On July 20, 2012, the Personnel Department completed a Charter Section 1022 review as part of the process for Concession Agreement No. 262. The Personnel Department determined that

## REPORT OF GENERAL MANAGER

PG. 5

NO. 14-081

there were no City classifications with the expertise to perform essential aspects of the work, including all aspects of operating a souvenir stand or gift shop. It is therefore more feasible to secure these services through an independent contractor.

### ENVIRONMENTAL IMPACT STATEMENT:

Staff has determined that the proposed Amendment with TTMF will continue to allow the Travel Town Gift Shop to be used for operations involving no expansion of use, and, therefore, is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 1 (14) of the City CEQA Guidelines.

### FISCAL IMPACT STATEMENT:

TTMF will pay \$447,600 to RAP over the extended twenty year term of the Operating Agreement. Of that amount, \$313,320, or Seventy Percent (70%), of the revenue will be deposited into RAP's General Fund (Fund 302, Department 88); \$89,520, or Twenty Percent (20%), will be deposited into the Travel Town Development Account (Fund 302, Department 89, Account 89980D); and, \$44,760, or Ten Percent (10%), will be deposited into the Concession Improvement Account (Fund 302, Department 89, Account 89070K).

This report was prepared by Joel Alvarez, Senior Management Analyst, and Robert Morales, Senior Management Analyst, Partnership Division.

# ATTACHMENT A



**Travel Town Museum Foundation**  
American Southwestern Railway Association, Inc.  
P.O. Box 39846, Griffith Station  
Los Angeles, CA 90039

January 4, 2013

Robert Morales  
City of Los Angeles  
Department Recreation and Parks  
221 N. Figueroa St. Suite 1550,  
Los Angeles, CA 90012

Dear Mr. Morales,

The American Southwestern Railway Association, doing business as the *Travel Town Museum Foundation* (TTMF), would like to make the offer of a new Gift Shop building to the Department of Recreation and Parks for the Travel Town Museum. The new building would be a modular structure, centrally located on Museum grounds near the existing restrooms. The building project would greatly improve an unplanted dirt area at the museum and help improve the entire facility. The new gift shop would offer a larger retail space than the current gift shop, enabling the store to offer a greater selection of merchandise to better serve the Museum's visitors.

As part of the project, the TTMF would like to repurpose the current gift shop space as a Volunteer Center and Program Office. The Volunteer center would house a Library and Conference Room where the volunteers and members of the public could conduct research. There would be an office for the Program Manager and locker area for volunteers to store personal belongings while serving at the Museum.

The new building, as well as the repurposing of the existing building, would be done as a donation to Museum with funds raised for that purpose. The ASRA/TTMF anticipates continuing the operation of the Gift Shop concession under the current Concession Agreement, at least for the remaining 5 years stipulated in the agreement.

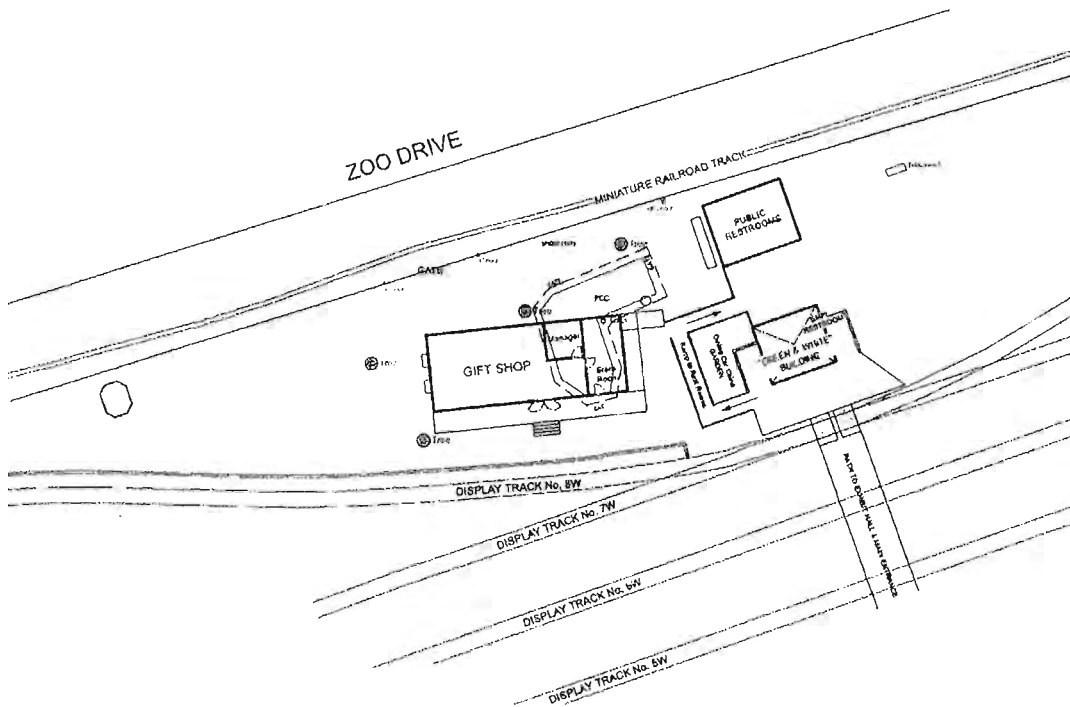
#### New Gift Shop Building

The New Gift shop will be in a more central location at the Museum. The Photo below shows the current status of the proposed site – our volunteers would remove the fencing and re-locate the materials inside the fencing to the service yard area of the museum.

DesignSpace Modular Buildings of Fontana, CA, (DSMB) has quoted us a turnkey price of \$219,000, which the ASRA/TTMF is willing to fully fund.



Below is the plan for the new building, as supplied by DSMB. Below that is a draft plan of the north side of Travel Town, with the new building outline in blue.





#### Budget for Gift Shop

The following is an abbreviated budget for the cost estimates including the Income of grants from Foundations that support the work of the Travel Town Museum Foundation. Expenses above and beyond the cost of the building include furnishing the inside of the building. The old building will also need to be furnished. Fundraising and in-kind donation solicitation is on-going to cover these costs.

DSMB has given us a turnkey quote, however we need to bring the City of Los Angeles Department of Recreation and Parks Planning, Construction and Maintenance representatives and DSMB together to make sure we can work through any unforeseen issues.

#### **Volunteer Center Cost Estimates (2012 Estimates)**

##### Expenses

Turn-key purchase of 24 x 60 Modular Building	198,268
Wooden deck, ramps, and steps, with tax	17,883
	<hr/>
	216,151
 New Gift Shop Furnishings	 <hr/>
	11,355
	<hr/>
Office Furnishings subtotal	2,100
<b>TOTAL EXPENSES</b>	<hr/> <b>229,606</b>

##### **Income:**

Grant from Parsons Foundation	50,000
Grant from the Griffith Trust	50,000
Grant from the Ahmanson Foundation	80,000
Pledge from Universal LLC Evolution Plan Contribution	50,000
	<hr/>
	<b>230,000</b>

#### Attachments

Attached please find the Proposal from Design Space Mobile Modular. We anticipate that there will need to be several meetings to approve the final placement of the new building as well as other move-in challenges.

#### Scheduling

Once we have had this offer accepted from the Department, we would like to get the process started and schedule any permitting meetings to make sure the installation will be seamless. The build-time for the new building is estimated to be from 2-6 months, so move in probably cannot take place until July or August of 2013. This should give the Museum volunteers time to clear

the site, the City and DSMB time to prepare the site for the piers, telephone and electrical hook-up, and the Foundation time to raise more money for furnishings and landscaping.

We look forward to hearing from you soon. We are very excited to move forward with this great improvement for the Travel Town Museum facility. If I can provide any more information please contact me at 818-822-7022, or via e-mail at [Nancy.newgiftshop@traveltown.org](mailto:Nancy.newgiftshop@traveltown.org).

Thank you again for your support!

Nancy Gneier  
Executive Director  
Travel Town Museum Foundation

Attachments:  
DesignSpace Modular Buildings Proposal

BOARD OF RECREATION AND  
PARK COMMISSIONERS

BARRY A. SANDERS  
PRESIDENT

W. JEROME STANLEY  
VICE PRESIDENT

LYNN ALVAREZ  
SYLVIA PATSAOURAS  
JILL T. WERNER

LATONYA D. DEAN  
COMMISSION EXECUTIVE ASSISTANT II

CITY OF LOS ANGELES  
CALIFORNIA



ERIC GARCETTI  
MAYOR

DEPARTMENT OF  
RECREATION AND PARKS

221 NORTH FIGUEROA STREET  
16TH FLOOR, SUITE 1650  
LOS ANGELES, CA 90012

(213) 202-2633  
FAX (213) 202-2614

MICHAEL A. SHULL  
GENERAL MANAGER

December 26, 2013

Ms. Nancy Gneier, Executive Director  
American Southwestern Railway Association, Inc.  
DBA Travel Town Museum Foundation  
P. O. Box 39846  
Los Angeles, CA 90039.

**DONATION OF A MODULAR BUILDING FOR THE PROPOSED USE AS THE  
TRAVEL TOWN MUSEUM GIFT SHOP**

Dear Ms. Gneier,

I am in receipt of your revised proposal E-mailed to the Department of Recreation and Parks (RAP) on October 2, 2013. I am also in receipt of your E-mail to RAP and Councilmember Tom LaBonge dated November 21, 2013.

Over the past year, RAP has attempted to provide the American Southwestern Railway Association, Inc., dba Travel Town Museum Foundation (Foundation) with a means to donate the proposed modular building and use throughout a long-term agreement. RAP has also provided the Foundation with the option to donate the proposed modular building at no cost to the City or RAP under the terms of existing Concession Agreement No. 262. The Foundation has elected to not accept the terms of the previous RAP proposals.

The following is the current RAP proposal in response to your October 2, 2013, counter proposal. Please understand that the non-acceptance by the Foundation will create delays in the ability to present a mutually agreed upon proposal to the Board of Recreation and Park Commissioners to consider. This includes delays in presenting the item to the Mayor and Council should a proposal for a new agreement eventually be agreed upon.

**Final Proposal**

The following are RAP's terms for the proposed acceptance of the donation of a modular building and the Foundation's use as the Museum Gift Shop:

1. **Term of Agreement**

Twenty (20) years from the date of execution of the proposed agreement.



2. Payment to RAP

The following monthly payments will be due to RAP on the first day of each month, and will be considered late if said payment is postmarked after the fifteenth (15th) day of the month payment is due:

Contract Years 1 through 3	\$ 1,250 per month	(\$15,000 annually)
Contract Years 4 through 6	\$ 1,550 per month	(\$18,600 annually)
Contract Years 7 through 10	\$ 1,850 per month	(\$22,200 annually)
Contract Years 11 through 15	\$ 2,050 per month	(\$24,600 annually)
Contract Years 16 through 20	\$ 2,250 per month	(\$27,000 annually)

The charges for late or delinquent payments shall be \$50.00 for each month the payment is late, plus interest calculated at the rate of eighteen percent (18%) per annum, assessed monthly on the balance of the unpaid amount. Payments shall be considered past due if postmarked after the fifteenth (15th) day of the month in which payment is due.

Note: The matter of rent reduction will not be included in the proposed agreement. All Concessionaires have the ability to request temporary rent reduction and, at the written approval of the Board, be granted such temporary rent reduction.

3. Premises

The Premises for the Museum Gift Shop will be revised to include the site proposed for the modular building, as proposed by the Foundation in the January 4, 2013, unsolicited proposal (Attachment A).

4. Donation of a New Modular Building

The Foundation will donate a modular building to RAP as described in the January 4, 2013, unsolicited proposal (Attachment A). The City and/or RAP will bear no costs associated with the donation, including, but not limited to: design, permits, licenses, delivery, installation, and/or site preparation.

5. Existing Modular Building

The Foundation will cease using the Existing Modular Building as a Gift Shop immediately upon occupancy of the donated modular building. By entering into this Agreement, the Foundation may repurpose the existing modular building as a Volunteer Center. The Foundation will be responsible for any and all costs of repairs, upkeep, maintenance and operation of the existing modular building. Before the Foundation is allowed to "reuse" the existing modular building, the Department must approve all upgrades are performed to Department standards and be compliance with the ADA regulations.

Ms: Nancy Gneier, Executive Director  
December 26, 2013  
Page 3

6. Museum Volunteer Program

Under the direction of the designated RAP Representative, the Foundation will provide oversight of the Museum Volunteer Program, to include: 1) docent tours; 2) educational and informational outreach; 3) grounds maintenance to supplement RAP maintenance; and, 4) exhibit maintenance. The Foundation will actively assist RAP in creating awareness of the Museum Volunteer Program, to include outreach, training, and retention of volunteers.

Note: Clarification of the Foundation's role and relationship in the Museum Volunteer Program may be required prior to a proposed agreement being submitted to the Board for consideration.

7. Museum Restoration Program

All new restoration projects will require the Foundation to submit a written proposal for consideration by the RAP General Manager. Restoration projects will not commence until written approval by the RAP General Manager is obtained.

All current restoration projects will be completed within twelve (12) months of execution of the proposed agreement. Any current restoration projects not completed within the aforementioned timeframe will require the Foundation to submit a written proposal for consideration by the RAP General Manager in order to continue the restoration.

A list of current restoration projects approved by the RAP General Manager will be included as an exhibit to any proposed agreement prior to submission to the Board for consideration.

8. Utilities

The Foundation will assume any and all costs to install or provide electrical hook-up or connections to the new modular building.

RAP will not be responsible for any costs associated with the installation of utility hook-ups, including installation of dedicated electrical meters or for any other utilities (e.g., water, gas, telephones) which may or may not be used at the donated modular building.

RAP will incur the monthly electrical costs subsequent to the installation of the electrical meter by the Foundation.

9. Insurance

The Foundation will provide and maintain insurance during the term of the Agreement in a manner and form acceptable to RAP and the City Risk Manager. Said insurance will

Ms. Nancy Gneier, Executive Director  
December 26, 2013  
Page 4

provide acceptable levels of coverage for the New Modular Building at the sole cost of the Foundation.

10. The remaining terms and conditions of a proposed agreement will be consistent with Concession Agreement No. 262.

In order to proceed with the donation of the new modular building and preparation of a new Concession Agreement, a written unconditional acceptance of the aforementioned terms, signed by an authorized agent of the Foundation on Foundation letterhead, must be received by RAP no later than 5:00 P.M. on January 13, 2014. Please send to the following address:

Department of Recreation and Parks  
Attn: Vicki Israel, Assistant General Manager  
221 North Figueroa Street  
Suite 1550  
Los Angeles, CA 90012

Upon receipt by RAP of the Foundation's written unconditional acceptance of the aforementioned RAP proposal, RAP staff will prepare the necessary documents for the Board's consideration.

Should you have any questions, please contact Robert Morales, Senior Management Analyst of the Partnership Division, at (818) 243-6488.

Sincerely,



MICHAEL A. SHULL  
General Manager

MAS/VLJA:mn

Attachments

cc: Regina Adams, Executive Officer  
Vicki Israel, Assistant General Manager  
Kevin Regan, Assistant General Manager  
Joe Salaices, Park Services Supervisor  
Noel Williams, Chief Management Analyst  
Agnes Ko, Senior Management Analyst  
Robert Morales, Senior Management Analyst  
Joel Alvarez, Senior Management Analyst



**TRAVEL TOWN MUSEUM FOUNDATION**  
**AMERICAN SOUTHWESTERN RAILWAY ASSOCIATION**  
•INCORPORATED•  
POST OFFICE BOX 39846 • GRIFFITH STATION  
LOS ANGELES, CALIFORNIA 90039

January 7, 2014

Department of Recreation and Parks  
Attn: Vicki Israel, Assistant General Manager  
221 North Figueroa Street  
15 Floor, Suite 1550  
Los Angeles, CA 90012

**DONATION OF MODULAR BUILDING TO BE USED AS  
THE TRAVEL TOWN MUSEUM GIFT SHOP**

Dear Vicki:

We are in receipt of your letter mailed to American Southwestern Railway Association on December 26, 2013 concerning the Donation of the Modular Building for the proposed use as the Travel Town Museum Gift Shop and other Foundation assistance set out to improve the Travel Town Museum.

We are prepared to accept the provisions set out in this letter, and we ask that you please proceed with preparation of necessary documents for Commission review. If you have any questions, please feel free to contact me at 818-968-3678 (cell). We look forward to working together on the goal of improving the Travel Town Museum!

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory C. Gneier". The signature is fluid and cursive, written over the word "Sincerely,".

GREGORY C. GNEIER  
President  
American Southwestern Railway Assn., Inc.

cc: Craig A. Smith, Esq.

REPORT OF GENERAL MANAGER

NO. 14-082

DATE April 2, 2014

C.D. All

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: SUMMER LUNCH PROGRAM – NATIONAL RECREATION AND PARK ASSOCIATION 2014 OUT-OF-SCHOOL TIME PROGRAMS GRANT – AUTHORIZATION TO SUBMIT GRANT APPLICATION; ACCEPTANCE OF GRANT FUNDS

R. Adams \_\_\_\_\_  
R. Barajas RB  
H. Fujita \_\_\_\_\_

\*V. Israel [Signature]  
K. Regan \_\_\_\_\_  
N. Williams \_\_\_\_\_

For Ramon Barajas  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

That the Board:

1. Approve retroactively the submission of an application for a 2014 Out-of-School Time Programs Grant from the National Recreation and Park Association (NRPA) to augment funding for the Department of Recreation and Parks (RAP) 2014 Summer Lunch Program in an approximate amount of \$35,000.00, subject to the approval of the Mayor and the City Council;
2. Direct staff to transmit a copy of the grant application to the Mayor, Office of the City Administrative Officer (CAO), Office of the Chief Legislative Analyst (CLA) and to the City Clerk for committee and City Council approval before accepting and receiving the grant award, pursuant to Los Angeles Administrative Code Section 14.6 et seq. as may be amended;
3. Authorize RAP's General Manager to accept and receive the NRPA 2014 Out-of-School Time Programs Grant, if awarded, in an approximate amount of \$35,000.00 from NRPA to supplement the 2014 Summer Lunch Program, subject to the approval of the Mayor and City Council;
4. Designate RAP's General Manager, Executive Officer, or Assistant General Manager, as the agent to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, and payment request, which may be necessary for the completion of the project; and,



## REPORT OF GENERAL MANAGER

PG. 2      NO. 14-082

5. Authorize RAP's Chief Accounting Employee to establish the necessary account and/or to appropriate funding received within "Recreation and Parks Grant" Fund 205 to accept the NRPA grant in an approximate amount of \$35,000.00 for the 2014 Summer Lunch Program, if awarded.

### SUMMARY:

On February 12, 2013, the Department of Recreation and Parks (RAP) received notification of the National Recreation and Park Association's (NRPA) 2014 Out-of-School Time Programs Grant, which supports children's health programming through park and recreation out-of-school time programs. The application was due by March 6, 2014.

In 2012, RAP received a similar award, the NRPA Serving Communities Grant, which helped to expand marketing and outreach in an effort to increase participation in RAP's Summer Lunch Program (Board Report No. 12-120) (Council File No. 12-0657). RAP's Summer Lunch Program provides free nutritious lunches to children ages 1-18 at more than 100 RAP facilities (feeding sites) located in low to moderate income areas throughout the City of Los Angeles. While most participants are drawn from RAP's summer day camp programs, these feeding sites are open to the public and meals are available to all youth. The program serves an estimated 200,000 meals each summer.

If awarded, this grant will be used to enhance marketing and outreach for the program. It will also assist in training program staff in nutrition education. As a condition of this grant, RAP will implement the OrganWise Guys nutrition education program at ten (10) of the feeding sites and disseminate nutritional information to participants and their families. This grant will also supply in-kind nutrition literacy materials valued at \$10,000.00 for use in OrganWise Guys nutrition literacy programming. The goal will be to provide nutrition education to at least 500 children by increasing access to nutritional facts and information.

### FISCAL IMPACT STATEMENT:

This grant will provide additional funding to enhance RAP's Summer Lunch Program and does not require a match. Therefore, there is no anticipated impact to RAP's General Fund.

This report was prepared by Isophine Atkinson, Senior Management Analyst, Grants Administration.

REPORT OF GENERAL MANAGER

NO. 14-083

DATE: April 2, 2014

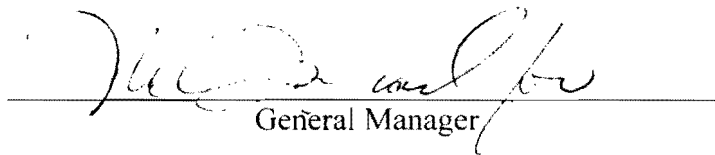
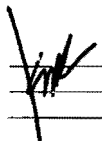
C.D. 1, 14

BOARD OF RECREATION AND PARKS COMMISSIONERS

SUBJECT: VARIOUS DONATIONS TO OPERATIONS BRANCH – METRO REGION

R. Adams \_\_\_\_\_  
R. Barajas \_\_\_\_\_  
H. Fujita \_\_\_\_\_

V. Israel \_\_\_\_\_  
\*K. Regan \_\_\_\_\_  
N. Williams \_\_\_\_\_

  
General Manager

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board accept the following donations as noted in the Summary of this Report, and that appropriate recognition is given to the donors.

SUMMARY:

Operations Branch – Metro Region, has received the following donations:

Lincoln Park Recreation Center

Bonanza Productions donated six (6) Spaulding ‘official-sized’ basketballs. The total estimated value of this donation is \$196.14.

Nicole White donated an Xbox 360 video game console with one remote. The total estimated value of this donation is \$200.00.

Ramona Gardens Recreation Center

Westcoast Sports Associates donated one-hundred-eight (108) basketball uniforms for the youth league. The total estimated value of this donation is \$1,685.79.

Rose Hill Recreation Center

LA32 Neighborhood Council donated \$2,000.00 to be used for uniforms, trophies, and equipment for the spring and fall baseball leagues.

REPORT OF GENERAL MANAGER

PG. 2

NO. 14-083

FISCAL IMPACT STATEMENT:

There is no fiscal impact to the Department's General Fund, except for unknown savings, as the donations may offset some expenditures. All cash donations will be deposited into appropriate Municipal Recreation Program (MRP) accounts for program-related expenses.

Report prepared by Marcus Chinelo, Clerk Typist, Metro Region Administration

REPORT OF GENERAL MANAGER

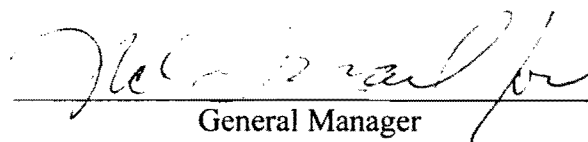
NO. 14-084

DATE April 2, 2014

C.D. Various

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: VARIOUS COMMUNICATIONS

  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

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The following communications have been received by the Board and recommended action thereon is presented.

From:

1) Mayor, relative to a Gift Agreement with the Los Angeles Dodgers Foundation, LA84 Foundation and Consolidated Disposal Service, LLC for the Installation of Baseball Field Improvements at Rancho Cienega Sports Complex.

2) Councilmember LaBonge, relative to a new marker for the Hayn Salomon statue in Pan Pacific Park.

3) City Clerk, relative to Assignment to the Social and Public Art Resource Center of the Right to Apply for the Proposition A Cities Excess Funds for the Tujunga Greenbelt Park - The Great Wall of Los Angeles Interpretive Green Bridge Project.

Recommendation:

Referred to staff for further processing.

Referred to General Manager.

Note and File.

REPORT OF GENERAL MANAGER

PG. 2

NO. 14-084

- 4) City Clerk, relative to Assignment to the Los Angeles Neighborhood Land Trust of the Right to Apply for Proposition A Cities Excess Funds for the Coronado Street Community Park and Garden Acquisition Project. Note and File.
- 5) City Clerk, relative to a comprehensive review of compliance with the Iran Contracting Act of 2010 (AB 1650). Referred to General Manager.
- 6) City Clerk, relative to the Mountains Recreation and Conservation Authority conducting the Los Angeles River Recreational Zone Program. Referred to General Manager.
- 7) Chief Legislative Analyst, forwarding the Legislative Report for the week ending February 28, 2014. Note and File.
- 8) Lake View Terrace Recreation Center/Hansen Dam Park Advisory Board, relative to a proposed naming of the lake at Hansen Dam. Referred to General Manager.
- 9) Two residents, eleven communications relative to the Los Angeles Unified School District. Note and File.
- 10) Rick Selan, eleven communications to staff relative to various allegations against the Oakwood Recreation Center. Note and File.
- 11) Tim Donovan, ten communications to various California Department of Justice staff, relative to Stoner Skate Park. Note and File.
- 12) Two residents, relative to Reports of the General Manager No. 14-061 and 14-062. Referred to General Manager.
- 13) Nine residents, relative to proposed youth baseball fields in Crystal Springs picnic area in Griffith Park. Referred to General Manager.

REPORT OF GENERAL MANAGER

PG. 3

NO. 14-084

- |   |                              |
|---|------------------------------|
| 14) Los Feliz Improvement Association, to Councilmember O'Ferrell, relative to park rangers.  | Note and File.               |
| 15) Eric Watson, to Councilmember LaBonge, relative to access to Griffith Park at Beachwood Canyon.   | Referred to General Manager. |
| 16) Approximately twenty-five additional signers, a continuation of Chris Yamashita's petition (via Change.org) relative to the State-owned Angel's Knoll Park. | Note and File.               |
| 17) Marc Behrman, Sport Court of Southern California, relative to the Department's tennis courts.   | Referred to General Manager. |

This report was prepared by Paul Liles, Clerk Typist, Commission Office.

REPORT OF GENERAL MANAGER

NO. 14-009

DATE January 22, 2014

C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: 50 PARKS INITIATIVE – LAUREL CANYON/MULHOLLAND OPEN SPACE ACQUISITION PROJECT, 8100 WEST MULHOLLAND DRIVE – REQUEST FOR FINAL AUTHORIZATION TO ACQUIRE PROPERTY – ESCROW INSTRUCTIONS AND LEGALLY OBLIGATED ACQUISITION COSTS, PURCHASE AND SALE AGREEMENT, ALLOCATION OF PROPOSITION K FUNDS, AND EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

R. Adams	<u>                    </u>	V. Israel	<u>                    </u>
*R. Barajas	<u><i>[Signature]</i></u>	K. Regan	<u>                    </u>
H. Fujita	<u>                    </u>	N. Williams	<u>                    </u>

*[Signature]*  
General Manager

Approved                                           Disapproved                                           Withdrawn                     

RECOMMENDATIONS:

That the Board:

1. Authorize the Board President and Secretary to execute the Assignment and Assumption Agreement which accepts the assignment of the rights from Mountain Recreation and Conservation Authority (MRCA) to purchase the property with Assessor's Parcel Number (APN) 5565-003-036 for \$1,226,000.00 (plus closing costs) under the Option to Purchase and Sale Agreement dated April 8, 2013 as amended and execute the Purchase and Sale Agreement and Joint Escrow Instructions (PSA) between the City and Laurel Mulholland Partners L.P. a California limited partnership;
2. Direct the Board Secretary to accept the Quit Claim Deed from MRCA, on file in the Board Office, which terminates and extinguishes any interest MRCA may have had in the property with APN 5565-003-036 under the to Purchase and Sale Agreement dated April 8, 2013;
3. Adopt a Resolution, substantially in the form on file in the Board Office, authorizing staff to request the assistance of the Department of General Services (GSD) and other City entities, per Charter Section 594(a) and (b), in obtaining fee title to a privately owned, vacant parcel,

REPORT OF GENERAL MANAGER

PG. 2                      NO. 14-009

approximately 1.21 acres or 52,750 square feet, with the address of 8100 West Mulholland Drive, Los Angeles, 90046 in the Bel-Air/Beverly Crest area with a County of Los Angeles APN 5565-003-036;

4. Direct the Board Secretary to transmit forthwith the proposed Assignment and Assumption Agreement and the Purchase and Sale Agreement And Joint Escrow Instructions to the City Attorney for review as to form;
5. Authorize and/or Request that the Department of General Services (GSD), the Department of Public Works, Bureau of Engineering, and the Department's Chief Accounting Employee to make technical corrections as necessary to establish the necessary accounts to acquire the project site, and to accept, and transfer the necessary monies to fund the acquisition to the appropriate City Department accounts or escrow company account in order to effectuate the acquisition of the property with APN 5565-003-036;
6. Find that the project is exempt from the provisions of the California Environmental Quality Act, as referenced in the Environmental section of this Report;
7. Direct staff to file a Notice of Exemption (NOE) with the Los Angeles County Clerk; and,
8. Direct the Board Secretary to accept the grant deed to the parcel, which is to be set apart and dedicated as park property in perpetuity.

SUMMARY:

On April 18, 2012, the Board of Recreation and Park Commissioners (Board) authorized the General Manager of the Department of Recreation and Parks (RAP) to submit the Proposition K 8<sup>th</sup> Cycle grant proposals for proposed capital improvement projects (Board Report No. 12-119). On April 25, 2012, RAP officially submitted a proposal to the Proposition K - L.A. for Kids Program, for the Laurel Canyon/Mulholland Open Space Acquisition Project for acquisition of the parcel located at 8100 West Mulholland Drive, Los Angeles, 90046, of approximately 1.21 acres or 52,750 square feet (per county assessor property data information) in the Bel-Air/Beverly Crest community, identified by APN 5565-003-036. On June 5, 2013, the City Council under Council File No. 12-1670 adopted the annual Proposition K budget for Fiscal Year 2013-2014 which included the allocation of \$1,500,000.00 in Proposition K funding for the Laurel Canyon/Mulholland Open Space Acquisition Project for the acquisition of land for open space. Currently, \$1,500,000.00 is available in Proposition K funds (Department 10, Fund 43K, Account 10KM14) for the project identified in the proposal of which up to \$1,365,000.00 can be used for acquisition and closing costs and the remaining amount up to \$125,000.00 can be used for City staff costs relating to the acquisition. The Proposition K Project is known as the "Laurel Canyon/Mulholland Open Space Acquisition Project".



REPORT OF GENERAL MANAGER

PG. 3

NO. 14-009

RAP will acquire the parcel identified by APN 5565-003-036 (Attachment 2 - Assessor Map) located at the intersection of Laurel Canyon Boulevard and Mulholland Drive in the Bel-Air/Beverly Crest Community. The property is a highly visible lot at the top end of a canyon. It is adjacent to the wide and mostly natural scenic highway and adjacent to the parkland owned by MRCA. The property is also located within the boundaries of the Santa Monica Mountains National Recreation Area. The proposed park will be part of a larger effort being coordinated by MRCA to control and preserve open space in the area. All of the nearby parcels now are, or soon will be maintained as open space that is contiguous with a greater than 400 acre natural area that extends from the Coldwater Canyon area to the Runyon Canyon area. (Attachment 1 - Vicinity Map). The ultimate future goal of this broader effort is to obtain ownership or control of the necessary land to eventually construct in the future a high-quality walking path that will connect the new Laurel Canyon/Mulholland Park with the nearby Laurel Canyon Park. The future proposed trail improvements once designed will implement a segment of the Core Trail parallel to Mulholland Drive that is called for in the City's Mulholland Scenic Parkway Specific Plan.

For the past ten (10) years the MRCA has been working on the overall goal of acquiring six parcels to be preserved for open space in the Mulholland Scenic Parkway (Inner Corridor) area connecting the remainder of the eastern Santa Monica Mountains. The MRCA entered into one Option to Purchase and Sale Agreement ("Option Agreement"), dated April 5, 2013, and recorded on June 4, 2014 as Instrument No 2013-0833380 with the owners of the five parcels identified by APN's: 565-003-036, 5565-003-037, 5565-003-039, 5565-003-040 (these parcels are owned by Laurel Mulholland Partners L.P.), and 5565-003-041 (owned by St. Joseph's Cottage L.P.). Under the Option Agreement, the MRCA as the "Buyer" has the option to purchase the five parcels referenced above. With the exception of parcel APN 5565-003-036, these parcels are to be purchased by MRCA in succession in the order listed above.

Under the Option Agreement, the MRCA also has the option of assigning its rights to acquire parcel APN 5565-003-036 to the City of Los Angeles. The MRCA, sellers identified in the Option Agreement (including specifically the owner of parcel APN 5565-003-036), and the City/RAP now propose that the MRCA assign its rights to the City to acquire said parcel for the purchase price of \$1,226,000.00, as identified in the Option Agreement. Staff recommends that the Board approve said assignment of the rights to purchase the subject parcel and authorize staff to negotiate an Assignment and Assumption Agreement ("Assignment Agreement") and a Purchase and Sale Agreement and Joint Escrow Instructions ("Purchase and Sale Agreement"), with the assistance of GSD and the City Attorney. MRCA's acquisition of the remaining four parcels identified in the Option Agreement would be separate from and independent of the City's acquisition of parcel APN 5565-003-036. The City will acquire property, with APN 5565-003-036 from Laurel Mulholland Partners L.P. and the City will deposit funds into escrow. Laurel Mulholland Partners L.P. will transfer the property via Grant Deed to the City.

## REPORT OF GENERAL MANAGER

PG. 4 NO. 14-009

### Funding Sources:

Funding for the acquisition will come from Proposition K funds, Department 10, Fund 43K, Account 10KM14. The total funding available for the 8100 West Mulholland Drive, Los Angeles, 90046 parcel identified by APN 5565-003-036 is \$1,500,000.00, of which up to \$1,365,000.00 can be used toward the purchase price for the property. This funding will be used to pay for the purchase price of \$1,226,000.00. Up to \$15,000.00 is available to pay for acquisition related costs such as appraisal fees, survey, and escrow closing costs. \$135,000.00 is available to pay for City staff costs, if any, directly related to the acquisition.

### Acquisition Cost:

The cost of the proposed Laurel Canyon/Mulholland Open Space acquisition is the \$1,226,000.00 purchase price plus closing costs and other due diligence costs, which are currently estimated at \$3,265.50. A Class "A" appraisal was prepared on October 28, 2013, by an independent appraiser hired by the MRCA. The appraiser concluded that the market value for parcel APN 5564-003-036 was \$1,440,000.00. GSD has completed its review of said appraisal and concurs with the appraised value for the 74,790 square foot site, which is currently vacant and is zoned RE15-1-H, which is Very Low II Residential. Per GSD's appraisal review memo, the appraised value takes into consideration the 31,220 square feet of conservation easement which encumbers the parcel. Said conservation easement was reportedly purchased by the MRCA for \$65,000.00 in the summer of 2012. GSD recommends and supports the purchase price of \$1,226,000.00 for the site, given the appraiser's determination of the market value of the site. All final costs, including closing costs, will be reviewed and recommended for payment by GSD.

### Development of the Site:

The new Laurel Canyon/Mulholland park site that the City/RAP will acquire, identified by APN 5565-003-036, will provide additional park space in the area and will help meet the needs of the community by providing future new trails and open space. There are no design plans yet for trail improvements over the site to be acquired by the City/RAP. Future trail location and design will need to be coordinated with the MRCA to ensure cohesive trail location and design throughout the City's parcel and the other five parcels which will be owned by the MRCA. The location of the RAP trailhead will have to be determined at a later time after community outreach and input is completed. This project only addresses acquisition of parcel APN 5665-003-036. References to potential improvements and development in the Proposition K proposal submitted by RAP were for reference purposes only and were included to provide information about the future development plans for the area that the MRCA intends to undertake and develop. As of the writing of this Report, details about MRCA's future development plans for the area have not been presented to RAP. However, upon acquiring parcel APN 5565-003-036, RAP will operate and maintain the site in its current state,

## REPORT OF GENERAL MANAGER

PG. 5

NO. 14-009

which is already usable by the public as open space. RAP will request funds to operate and maintain the new park as part of its annual budget request. There is strong support from Council District 4 for RAP to acquire the site now and to operate and maintain the site as open space until design plans for trail development are prepared.

### Environmental:

A Phase I Environmental Site Assessment (ESA) was completed on April 10, 2012 in conformance with the scope and limitations of ASTM Standard Practice E1527-05 and the Environmental Protection Agency Standards and Practices for All Appropriate Inquiries (40 CFR Part 312) for the subject property. The ESA report indicated that there are no recognized environmental conditions in connection with the parcel identified by APN 5565-003-036, and therefore, no environmental impediment to the City's acquiring the parcel identified by APN 5565-003-036 for public use. An updated Phase I ESA was completed in November 2013 and the previous findings and conclusions of the conditions of the parcel identified by APN 5565-003-036 for All Appropriate Inquiries have been validated.

Staff determined that the subject project consists of the acquisition of property with the intent to preserve open space for park purposes and access to public lands. Therefore, the project is categorically exempt from the provisions of California Environmental Quality Act (CEQA), pursuant to Article 19, Section 15313 of the State CEQA Guidelines. A NOE was filed by MRCA with the Los Angeles County Clerk on August 30, 2011. However, a new NOE will be filed by the RAP upon approval of the project.

### Quit Claim:

As of the drafting of this report, negotiations between all parties concerning easement and related title issues have led to changes in the following documents: Purchase and Sale Agreement, Assignment Agreement and the First Amendment to the Option Agreement.

### Quit Claim Deed:

The sole purpose of this quitclaim deed is to terminate and extinguish any interest of the MRCA herein by reason of the Option Agreement which recorded on June 4, 2013 as Instrument No. 2013-0833380 of Official Records only insofar as it affects the property described. Said Option Agreement will remain in full force and effect as to the remainder of the parcel described therein.

In addition to the Office of Council District 4, the Assistant General Manager of Planning, Construction and Maintenance Branch concurs with staff's recommendations.

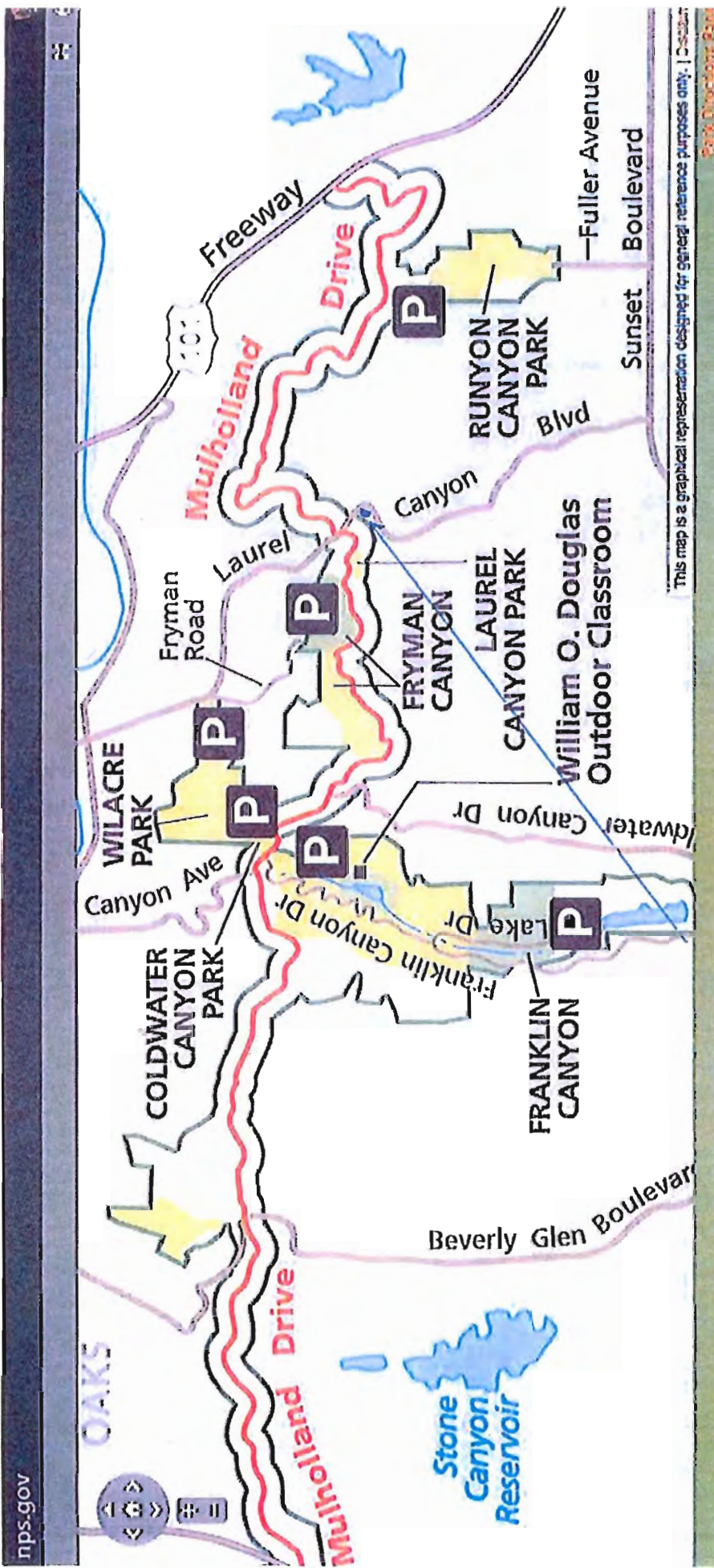
REPORT OF GENERAL MANAGER

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FISCAL IMPACT STATEMENT:

At this time, there is no fiscal impact to RAP's General Fund for the approval of this Board Report. Once this project is completed, operational maintenance cost will be determined. The Proposal budget for the first year of operation had a cost of \$13,572.00 for staff and \$317.00 for equipment.

This report was prepared by John Barraza, Management Analyst II in Real Estate and Asset Management Division, Planning, Construction, and Maintenance Branch.



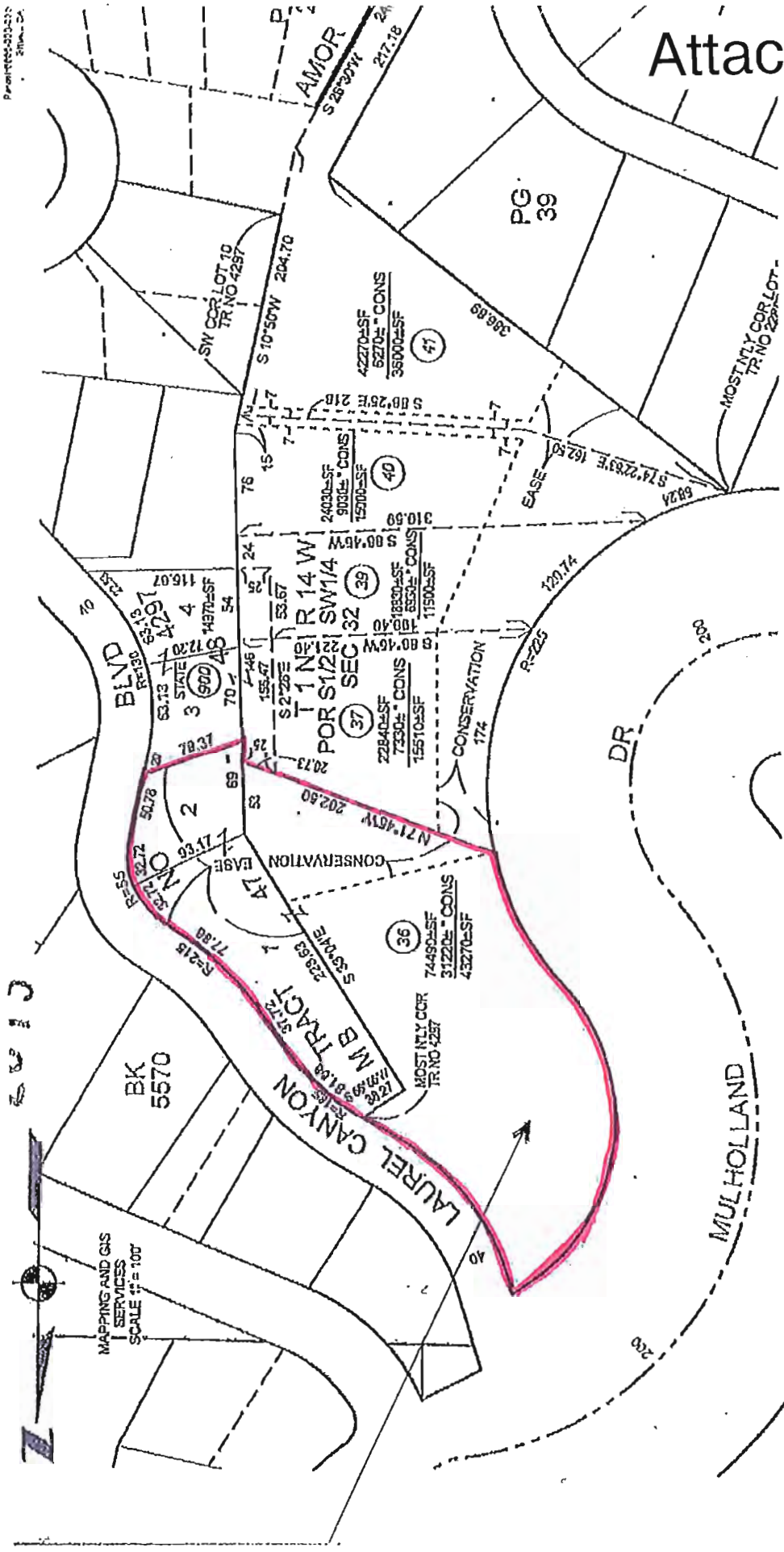
VICINITY MAP

APN: 5565-003-036



ASSESSOR MAP

8100 W. Mulholland APN: 5565-003-036



MAPPING AND GIS SERVICES SCALE 1" = 100'



REPORT OF GENERAL MANAGER

NO. 14-047

DATE April 2, 2014

C.D. ALL

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES CONTRACT – USE OF THE NATIONAL JOINT POWERS ALLIANCE (NJPA) SELECTION PROCESS FOR PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES WITH PLAYPOWER, INC.

R. Adams	<u>                    </u>	V. Israel	<u>                    </u>
*R. Barajas	<u><i>mf</i></u>	K. Regan	<u>                    </u>
H. Fujita	<u>                    </u>	N. Williams	<u>                    </u>

*[Signature]*  
 General Manager

Approved                                           Disapproved                                           Withdrawn                                     

RECOMMENDATIONS:

That the Board:

1. Approve the proposed contract, substantially in the form on file in the Board Office, between the City of Los Angeles (City) and PlayPower, Inc., a North Carolina corporation for the purchase and installation of playground and recreation related equipment, accessories and supplies on an occasional and as-needed basis with a contract term expiring on April 22, 2017;
2. Find that the National Joint Powers Alliance (NJPA), acts as the agent for participating governmental agencies for the purchase and installation of playground and recreation related equipment, accessories and supplies offered by PlayPower, Inc., and City is a participating agency;
3. Find that PlayPower, Inc., by written communication dated March 4, 2014, attached hereto and incorporated herein by reference as Attachment B, authorized City to utilize the NJPA contract terms and conditions for purchase and installation of playground and recreation related equipment, accessories and supplies;

REPORT OF GENERAL MANAGER

PG. 2                      NO. 14-047

4. Find as the contract awarding authority, in accordance with Charter Section 371(e)(2), the professional, scientific, expert, technical or other special services to be provided by PlayPower, Inc., are of a temporary and occasional character for which competitive bidding is not practicable or advantageous;
5. Find in accordance with Charter Section 371(e)(8), that the City may piggyback on the NJPA contract with Playpower, Inc., because contracts for cooperative arrangements with other governmental agencies for the utilization of the purchasing contracts and professional, scientific, expert or technical services contracts of those agencies and any implementing agreements are an exception to the City's competitive bidding requirements;
6. Find as the contract awarding authority, in accordance with Charter Section 371(e)(10), that the services to be provided by PlayPower, Inc., are for the performance of professional, scientific, expert or technical services and the use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by common law;
7. Find as the contract awarding authority, in accordance with Charter Section 1022, that the Department of Recreation and Parks (Department) does not have, available in its employ, personnel with the necessary expertise to undertake the specialized professional tasks sought and the work can be performed more economically or feasibly by an independent contractor;
8. Authorize the General Manager, at his sole discretion, to extend the term of the Agreement, if NJPA exercises its option to renew its contract with Playpower, Inc., for additional one (1) year;
9. Direct the Board Secretary to transmit forthwith the proposed Contract to the Mayor for approval and to the City Attorney for review and approval as to form; and,
10. Authorize the Board President and Secretary to execute the proposed Contract upon receipt of the necessary approvals.

SUMMARY:

The Department of Recreation and Parks (Department) has an ongoing need for the purchase and installation of playground and recreation related equipment, accessories, and supplies. The ability to purchase and install recreation and parks equipment is critical to meeting the Department's needs to build new and retrofit and repair existing park property.



REPORT OF GENERAL MANAGER

PG. 3                      NO. 14-047

Department staff is recommending that the Board authorize the Department to piggyback on NJPA's competitively bid contract with Playpower, Inc. Playpower, Inc., has issued a letter dated March 4, 2014 (attached hereto and incorporated herein by reference as Attachment B) to the City which authorizes use of the contract with the NJPA.

As stated on the NJPA's Contract Award and Request for Proposal (Attachment A), Section 1.B JOINT EXERCISE OF POWERS LAWS states: NJPA cooperatively shares those contracts with its Members nationwide throughout various "Joint Exercise of Powers Laws" established in Minnesota and other States. The Minnesota "Joint Exercise of Powers Law" is Minnesota Statute §471.59 which states "Two or more governmental units... may jointly or cooperatively exercise any power common to the contracting parties..." Similar Joint Exercise of Powers Laws exists within the laws of each State of the United States. This Minnesota Statute allows NJPA to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state.

Also, according to the California Government Code § 6502 below, it allows the City to participate in cooperative purchasing activities:

CALIFORNIA GOVERNMENT CODE §6502

If authorized by their legislative or other governing bodies, two or more public agencies by agreement may jointly exercise any power common to the contracting parties, even though one or more of the contracting agencies may be located outside this state. It shall not be necessary that any power common to the contracting parties be exercisable by each such contracting party with respect to the geographical area in which such power is to be jointly exercised....

Therefore, the Statute authorizes "public agencies" to participate in joint powers agreements with public agencies of other states. A "public agency" is defined, in part, as a public corporation. NJPA is a public corporation of the State of Minnesota pursuant to Minnesota Statute §123A.21, subdivision 9(d). The City of Los Angeles is a member of the NJPA and therefore is authorized to enter into contracts utilizing the terms and conditions of any NJPA awarded contracts.

The Board Office will issue a separate contract number and the Contract will be executed between the Playpower, Inc. and the City. Playpower, Inc.'s current contract with NJPA will expire on April 22, 2017. However, NJPA has the option to extend this contract, which if exercised would extend the term of their contract one (1) year to April 22, 2018. In the event that NJPA exercises its option, Department staff recommends that the Department's General Manager be given the sole discretion to extend the term of City's Contract for one (1) additional year.

REPORT OF GENERAL MANAGER

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The Playpower, Inc. contract will provide the Department with a variety of turnkey designs, manufacturing and installation options for playground equipment, poured in place surfaces, and site furnishing. The contract will allow the Department the ability to select a wide variety of standard manufactured and customized recreation and parks equipment. If desired, the Department may use this contract to install, construct or build new and/or to retrofit, repair and maintain the Department's existing recreation and parks equipment.

FISCAL IMPACT STATEMENT:

This contract will enable the Department to carry out various construction and maintenance projects that involve the construction, maintenance and/or retrofit of various recreation and parks equipment on an occasional and as-needed basis in order to enhance the recreational experience of the public. There will be no direct fiscal impact to the Department's General Fund as funding will be identified on a per project basis.

This Report was prepared by Jim Newsom, Management Analyst II, reviewed by Cid Macaraeg, Senior Management Analyst II, Planning, Construction and Maintenance Branch.

Attachment A

Contract Executed on April 23, 2013, between the National Joint Powers Alliance (NJPA) and Playpower, Inc.

# NJPA AWARDED CONTRACT



## NJPA VENDOR CONTRACT SUMMARY – LITTLE TIKES COMMERCIAL

<b>DATE</b> April 23, 2013	<b>RFP #</b> 022113
<b>AWARDED CONTRACT NUMBER</b> <b>022113-LTS</b>	<b>NJPA RFP TITLE &amp; CATEGORY</b> Athletic and Recreational surfaces, Playground and equipment.
<b>CONTRACT PERIOD</b> April 23, 2013-April 22, 2017	<b>PRICING MODEL</b> Line item pricing
<b>DESCRIPTION</b> Comprehensive Playground solution of products and services through local dealer and installer.	
<b>VENDOR NAME AND ADDRESS</b> Little Tikes 1615 Airpark dR. FARMINGTON, mo 63640	<b>VENDOR CONTACT</b> David Sheedy   Sales Director p. 573.366.6337   david.sheedy@playpower.com Brett Kidd   Sales Director c. 573.701.2236   o. 678.432.0077   brett.kidd@playpower.com
<b>NJPA CONTRACTS CONSIST OF THE FOLLOWING DOCUMENTS</b> Section 2.4 "Contract" as used herein shall mean cumulative documentation consisting of the RFP, and entire Bidder's Response, and fully executed "Acceptance and Award". <ul style="list-style-type: none"> <li>• <u>Request for Proposal (RFP)</u></li> <li>• <u>Bidders Response</u></li> <li>• <u>Bid Acceptance &amp; Award</u></li> </ul>	<b>RELATED CONTRACT DOCUMENTATION</b> <ul style="list-style-type: none"> <li>• <u><a href="#">Affidavit of Advertisement</a></u></li> <li>• <u><a href="#">Bid Opening Witness Page</a></u></li> <li>• <u><a href="#">Bid Evaluation</a></u></li> <li>• <u><a href="#">Bid Comment &amp; Review</a></u></li> </ul>
<b>DOCUMENTATION OF CONTRACT MAINTENANCE</b>	<b>ADDITIONAL INFORMATION:</b>

## NJPA INFORMATION

<b>NJPA CONTACT</b> Gordy Thompson	<b>TITLE</b> NJPA Contract Manager
<b>PHONE</b> 218-894-5489	<b>EMAIL</b> <a href="mailto:Gordv.thompson@njpacoop.org">Gordv.thompson@njpacoop.org</a>
<b>ADDRESS</b> 202 12th Street NE, P.O. Box 219, Staples, MN 56479	<b>WEBSITE</b> <a href="http://www.njpacoop.org">www.njpacoop.org</a>

National Joint Powers Alliance™

Contract Purchasing Department

**Formal Offering of Proposal**  
(To be completed Only by Proposer)



**PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES**

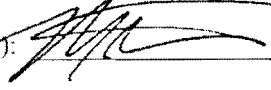
In compliance with the Request for proposal (RFP) for "PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES", the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer's Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: PlayPower Inc Date: 2/11/2013

Company Address: 13620 E Reese Blvd. Suite 300

City: Huntersville State: NC Zip: 28078

Contact Person: Michael A Sutton Title: Vice President Sales

Authorized Signature (ink only):  \_\_\_\_\_  
Michael A Sutton  
(Name printed or typed)



### Contract Acceptance and Award

(To be completed only by NJPA)

## NJPA 022113 PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES

Playpower, Inc.  
Proposer's full legal name

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective date of the Contract will be April 23, 20 13 and continue for four years thereafter AND which is subject to annual renewal at the option of both parties. This contract has the consideration of an optional fifth year renewal option at the discretion NJPA.

#### National Joint Powers Alliance® (NJPA)

NJPA Authorized signature: Susan Nariik Susan Nariik  
NJPA Executive Director (Name printed or typed)

Awarded this 24 April day of 20 13 NJPA Contract Number # 022113-LTS

NJPA Authorized signature: Scott Verona Scott Verona  
NJPA Board Member (Name printed or typed)

Executed this 24 April day of 20 13 NJPA Contract Number # 022113-LTS

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

Vendor Name Playpower, Inc.

Vendor Authorized signature: Michael A Sutton  
(Name printed or typed)

Title: Vice President of Sales, Playpower

Executed this \_\_\_\_\_ day of \_\_\_\_\_ NJPA Contract Number # 022113-LTS



# **National Joint Powers Alliance® (herein NJPA) REQUEST FOR PROPOSAL (herein RFP)**

for the procurement of

## **PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES**

### **RFP Opening**

February 21, 2013

8:00 A.M. Central Time

At the offices of the

National Joint Powers Alliance®

202 12<sup>th</sup> Street Northeast, Staples, MN 56479

### **RFP #022113**

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies to include all Government, Higher Education, K12 Education, Non-Profit, and all other Public Agencies located nationally in all fifty states and potentially internationally, issues this Request For Proposal (RFP) to result in a national contract solution for the procurement of PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES. Details of this RFP are available beginning January 9, 2013 and continuing until January 25, 2013. Details may be obtained by letter of request to Gregg Meierhofer, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at [RFP@njpacoop.org](mailto:RFP@njpacoop.org). Proposals will be received until February 20, 2013 at 4:30 p.m. Central Time at the above address and opened February 21, 2013 at 8:00 A.M. Central Time.

### **RFP Timeline**

*January 9, 2013*

*Publication of RFP in the print and online Minneapolis Star Tribune, in the print and online Daily Journal of Commerce within the State of Oregon, the NJPA website, and on the website of noticetobidders.com*

*January 25, 2013*

*Deadline for RFP requests*

*January 29, 2013*

*Pre-Proposal Conference (webcast – conference call - Connection info sent to all inquirers two business days prior to the event)*

*10:00 A.M. Central Time*

*February 20, 2013*

*Deadline for Submission of Proposals*

*4:30 P.M. Central Time*

*February 21, 2013*

*Public Opening of Proposals*

*8:00 A.M. Central Time*

*Direct questions regarding this RFP to:*

*Gregg Meierhofer at [gregg.meierhofer@njpacoop.org](mailto:gregg.meierhofer@njpacoop.org) or (218)894-1930*

**Methods and guidelines for submitting questions are detailed within the body of this document.**

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## I. INTRODUCTION

### A. ABOUT NJPA

- 1.1** The National Joint Powers Alliance®- (NJPA)- is a public agency serving as a national municipal contracting agency established under the Service Cooperative statute by Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative procurement services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations.
- 1.2** Under the authority of Minnesota state laws and enabling legislation, NJPA facilitates a competitive bidding and contracting process on behalf of the needs of itself and the needs of current and potential member agencies nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which NJPA Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of NJPA cooperative procurement contracts can be found at <http://www.njpacoop.org/contract-purchasing-solutions/contracts>.
- 1.3** NJPA is a public agency governed by publicly elected officials that serve as the NJPA Board of Directors. NJPA's Board of Directors calls for all proposals, awards all Contracts, and hosts those resulting Contracts for the benefit of its own and its Members use.
- 1.3.1** **Subject to Approval of the NJPA Board:** NJPA contracts are awarded by the action of NJPA Board of Directors. This action is based on the open and competitive bidding process facilitated by NJPA. The evaluation and resulting recommendation is presented to the Board of Directors by the NJPA Proposal Evaluation Committee.
- 1.4** NJPA currently serves over 47,000 member agencies nationally. Both membership and utilization of NJPA contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

### B. JOINT EXERCISE OF POWERS LAWS

- 1.5** NJPA cooperatively shares those contracts with its Members nationwide through various "Joint Exercise of Powers Laws" established in Minnesota and other States. The Minnesota "Joint Exercise of Powers Law" is Minnesota Statute §471.59 which states "Two or more governmental units...may jointly or cooperatively exercise any power common to the contracting parties..." Similar Joint Exercise of Powers Laws exists within the laws of each State of the United States. This Minnesota Statute allows NJPA to serve Member agencies located in all other states. Municipal agencies nationally have the ability to participate in cooperative purchasing activities as a result of specific laws of their own state. These laws can be found on our website at <http://www.njpacoop.org/contract-purchasing-solutions/legal-authority/state-procurement-resources>.

### C. WHY RESPOND TO A NATIONAL COOPERATIVE PROCUREMENT CONTRACT

- 1.6** National Cooperative Procurement Contracts create value for Municipal and Public Agencies, as well as for Vendors of products/equipment and services in a variety of ways:
- 1.6.1** National cooperative contracts potentially **save the time and effort** of Municipal and Public Agencies who would have been otherwise charged with soliciting vendor responses to individual RFP's, resulting in individual contracts, to meet the procurement needs of their respective agencies. Considerable time and effort is also potentially saved by the Vendors who would have had to otherwise respond each of those individual RFPs. A single, nationally

advertised RFP, resulting in a single, national cooperative contract can potentially replace thousands of individual RFPs for the same products/services that might have been otherwise advertised by individual NJPA member agencies.

**1.6.2** NJPA contracts offer our Members nationally leveraged **volume purchasing discounts**. Our contract terms and conditions offer the opportunity for Vendors to recognize individual member procurement volume commitment through additional volume based contract discounts.

**1.7** State laws that permit or encourage cooperative purchasing contracts do so with the belief that cooperative efficiencies will result in lower prices, better overall value, and considerable time savings.

**1.8** The collective purchasing power of thousands of NJPA Member agencies nationwide offers the opportunity for volume pricing discounts. Although no sales or sales volume is guaranteed by an NJPA Contract resulting from this RFP, substantial volume is anticipated and volume pricing is requested and justified.

**1.9** NJPA and its Members desire the best value for their procurement dollar as well as a competitive price. Pre-competited procurement contracts offer NJPA and its Member agencies the ability to directly compare non-price factors in their procurement analysis. Vendors have the opportunity to display and highlight value added attributes of their company, equipment/products and services without constraints of a typical individual proposal process.

#### D. THE INTENT OF THIS RFP

**1.10. A national contract awarded by the NJPA Board of Directors:** The intent of this RFP is to award a national contract by the action of the NJPA Board of Directors. This action will be influenced by the recommendation of the NJPA Proposal Evaluation Committee, and as a result of the competitive proposal and evaluation process which has been designed to reflect the best interests of NJPA and its Member agencies. NJPA is seeking the most responsive Vendor relationship(s) to meet this need. The goal and intent of this RFP is to follow through with an award and contract, which will be marketed nationally through a cooperative effort between the awarded vendor(s) and NJPA.

**1.11** NJPA's primary intent is to establish and provide a national cooperative procurement contract, offering opportunities for NJPA and our Member agencies to procure quality product/equipment and services as desired and needed. Contracts are expected to offer price levels reflective of the potential and collective volume of NJPA and the nationally established NJPA membership base.

**1.11.1** Beyond our primary intent, NJPA further desires to:

- Award a four year term contract with a fifth year contract option resulting from this RFP;
- Offer and apply any applicable technological advances throughout the term of a contract resulting from this RFP;
- Deliver "Value Added" aspects of the company, equipment/products and services as defined in the "Proposer's Response";
- Deliver wide spectrums of solutions to meet the needs and requirement of NJPA and NJPA Member agencies.
- Award an exclusive contract to the most responsive vendor when it is deemed to be in the best interest of NJPA and the NJPA Member agencies.

**1.12 Non-Manufacturer Awards:** NJPA reserves the right to make an award related to this invitation to a non-manufacturer or dealer/distributor if such action is in the best interests of NJPA and its Members.

**1.13 Exclusive or Multiple Awards:** Based on the goals and scope of this RFP, NJPA is requesting responders to demonstrate their ability to serve the needs of NJPA's national membership. It is NJPA's intent and desire to award a contract to a single exclusive Vendor to serve our membership's needs. To meet the goals of this RFP, NJPA reserves the right to award a Contract to multiple Proposers where the result of the responding Proposers justifies a multiple award and multiple contracts are deemed to be in the best interests of NJPA Member agencies.

#### E. SCOPE OF THIS RFP

**1.14** The scope, goal and intent of this RFP is to award a contract to a qualifying vendor defined as a manufacturer, provider, or dealer/distributor, established as a Proposer, and deemed responsive through our open and competitive proposal process. Vendors will be awarded contracts based on the proposal and responders demonstrated ability to meet the expectations of the RFP and demonstrate the overall highest valued solutions which meet and/or exceed the current and future needs and requirements of NJPA and its Member agencies nationally within the scope of **PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES**. Qualifying Proposers who are able to anticipate the current and future needs and requirements of NJPA and NJPA member agencies; demonstrate the knowledge of any and all applicable industry standards, laws and regulations; and possess the willingness and ability to distribute, market to and service NJPA Members in all 50 states are preferred. NJPA requests proposers submit their entire product line as it applies and relates to the scope of this RFP. All proposals deemed responsive will be evaluated based on their ability to provide the overall highest value to NJPA and NJPA Member agencies. One of the measures of overall highest value will be the proposed breadth and depth of products and services.

**1.15 Best and Most Responsive – Responsible Proposer:** It is the intent of NJPA to award a Contract to the best and most responsible and responsive Proposer(s) offering the best overall quality and selection of equipment/products and services meeting the commonly requested specifications of the NJPA and NJPA Members, provided the Proposer's Response has been submitted in accordance with the requirements of this RFP.

**1.16 Sealed Proposals:** NJPA will receive sealed proposal responses to this RFP in accordance with accepted standards set forth in the Minnesota Procurement Code and Uniform Municipal Contracting Law. Awards may be made to responsible and responsive Proposers whose proposals are determined in writing to be the most advantageous to NJPA and its current or qualifying future NJPA Member agencies.

**1.17 Use of Contract:** Any Contract resulting from this solicitation shall be awarded with the understanding that it is for the sole convenience of NJPA and its Members. NJPA and/or its members reserve the right to obtain like product/equipment and services solely from this Contract or from another contract source of their choice or from a contract resulting from their own procurement process.

**1.18 NJPA's interest in a contract resulting from this RFP:** Notwithstanding its own use, to the extent NJPA issues this RFP and any resulting contract for the use of its Members, NJPA's interests and liability for said use shall be limited to the competitive proposal process performed and terms and conditions relating to said contract and shall not extend to the products, services, or warranties of the Awarded Vendor or the intended or unintended effects of the product/equipment and services procured there from.

**1.19 Awarded Vendor's interest in a contract resulting from this RFP:** Awarded Vendors will be able to offer to NJPA, and current and potential NJPA Members, only those products/equipment and services specifically awarded on their NJPA Awarded Contract(s). Awarded Vendors may not offer as "contract compliant", products/equipment and services which are not specifically identified and priced in their NJPA Awarded Contract.

**1.20 Sole Source of Responsibility-** NJPA desires a "Sole Source of Responsibility" Vendor meaning the Vendor will take sole responsibility for the performance of delivered products/services. NJPA also desires sole responsibility with regard to:

**1.20.1 Scope of Products/Services:** NJPA desires a provider for the broadest possible scope of products/equipment and services being proposed over the largest possible geographic area and to the largest possible cross-section of NJPA current and potential Members.

**1.20.2 Vendor use of sub-contractors in sourcing or delivering product/equipment and services:** NJPA desires a single source of responsibility for equipment/products and services proposed. Proposers are assumed to have sub-contractor relationships with all organizations and individuals whom are external to the Proposer and are involved in providing or delivering the product/equipment and services being proposed. Vendor assumes all responsibility for the equipment/products and services and actions of any such Sub-Contractor.

**1.21 Additional Definitions** for the scope of this solicitation.

**1.21.1** In addition to **PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES**, this solicitation should be read to include, but not limited to:

**1.21.1.1** N/A

**1.21.2** NJPA reserves the right to limit the scope of this solicitation for NJPA and current and potential NJPA member agencies.

**1.22 Suggested Solutions Options**

**1.22.1** All potential Proposers are assumed to be professionals in their respective fields. As professionals you are deemed to be intimately familiar with the spectrum of NJPA and NJPA Members' needs and requirements with respect to the scope of this RFP.

**1.22.2** With this intimate knowledge of NJPA and NJPA Members' needs, Proposers are instructed to provide their proposal response in a format describing their solutions to those current and future needs and requirements. Proposers should take care to be economical in their response to this RFP.

**1.22.3** Multiple solutions to the needs of NJPA and NJPA Members are possible. **Examples could include:**

**1.22.3.1Equipment/Products Only Solution:** Equipment/products Only Solution may be appropriate for situations where NJPA or NJPA Members possess the ability, either in-house or through local third party contractors, to properly install and bring to operation those equipment/products being proposed.

**1.22.3.2 Turn-Key Solutions:** A Turn-Key Solution is a combination of equipment/products and services which provides a single price for equipment/products, delivery, and installation to a properly operating status. Generally this is the most desirable solution as NJPA and NJPA Members may not possess, or desire to engage, personnel with the necessary expertise to complete these tasks internally or through other independent contractors

**1.22.3.3 Good, Better, Best:** Where appropriate and properly identified, Proposers are invited to offer the CHOICE of good – better – best multiple grade solutions to NJPA and NJPA Members' needs.

**1.22.3.4 Proven – Accepted – Leading Edge Technology:** Where appropriate and properly identified, Proposers are invited to provide an appropriate identified spectrum of technology solutions to compliment or enhance the functionality of the proposed solutions to NJPA and NJPA Members’ needs both now and into the future.

**1.23 Overlap of Scope:**

**1.23.1** When considering equipment, products, or groups of product/equipment and services submitted as a part of your response, and whether inclusion of such will fall within a “Scope of Proposal”, please consider the validity of an inverse statement.

- For example, pencils and post-it-notes can generally be classified as office supplies and office supplies generally include pencils and post-it-notes.
- In contrast, computers (PCs and peripherals) can generally be considered office supplies; however, the scope of office supplies does not generally include computer servers and infrastructure.
- In conclusion: With this in mind, individual products and services must be examined individually by NJPA, from time to time and in its sole discretion, to determine their compliance and fall within the original “Scope” as intended by NJPA.

**1.24 Geographic Area to be Proposed:** This RFP invites proposals to provide **PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES** to NJPA and NJPA Members throughout the entire United States and possibly internationally. Proposers will be expected to express willingness to explore service to NJPA Members located abroad; however the lack of ability to serve Members outside of the United States will not be cause for non-award. The ability and willingness to serve Canada, for instance, will be viewed as a value-added attribute.

**1.25 Manufacturer as a Proposer:** If the Proposer is a Manufacturer or wholesale distributor, the response received will be evaluated on the basis of a response made in conjunction with that Manufacturer’s authorized Dealer Network. Unless stated otherwise, a Manufacturer or wholesale distributor Proposer is assumed to have a documented relationship with their Dealer Network where that Dealer Network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this RFP on behalf of the Manufacturer or wholesale distributor Proposer. Any such dealer will be considered a sub-contractor of the Proposer/Vendor. The relationship between the Manufacturer and wholesale distributor Proposer and its Dealer Network may be proposed at the time of the proposed submission if that fact is properly identified.

**1.26 Dealer/Re-seller as a Proposer:** If the Proposer is a dealer or re-seller of the products and/or services being proposed, the response will be evaluated based on the Proposer’s authorization to provide those products and services from their manufacturer. Where appropriate, Proposers must document their authority to offer those products and/or services.

**1.27 Contract Term:** At NJPA’s option a contract resulting from this RFP will become effective either; 1) The date awarded by the NJPA Board of Directors, or 2) The day following the expiration date of an existing NJPA procurement contract for the same or similar product/equipment and services.

**1.27.1** NJPA is seeking a Contract base term of four years subject to annual renewals as allowed by Minnesota Contracting Law. Full term is expected, however will only occur through successful annual renewals. One additional one-year renewal-extension may be offered by NJPA to Vendor beyond the original four year term if NJPA deems such action to be in the best interests of NJPA and its Members.

**1.28 Minimum Contract Value:** NJPA anticipates considerable activity resulting from this RFP and subsequent award; however, no commitment of any kind is made concerning actual quantities to be acquired. NJPA does not guarantee usage. Usage will depend on the actual needs of the NJPA Members and the value of the awarded contract.

**1.29 Estimated Contract Volume:** Estimated quantities and sales volume are based on potential usage by NJPA and NJPA Member agencies nationally.

**1.30 Largest Possible Solution:** If applicable, Contracts will be awarded to Proposer(s) able to deliver a proposal meeting the entire needs of NJPA and its Members within the scope of this RFP. NJPA prefers Proposers submit their complete product line of products and services described in the scope of this RFP. NJPA reserves the right to reject individual, or groupings of specific equipment/products and services proposals as a part of the award.

**1.31 Contract Availability:** This Contract must be available to all current and potential NJPA Members who choose to utilize this NJPA Contract to include all governmental and public agencies, public and private primary and secondary education agencies, and all non-profit organizations nationally.

**1.32 Proposer's Commitment Period:** In order to allow NJPA the opportunity to evaluate each proposal thoroughly, NJPA requires any response to this solicitation be valid and irrevocable for ninety (90) days after the date proposals were opened regarding this RFP.

#### F. EXPECTATIONS FOR EQUIPMENT/PRODUCTS AND SERVICES BEING PROPOSED

**1.33 Industry Standards:** Except as contained herein, the specifications or solutions for this RFP shall be those accepted guidelines set forth by the **PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES** industry, as they are generally understood and accepted within that industry across the nation. Submitted products/equipment, related services, and their warranties and assurances are required to meet and/or exceed all current, traditional and anticipated needs and requirements of NJPA and its Members.

**1.33.1 Deviations from industry standards** must be identified by the Proposer and explained how, in their opinion, the equipment/products and services they propose will render equivalent functionality, coverage, performance, and/or related services. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire proposal.

**1.33.2 Technical Descriptions/Specifications.** Proposers must supply **sufficient** information to:

- Demonstrate the Proposer's knowledge of industry standards, and
- Identify the equipment/products and services being proposed, and
- Differentiate those products and services from others.

Excessive technical descriptions and specifications which, in the opinion of NJPA unduly enlarge the proposal response may reduce evaluation points awarded on Form G.

**1.34 Important note:** NJPA does not typically provide product and service specifications; rather NJPA is requesting an industry standard or accepted specification for the requested product/equipment and services. Where specific line items are specified, those line items should be considered the minimum which can be expanded by the Proposer to deliver the Proposer's "Solution" to NJPA and NJPA Members' needs.

**1.35 Commonly used Product/Equipment and Services:** It is important that the equipment/products and services submitted are the equipment/products and services commonly used by public sector entities.

**1.36 New Current Model Product/Equipment:** Proposals submitted shall be for new, current model products and services with the exception of certain close-out products allowed to be offered on the Proposer's "Hot List" described herein.

**1.37 Compliance with laws and standards:** All items supplied on this Contract shall comply with any current applicable safety or regulatory standards or codes.

**1.38 Delivered and operational;** Products/equipment offered herein are to be proposed based upon being delivered and operational at the NJPA Member's site. Exceptions to "delivered and operational" must be explicitly disclosed in the "Total Cost of Acquisition" section of your proposal response.

**1.39 Warranty:** The Proposer warrants that all products, equipment, supplies, and services delivered under this Contract shall be covered by the industry standard or better warranty. All products and equipment should carry a minimum industry standard manufacturer's warranty that includes materials and labor. The Proposer has the primary responsibility to submit product specific warranty as required and accepted by industry standards. Dealer/Distributors agree to assist the purchaser in reaching a solution in a dispute over warranty's terms with the manufacturer. Any manufacturer's warranty which is effective past the expiration of the warranty will be passed on to the NJPA member. Failure to submit a minimum warranty may result in non-award.

**1.40 Proposer's Warrants:** The Proposer warrants all products/equipment and related services furnished hereunder will be free from liens and encumbrances; defects in design, materials, and workmanship; and will conform in all respects to the terms of this RFP including any specifications or standards. In addition, Proposer/Vendor warrants the products/equipment and related services are suitable for and will perform in accordance with the purposes for which they were intended.

## G. SOLUTIONS BASED SOLICITATION

**1.41** NJPA solicitations and contract process will not offer specific specifications for proposers to meet or base your response on. This RFP is a "Solutions Based Solicitation". This means the proposers are asked to understand and anticipate the current and future needs of NJPA and the nationally located NJPA membership base, within the scope of this RFP, and including specifications commonly desired or required by law or industry standards. Your proposal will be evaluated in part on your demonstrated ability to meet or exceed the needs and requirements of NJPA and our member agencies within the defined scope of this RFP.

## H. INQUIRY PERIOD

**1.42** The inquiry period shall begin at the date of first advertisement and continue to the "Deadline for Requests". RFP packages shall be distributed to Potential Bidders during the inquiry period. The purpose for the defined "Inquiry Period" is to provide a finite group of Potential Bidders to invite to, and attend the pre-bid conference.

## I. PRE-BID CONFERENCE

**1.43** All Potential Bidders inquiring during the inquiry period will be invited to the OPTIONAL "Pre-Bid Conference" via the e-mail address used to make their inquiry. The purpose of the pre-bid conference is to allow Potential Bidders to ask questions and hear answers from their own questions and the questions of other Potential Bidders.

## 2. DEFINITIONS

### A. PROPOSER - VENDOR

**2.1 Exclusive Vendor-** A sole Vendor awarded in a product category. NJPA reserves the right to award to an Exclusive Vendor in the event that such an award is in the best interests of NJPA Members nationally. A Proposer that exhibits and demonstrates the ability to offer and execute an outstanding overall program, demonstrates the ability and willingness to serve NJPA current and qualifying Members in all 50 states and comply with all other requirements of this RFP, is preferred.

**2.2 Potential Proposer-** A person or entity requesting a copy of this RFP.

**2.3 Proposer-** A company, person, or entity delivering a timely response to this RFP.

**2.4 Vendor-** One of a number of Proposers whose proposal has been awarded a contract pursuant to this RFP.

**2.5 Request for Proposal-** Herein referred to as RFP

## B. CONTRACT

**2.6** “Contract” as used herein shall mean cumulative documentation consisting of this RFP, fully executed forms C, D, F & P from the Proposer’s response pursuant to this RFP, and a fully executed form E, “Acceptance and Award” with final terms and conditions.

Form E will be executed on or after award and will provide final clarification of terms and conditions of the award.

## C. TIME

**2.7** Periods of time, stated as number of days, shall be in calendar days.

## D. PROPOSER’S RESPONSE

**2.8** A Proposer’s Response is the entire collection of documents as they are received by NJPA from a Potential Proposer in response to this RFP.

## E. CURRENCY

**2.9** All transactions are payable in U.S. dollars on U.S. sales. All administrative fees are to be paid in U.S. dollars.

## F. FOB

**2.10** FOB stands for “Freight On Board” and defines the point at which responsibility for loss and damage of product/equipment purchased is transferred from Seller to Buyer. “FOB Destination” defines that transfer of responsibility for loss is transferred from Seller to Buyer at the Buyer’s designated delivery point.

**2.11** FOB does not identify who is responsible for the costs of shipping. The responsibility for the costs of shipping is addressed elsewhere in this document.

## 3. INSTRUCTIONS FOR PREPARING YOUR PROPOSAL

### A. PRE-PROPOSAL CONFERENCE

**3.1** A non-mandatory pre-proposal conference will be held at the date and time specified in the time line on page one of this RFP. Conference call and web connection information will be sent to all Potential



Proposers through the same means employed in their inquiry. The purpose of this conference call is to allow Potential Proposers to ask questions regarding this RFP. Only answers issued in writing by NJPA to questions asked before or during the Pre-proposal Conference shall be considered binding.

#### B. IDENTIFICATION OF KEY PERSONNEL

**3.2** Vendor will designate one senior staff individual who will represent the awarded Vendor to NJPA. This contact person will correspond with members for technical assistance, questions or problems that may arise including instructions regarding different contacts for different geographical areas as needed.

**3.3** Individuals should also be identified (if applicable) as the primary contacts for the contents of this proposal, marketing, sales, and any other area deemed essential by the Proposer.

#### C. PROPOSER'S EXCEPTIONS TO TERMS AND CONDITIONS

**3.4** Any exceptions, deviations, or contingencies a Proposer may have to the terms and conditions contained herein must be documented on Form C.

**3.5** Exceptions, deviations or contingencies stipulated in Proposer's Response, while possibly necessary in the view of the Proposer, may result in disqualification of a Proposal Response.

#### D. FORMAL INSTRUCTIONS TO PROPOSERS

**3.6** It is the responsibility of all Proposers to examine the entire RFP package, to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a Proposal. Negligence in preparing a Proposal confers no right of withdrawal after the deadline for submission of proposals.

**3.7** All proposals must be sent to "The National Joint Powers Alliance®, 202 12th ST NE Staples, MN 56479."

**3.8 Format for proposal response:** All proposals must be physically delivered to NJPA at the above address in the following format:

**3.8.1** Hard copy original signed, completed, and dated forms C,D,F,I, and hard copy signed signature page only from forms A and P from this RFP,

**3.8.2** Hard copies of all addenda issued for the RFP with original counter signed by the Proposer,

**3.8.3** Certificate of insurance verifying the coverage identified in this RFP,

**3.8.4** Two complete copies of your response on a CD (Compact Disc) or flash drive. The first copy shall be identified as the "Evaluation Copy" and the second copy will be identified as the "Public Records" copy. Both copies shall contain completed Forms A,B,C,D,F & P, your statement of products and pricing together with all appropriate attachments, a copy of your audited financial statements from previous year end(or an unaudited copy if an audited copy is not available). However, your "Public Record Copy" shall have all "Trade Secret" information redacted. You will be responsible for citing specific legal authority for each redaction as identified herein.

**3.9** All Proposal forms must be submitted in English and be legible. All appropriate forms must be executed by an authorized signatory of the Proposer. Blue ink is preferred for signatures.

**3.10** Proposal submissions should be submitted using the electronic forms provided. If a Proposer chooses to use alternative documents for their response, the proposer will be responsible for ensuring the content is effectively equal to the NJPA form and the document is in a format readable by NJPA.

**3.11** It is the responsibility of the Proposer to be certain the proposal submittal is in the physical possession of NJPA on or prior to the deadline for submission of proposals.

**3.11.1** Proposals must be submitted in a sealed envelope or box properly addressed to NJPA and prominently identifying the proposal number, proposal category name, the message “**Hold for Proposal Opening**”, and the deadline for proposal submission. NJPA cannot be responsible for late receipt of proposals. Proposals received by the correct deadline for proposal submission will be opened and the name of each Proposer and other appropriate information will be publicly read.

**3.12** Corrections, erasures, and interlineations on a Proposer’s Response must be initialed by the authorized signer in original ink on all copies to be considered.

**3.13** Addendums to the RFP: The Proposer is responsible for ensuring receipt of all addendums to this RFP.

**3.13.1** Proposer’s are responsible for checking directly with the NJPA website for addendums to this RFP.

**3.13.2** Addendums to this RFP can change terms and conditions of the RFP including the deadline for submission of proposals.

#### E. QUESTIONS AND ANSWERS ABOUT THIS RFP

**3.14** Upon examination of this RFP document, Proposer shall promptly notify the NJPA of any ambiguity, inconsistency, or error they may discover. Interpretations, corrections and changes to this RFP will be made by NJPA through addendum. Interpretations, corrections, or changes made in any other manner will not be binding and Proposer shall not rely upon such.

**3.15** Submit all questions about this RFP, in writing, referencing “**PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES** to Gregg Meierhofer, NJPA 202 12th Street NE, Staples, MN 56479 or RFP@njpacoop.org. Those not having access to the Internet may call Gregg Meierhofer at (218) 894-1930. Requests for additional information or interpretation of instructions to Proposers or technical specifications shall also be addressed to Gregg Meierhofer. NJPA urges Potential Proposers to communicate all concerns well in advance of the deadline to avoid misunderstandings. Questions received less than seven (7) days ending at 4:00 p.m. Central Time of the seventh (7<sup>th</sup>) calendar day prior to proposal due-date cannot be answered.

**3.16** If the answer to a question is deemed by NJPA to have a material impact on other potential proposers or the RFP itself, the answer to the question will become an addendum to this RFP.

**3.17** If the answer to a question is deemed by NJPA to be a clarification of existing terms and conditions and does not have a material impact on other potential proposers or the RFP itself, no further documentation of that question is required.

**3.18** As used in this solicitation, clarification means communication with a Potential Proposer for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the RFP.

**3.19** Addenda are written instruments issued by NJPA that modify or interpret the RFP. All addenda issued by NJPA shall become a part of the RFP. Addenda will be delivered to all Potential Proposers using the same method of delivery of the original RFP material. NJPA accepts no liability in connection with the delivery of said materials. Copies of addenda will also be made available on the NJPA website at [www.njpacoop.org](http://www.njpacoop.org) by clicking on “Current and Pending Solicitations” and from the NJPA offices. No questions will be accepted by NJPA later than five (5) days prior to the deadline for receipt of proposals, except an addendum withdrawing the request for proposals or one that includes postponement of the date of receipt of proposals. Each Potential Proposer shall ascertain prior to submitting a Proposal that it has received all addenda issued, and the Proposer shall acknowledge their receipt in its Proposal Response.

**3.20** An amendment to a submitted proposal must be in writing and delivered to NJPA no later than the

time specified for opening of all proposals.

#### F. MODIFICATION OR WITHDRAWAL OF A SUBMITTED PROPOSAL

**3.21** A submitted proposal may not be modified, withdrawn from or cancelled by the Proposer for a period of ninety (90) days following the date proposals were opened regarding this RFP. **Prior** to the deadline for submission of proposals, any proposal submitted may be modified or withdrawn by notice to the NJPA Manager of Bids and Contracts. Such notice shall be submitted in writing and include the signature of the Proposer and shall be delivered to NJPA prior to the deadline for submission of proposals and it shall be so worded as not to reveal the content of the original proposal. However, the original proposal shall not be physically returned to the Potential Proposer until after the official proposal opening. Withdrawn proposals may be resubmitted up to the time designated for the receipt of the proposals if they are then fully in conformance with the Instructions to Proposer.

#### G. VALUE ADDED ATTRIBUTES, PRODUCTS/SERVICES

**3.22 Examples of Value Added Attributes:** Value-Added attributes, products and services are items offered in addition to the products and services being proposed which adds value to those items being proposed. The availability of a contract for maintenance or service after the initial sale, installation, and set-up may, for instance, be “Value Added Services” for products where a typical buyer may not have the ability to perform these functions.

**3.23 Where to document Value Added Attributes:** The opportunity to indicate value added dimensions and such advancements will be available in the Proposer’s Questionnaire and Proposer’s product and service submittal.

**3.24** Value added equipment/products and services and expanded services, as they relate to this RFP, will be given positive consideration in the award selection. Consideration will be given to an expanded selection of “PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES”, and advances to provide products/services, supplies meeting and/or exceeding today’s industry standards and expectations. A value add would include a program or service that further serves the members needs above and possibly beyond standard expectation and complements the equipment/products and services and training. Value added could include areas of product and service, sales, ordering, delivery, performance, maintenance, technology, and service that furthers the functionality and effectiveness of the procurement process while remaining within the scope of this RFP.

**3.25 Minority, Small Business, and Women Business Enterprise (WMBE) participation:** It is the policy of some NJPA Members to involve Minority, Small Business, and WMBE contractors in the process to purchase product/equipment and related services. Vendors should document WMBE status for their organization AND any such status of their affiliates (i.e. Supplier networks) involved in carrying out the activities invited. The ability of a Proposer to provide “Credits” to NJPA and NJPA Members in these subject areas, either individually or through related entities involved in the transaction, will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. NJPA is committed to facilitating the realization of such “Credits” through certain structuring techniques for transactions resulting from this RFP.

**3.26 Environmentally Preferred Purchasing Opportunities:** There is a growing trend among NJPA Members to consider the environmental impact of the equipment/products and related services they purchase. “Green” characteristics demonstrated by responding companies will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. Please identify any Green characteristics of the product/equipment and related services in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as “green” and by which certifying agency.

**3.27 On-Line Requisitioning systems:** When applicable, on-line requisitioning systems will be viewed as a value-added characteristic. Proposer shall include documentation about user interfaces that make on-line ordering easy for NJPA Members as well as the ability to punch-out from mainstream e-Procurement or Enterprise Resource Planning (ERP) systems that NJPA Members may currently utilize.

**3.28 Financing:** The ability of the Proposer to provide financing options for the products and services being proposed will be viewed as a Value Added Attribute.

#### H. CERTIFICATE OF INSURANCE

**3.29** Proposer shall provide evidence of liability insurance coverage identified below in the form of an ACCORD binder form with their proposal. Upon Award issued pursuant to this contract, and prior to the execution of any commerce relating to such award, Vendor will be responsible for providing verification, in the form of an ACCORD binder identifying the coverage required below and identifying NJPA as a "Certificate Holder" and an "Additional Insured". Vendor will be responsible to maintain such insurance coverage at their own expense throughout the term of any contract resulting from this solicitation.

**3.30** Vendor, upon award, shall be required to maintain the following insurance coverage during the term of the NJPA Contract:

(1) Workers Compensation insurance (Occurrence) with the following minimum coverage: Bodily injury by accident--per employee \$100,000; Bodily injury by disease--per employee \$100,000; Policy limits \$500,000. In addition, Proposer shall require all subcontractors occupying the premises or performing work under the contract to obtain an insurance certificate showing proof of Workers Compensation Coverage with the following minimum coverage: Bodily injury by accident--per employee \$100,000; Bodily injury by disease--per employee \$100,000; Policy limits \$500,000.

(2) Commercial General Liability Policy per occurrence \$1,000,000.

(3) Business Auto Policy to include but not be limited to liability coverage on any owned, non-owned and hired vehicle used by Proposer or Proposer's personnel in the performance of this Contract. The Business Automobile Policy shall have a per occurrence limit of \$1,000,000.

**3.31** The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least thirty (30) days prior written notice has been given to NJPA. Certificates of Insurance showing such coverage to be in force shall be filed with NJPA prior to commencement of any work under the contract. The foregoing policies shall be obtained from insurance companies licensed to do business nationally and shall be with companies acceptable to NJPA, which must have a minimum AM Best rating of A-. All such coverage shall remain in full force and effect during the term and any renewal or extension thereof.

#### I. ORDER PROCESS AND/OR FUNDS FLOW

**3.32** Please propose an order process and funds flow. Please choose from one of the following:

**3.32.1 B-TO-G:** The Business-to-Government order process and/or funds flow model involves NJPA Members issuing Purchase Orders directly to a Vendor and pursuant to a Contract resulting from this RFP.

**3.32.3 Other:** Please fully identify.

#### J. ADMINISTRATIVE FEES

**3.33** Proposer agrees to authorize and/or allow for an administrative fee payable to NJPA by an Awarded Vendor in exchange for its facilitation and marketing of a Contract resulting from this RFP to current and potential NJPA Members. This Administration Fee shall be:

**3.33.1** Calculated as a percentage of the dollar volume of all equipment/products and services provided to and purchased by NJPA Members or calculated as reasonable and acceptable method applicable to the contracted transaction, and

**3.33.2** Included in, and not added to, the pricing included in Proposer's Response to this RFP, and

**3.33.3** Designed to offset the anticipated costs of NJPA's involvement in contract management, facilitating marketing efforts, Vendor training, and any order processing tasks relating to the Contract resulting from this RFP.

**3.33.3.1** Typical administrative fees for a B-TO-G order process and funds flow is 2.0%.

**3.34** The opportunity to propose these factors and an appropriate administrative fee is available in the Proposer's Questionnaire.

#### 4. PRICING STRATEGIES

**4.1** NJPA requests Potential Proposers respond to this RFP only if they are able to offer a wide array of equipment/products and services and at prices lower and better value than what they would ordinarily offer to single government agency, larger school district, or regional cooperative.

**4.2** RFP is an "Indefinite Quantity Product/Equipment and Related Service Price and Program Request" with potential national sales distribution and service. Proposers are agreeing to fulfill Contract obligations regarding each product/equipment to which you provide a description and a price. If Proposer's solution requires additional supporting documentation, describe where it can be found in your submission. If Proposer offers the solution in an alternative fashion, describe your solution to be easily understood. All pricing must be copied on a CD along with other requested information as a part of a Proposer's Response.

**4.3** Regardless of the payment method selected by NJPA or NJPA Member, a total cost associated with any purchase option of the equipment/products and services and being supplied must always be disclosed at the time of purchase.

**4.4 Primary Pricing/Secondary Pricing Strategies-** All Proposers will be required to submit "Primary Pricing" in the form of either "Line-Item Pricing," or "Percentage Discount from Catalog Pricing," or a combination of these pricing strategies. Proposers are also encouraged to offer OPTIONAL pricing strategies such as but not limited to "Hot List," "Sourced Product/Equipment" and "Volume Discounts," as well as financing options such as leasing.

##### A. LINE-ITEM PRICING

**4.5 Line-Item pricing-** A pricing format where specific individual products and/or services are offered at specific individual Contract prices. Products/equipment and/or related services are individually priced and described by characteristics such as manufacture name, stock or part number, size, or functionality. This method of pricing offers the least amount of confusion as products/equipment and prices are individually identified however, Proposers with a large number of products/equipment to propose may find this method cumbersome. In these situations, a percentage discount from catalog or category pricing model may make more sense and increase the clarity of the contract pricing format.

**4.6** All Line-Item Pricing items must be numbered, organized, sectioned, including SKU's (when applicable) and easily understood by the Evaluation Committee and members.

**4.7** Line-Item Pricing items are to be submitted in an Excel spreadsheet format provided and are to include all appropriate identification information necessary to discern the line item from other line items

in each Responder's proposal.

**4.8** The purpose for the excel spreadsheet format for Line-Item Pricing is to be able to use the "Find" function to quickly find any particular item of interest. For that reason, Proposers are responsible for providing the appropriate product and service identification information along with the pricing information which is typically found on an invoice or price quote for such products/equipment and related services.

**4.9** All products/equipment and related services typically appearing on an invoice or price quote must be individually priced and identified on the line-item price sheet, including any and all ancillary costs.

**4.10** Proposers are asked to provide both a published "List" price as well as a "Proposed Contract Price" in their pricing matrix. "The published List" price will be the standard "quantity of one" price currently available to government and educational customers excluding cooperative and volume discounts.

## B. PERCENTAGE DISCOUNT FROM CATALOG OR CATEGORY

**4.11 Percent Discount From Catalog, list or Category Pricing-** A specific percentage discount from a "Catalogue or List Price" defined as a published Manufacturer's Suggested Retail Price (MSRP) for the products/equipment or related services being proposed.

**4.12** Individualized percentage discounts can be applied to any number of defined product groupings.

**4.13** A Percentage Discount from MSRP may be applied to all elements identified in MSRP including all Manufacturer Options applicable to the product/equipment or related service.

**4.14** Accessory options requested by the customer and related to the general scope of this RFP but are not under the current contract will be priced using a "Sourced Product/equipment pricing model" as defined herein. See Section F

**4.15** When a Proposer elects to use "Percentage Discount from Catalog or Category," Proposer will be responsible for providing and maintaining current published "MSRP" with NJPA and must be included in their proposal and provided throughout the term of any Contract resulting from this RFP.

**4.16** NJPA reserves the right to review catalogs submitted to determine if the represented products and services reflect and relate to the scope of this RFP. Each new catalog received may have the effect of adding new product offerings and deleting products no longer carried by the Vendor. New catalogs shall apply to the Contract only upon approval of the NJPA. Non-approved use of catalogs may result in termination for convenience. New price lists or catalogs found to be offering non-contract items during the Contract may be grounds for terminating the Contract for convenience. New optional accessories for product/equipment and related services may be added to the Contract through the NJPA approval process at the time they become available.

## C. HOT LIST PRICING

**4.17** Where applicable, NJPA also invites the Vendor, at their option, to offer a specific selection of products/services, defined as a Hot List selection offer pricing at greater discounts or related advantages than those listed in the standard Contract pricing. All product/service pricing, including the Hot List Pricing, must be submitted electronically provided in Excel format. Hot List pricing must be submitted in a Line-Item format. Providing or offering a "Hot List Selection" of equipment/products and related services is optional. Equipment/products and related services may be added or removed from the "Hot List" at any time.

**4.18** Hot List program and pricing when applicable may also be used to discount and liquidate close-out

and discontinued equipment/products and related services as long as those close-out and discontinued items are clearly labeled as such. Current ordering process and administrative fees apply. This option must be published and made available to all NJPA Members.

**4.19** Hot List Program and Pricing is allowed to change at the discretion of the Vendor within the definition of Hot List Pricing. The Vendor is responsible to maintain current Hot List product/equipment and related service descriptions and Pricing with NJPA.

#### D. CEILING PRICE

**4.20** Proposal pricing is to be established as a ceiling price. At no time may the proposed equipment/products and related services be offered pursuant to this Contract at prices above this ceiling price without request and approval by NJPA. **IMPORTANT NOTE:** Contract prices may be reduced to allow for volume considerations and commitments and to meet the specific and unique needs of an NJPA Member.

**4.21** Allowable specific needs may include competitive situations, certain purchase volume commitments or the creation of custom programs based on the individual needs of NJPA Members.

#### E. VOLUME PRICE DISCOUNTS

**4.22** Proposers are free to offer volume commitment discounts from the contract pricing documented in a Contract resulting from this RFP. Volume considerations shall be determined between the Vendor and individual NJPA Members on a case-by-case basis.

**4.23** Nothing in this Contract establishes a favored member relationship between the NJPA or any NJPA Member and the Vendor. The Vendor will, upon request by NJPA Member, extend this same reduced price offered or delivered to another NJPA Member provided the same or similar volume commitment, specific needs, terms, and conditions, a similar time frame, seasonal considerations, locations, competitively situations and provided the same manufacturer support is available to the Vendor.

**4.24** All price adjustments are to be offered equally to all NJPA Members exhibiting the same or substantially similar characteristics such as purchase volume commitments, and timing including the availability of special pricing from the Vendor's suppliers.

#### F. SOURCED PRODUCT/EQUIPMENT /OPEN MARKET ITEMS

**4.25** NJPA or NJPA Members may from time to time, request product/equipment and/or equipment/products and related services that are within the related scope of this RFP, which are not included in an awarded Vendor's line-item product/equipment and related service listing or "list or catalog". These items are known as Sourced Product/Equipment or Open Market Items.

**4.26** An awarded Vendor resulting from this RFP may "Source" equipment/products and related services for NJPA or an NJPA Member to the extent they:

**4.26.1** Identify all such equipment, products and services as "Sources Product/Equipment " or "Open Market Items" on any quotation issued in reference to an NJPA awarded contract, and provided to either NJPA or an NJPA Member, and

**4.26.2** All applicable acquisition regulations pertaining to the purchase of such equipment, products and services have been followed, as defined by NJPA or the NJPA Member receiving quotation from Vendor, and

**4.26.3** NJPA or the NJPA Member has determined the prices as quoted by Vendor for such equipment, products and services are deemed to be fair and reasonable and are acceptable to the

member.

#### G. COST PLUS A PERCENTAGE OF COST

**4.27** Cost plus a percentage of cost as a primary pricing mechanism is not desirable.

#### H. TOTAL COST OF ACQUISITION

**4.28** The Total Cost of Acquisition for the equipment/products and related services being proposed, including those payable by NJPA Members to either the Proposer or a third party, shall be defined as:

- The cost of the proposed equipment/products product/equipment and related services delivered and operational for its intended purpose in the end-user's location.

**4.29** For example, if you are proposing equipment/products only (IE, FOB Proposer's dock) your proposal would identify your deviation from the "Total Cost of Acquisition" of contracted equipment/products. The "Proposal should reflect that the contract does not provide for delivery beyond Proposer's dock, nor any set-up activities or costs associated with those delivery or set-up activities." In contrast, proposed terms including all costs for product/equipment and services delivered and operational at to the end-user's location would require a disclosure of "None".

#### I. REQUESTING PRODUCT/EQUIPMENT AND RELATED SERVICE ADDITIONS/DELETIONS

**4.30** Requests for product/equipment and related services, price changes, additions, deletions, or any related contract changes must be made in written form and shall be subject to approval by NJPA.

**4.31** New equipment/products and related services may be added to a Contract resulting from this RFP at any time during that Contract to the extent those equipment/products and related services are within the scope of this RFP. Those requests are subject to review and approval of NJPA. Allowable new equipment/products and related services generally include new updated models of equipment/products and related services and or enhanced services previously offered which could reflect new technology and improved functionality.

**4.32** Proposers representing multiple manufacturers, or carrying multiple related product lines may also request the addition of new manufacturers or product lines to their Contract to the extent they remain within the scope of this RFP.

**4.33** NJPA's due diligence in analyzing any request for change is to determine if approval of the request is 1) within the scope of the original RFP, and 2) in the "Best Interests of NJPA and NJPA Members." We are looking for consistent pricing and delivery mechanisms and an understanding of what value the proposal brings to NJPA and NJPA Members.

**4.34** Documenting the "Best Interests of NJPA and NJPA Members" when outdated equipment is being deleted is fairly straight forward since the product is no longer available and not relevant to the procurement Contract.

**4.35** Requests must be in the form of 1) a cover letter to NJPA a) asking to add the product/equipment line, b) making a general statement identifying how the products to be added are within the scope of the original RFP, and c) making a general statement identifying that, if appropriate, the pricing is consistent with the existing Contract pricing and 2) the detail as to what is being added at what price will then be an attachment to that cover letter. Pending approval of your request by NJPA you will need to provide a complete re-statement of all pricing including all new prices/products AND existing prices and products/equipment.

**4.36** NJPA's intent is to encourage Proposers to provide and document NJPA's due diligence in a clear and concise one page format on which we can approve and sign our acknowledgment and acceptance.



This information must ultimately come from Proposers, and NJPA is requiring it in this format.

## J. REQUESTING PRICING CHANGES

**4.37 Price Decreases:** Requests for standard Contract price decrease adjustments (percentage discount increases) are encouraged and will be allowed at any time based on market place efficiencies, market place competitiveness, improved technologies and/or improved methods of delivery or if Vendor engages in innovative procurement practices such as strategic sourcing, aggregate and volume purchasing. NJPA expects Vendors to propose their very best prices and anticipates price reductions due to the advancement of technologies and market place efficiencies. Documenting the “Best Interests of NJPA and NJPA Members” is highly valued when we are documenting price reductions.

**4.38 Price increases:** Requests for standard contract price increases (or the inclusion of new generation products/equipment/services at higher prices) can be made at any time. These requests will again be evaluated by NJPA based on the best interests of NJPA and NJPA Members. As an example, typically acceptable requests for price increases for existing equipment/products and services may cite increases to the Vendor of input costs such as petroleum or other applicable commodities. Typically acceptable requests for price increases for new equipment/products and services enhance or improve on the current solutions currently offered as well as cite increases in utility of the new compared to the old. Vendors are requested to reasonably document the claims cited in their requests. Your written request for a price increase, therefore, is an exercise in describing what you need, and a justification for why you need it in sufficient detail for NJPA to deem such change to be in the best interests of ourselves and our Members.

**4.39 Price Change Request Format:** An awarded Proposer will use the format of a cover letter requesting price increases in general terms (a 5% increase in product line X) and stating their justification for that price increase (due to the recent increase in petroleum or raw material costs) by product category. Specific details for the requested price change must be attached to the request letter identifying product/services where appropriate, both current and proposed pricing. Attachments such as letters from suppliers announcing price increases are appropriate for documenting your requests here.

## K. PRICE AND PRODUCT CHANGES FORMAT

**4.40** NJPA’s due diligence regarding product and price change requests is to consider the reasonableness of the request and document consideration on behalf of our members. Submit the following documentation to request a pricing change:

**4.40.1** A cover letter:

a. Please address the following subjects in your cover letter:

- i. What product/equipment and related service prices are changing?
- ii. How much are the prices changing?
- iii. Why are the prices changing?
- iv. Any additions or deletions from the previous product/equipment and related services list and the reason for the changes.

b. The specifics of the product/equipment and price changes will be listed in the excel spreadsheets identified below. Please take a more general “Disclosure” approach to identifying changes in the cover letter.

- i. If applicable and **for example**, indicate “All paper equipment/products and services increased 5 % in price due to transportation and fuel costs.”
- ii. If applicable, for instance, indicate, “The 6400 series floor polisher added to the product list is the new model replacing the 5400 series. The 6400’s 3% price increase reflects the rate of inflation over the past year. The 5400 series is now included in the “Hot List” at a 20% discount from previous pricing until remaining inventory is liquidated.”

**4.40.2** An excel spreadsheet identifying all equipment/products and services being offered and their pricing. Each subsequent pricing update will be saved using the naming convention of “(Vendor Name) pricing effective XX/XX/XXXX.”

a. Include all equipment/products and services regardless of whether their prices have changed. By observing this convention we will:

- i. Reduce confusion by providing a single, easy to find, current pricing sheet for each Vendor.
- ii. Create a historical record of pricing.

#### L. SINGLE STATEMENT OF PRICING/HISTORICAL RECORD OF PRICING

**4.41** Initially; and again with each request for product addition, deletion, and/or pricing change; you must state all pricing for all equipment/products and services available. The request for price changes described above will serve as the documentation for those requested changes. Each complete pricing list will be identified by its “Effective Date.” Each successive price listing identified by its “Effective Date” will create a “Product and Price History” for the Contract.

**4.42** Proposers may use the multiple tabs available in an Excel workbook to separately list logical product groupings or to separately list product and service pricing as they see fit.

**4.43** All equipment/products and services together with their pricing, whether changed within the request or remaining unchanged, will be stated on each “Pricing” sheet created as a result of each request for product, service, or pricing change.

**4.44** Each subsequent “Single Statement of Product and Pricing” will be archived by its effective date therefore creating a product and price history for any Contract resulting from this RFP. Proposers are required to create a historical record of pricing annually by submitting updated pricing referred to as a “Single Statement of Product/Equipment and Related Services Contract Price Update”. This pricing update is required at a minimum of once per contract year.

#### M. PAYMENT TERMS

**4.45** Payment terms will be defined by the Proposer in the Proposer’s Response. Proposers are encouraged to offer payment terms through P Card services if applicable to the customary method of procurement relating to the contracted product/equipment and related services.

**4.46** Leasing- If available, identify any leasing programs available to NJPA and NJPA Members as part of your proposal. Proposers should submit an example of the lease agreement to be used. Proposers should identify:

- General leasing terms such as:
  - The percentage adjustment over/under an index rate used in calculating the internal rate of return for the lease; and
  - The index rate being adjusted; and
  - The “Purchase Option” at lease maturity (\$1, or fair market value); and
  - The available term in months of lease(s) available.
- Leasing company information such as:
  - The name and address of the leasing company; and
  - Any ownership, common ownership, or control between the Proposer and the Leasing Company.

#### N. SALES TAX

**4.47** Sales and other taxes, where applicable, shall not be included in the prices quoted. Vendor will charge state and local sales and other taxes on items for which a valid tax exemption certification has not been provided. Each NJPA Member is responsible for providing verification of tax exempt status to

Vendor. When ordering, if applicable, NJPA Members must indicate that they are tax exempt entities. Except as set forth herein, no party shall be responsible for taxes imposed on another party as a result of or arising from the transactions contemplated by a Contract resulting from this RFP.

#### O. SHIPPING AND SHIPPING PROGRAM

**4.48** Shipping program for material only proposals, or sections of proposals, must be defined as a part of the cost of product/equipment. If shipping is charged to NJPA or NJPA Member, only the actual cost of delivery may be added to an invoice. Shipping charges calculated as a percentage of the product price may not be used, unless such charges are lower than actual delivery charges. No COD orders will be accepted. It is desired that delivery be made within ninety-days (90) of receipt of the Purchase Order. See “The Total Cost of Acquisition” for the equipment/products and related services.

**4.49** Any shipping cost charged to NJPA or NJPA Members will be considered to be part of “proposal pricing.”

**4.50** Additional costs for expedited deliveries will be at the additional shipping or handling expense to the NJPA Member.

**4.51** Selection of a carrier for shipment will be the option of the party paying for said shipping. Use of another carrier will be at the expense of the requester.

**4.52** Proposers must define their shipping programs for Alaska and Hawaii and any location not served by conventional shipping services. Over-size and over-weight items and shipments may be subject to custom freight programs.

**4.53** Proposals containing restocking fees are less advantageous than those not containing re-stocking fees. That being said, certain industries cannot avoid restocking fees. Certain industries providing made to order product/equipment may not allow returns. With regard to returns and restocking fees, Proposers will be evaluated based on the relative flexibility extended to NJPA and NJPA Members relating to those subjects. Where used, restocking fees in excess of 15% will be considered excessive. Restocking fees may be waived, at the option of the Proposer/Vendor. Indicate all shipping and re-stocking fees in price program.

**4.54** Proposer agrees shipping errors will be at the expense of the Vendor. For example, if a Vendor ships a product that was not ordered by the member, it is the responsibility of the Vendor to pay for return mail or shipment at the convenience of the member.

**4.55** Unless specifically stated otherwise in the “Shipping Program” of a Proposer’s Response, all prices quoted must be F.O.B. destination with the freight prepaid by the Vendor. Delivery effectiveness is very important aspect of this Contract. If completed deliveries are not made at the time agreed, NJPA or NJPA Member reserves the right to cancel and purchase elsewhere and hold Vendor accountable. If delivery dates cannot be met, Vendor agrees to advise NJPA or NJPA Member of the earliest possible shipping date for acceptance by NJPA or NJPA Member.

**4.56** Delivered products/equipment must be properly packaged. Damaged products/equipment will not be accepted, or if the damage is not readily apparent at the time of delivery, the products/equipment product/equipment shall be returned at no cost to NJPA or NJPA Member. NJPA and NJPA Members reserve the right to inspect the product/equipment at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the product/equipment at the time of delivery.

**4.57** Vendor shall deliver Contract conforming products/equipment in each shipment and may not substitute products/equipment without approval from NJPA Member.

**4.58** NJPA reserves the right to declare a breach of Contract if the Vendor intentionally delivers substandard or inferior products/equipment which are not under Contract and described in its paper or electronic price lists or sourced upon request to any member under this Contract. In the event of the delivery of a non-conforming product/equipment, NJPA Member will immediately notify Vendor and the Vendor will replace non-conforming product/equipment with conforming product/equipment acceptable to the NJPA member.

**4.59** Throughout the term of the Contract, Proposer agrees to pay for return shipment on product/equipment that arrives in a defective or inoperable condition. Proposer must arrange for the return shipment of damaged product/equipment.

**4.60** Unless contrary to other parts of this solicitation, if the product/equipment or the tender of delivery fail in any respect to conform to this Contract, the purchasing member may: 1) reject the whole, 2) accept the whole or 3) accept any commercial unit or units and reject the rest.

#### P. NORMAL WORKING HOURS

**4.61** Prices quoted are for equipment/products and services delivered during normal business hours. Normal Business hours will be as specifically defined herein, defined through industry standards OR defined through statement contained in the purchase/work order issued pursuant to a Contract resulting from this RFP.

#### 5. MARKETING PLAN

**5.1 Internal Marketing Plan:** If you are awarded a contract based on this solicitation, your sales force will be the primary source of the contract success. Your sales force needs to be aware that the value of the contract includes:

- The use of the NJPA Contract will save their customer (NJPA's Member) the time and effort of bringing a new individual Request For Proposal (RFP).
- The use of the NJPA Contract will save you and your sales force the time and effort of responding to individual Request For Proposals (RFPs).
- The use of the NJPA Contract will offer NJPA members the opportunity to have the ability to choose your company's contracted product/equipment and related services.

An award of Contract resulting from this RFP is an opportunity for the awarded Vendor to pursue commerce with, and deliver valued contracted products/equipment and related service solutions to NJPA and NJPA Members nationwide. Your internal marketing plan should serve to:

**5.1.1** Identify the appropriate levels of sales management whom will need to understand the value of, and the internal procedures necessary to deliver your Contract solution to NJPA and NJPA Members through your marketing and sales efforts.

**5.1.2** Identify, in general, your national footprint and dedicated feet-on-the-street sales force that will be carrying this Contract message and opportunity in the field to NJPA Members. Outline the sale force network in terms of numbers and geographic location and distribution of the product/equipment and related services. Service may be independent of the sales of the product/equipment. Demonstrate fully the sales and service capabilities of your company through your response.

**5.1.2.1** Identify whether your sales force are employees or independent contractors. Identify whether your dealers are company owned or independently owned.

**5.1.3** Identify your plan for delivering training to these individuals.

**5.1.3.1** Will you have your sales force or dealer network gathered at national or regional events in the near future? Does your sales force or dealer network have the ability to participate in sales training webinar or webcast events?

**5.1.3.2** NJPA is prepared to provide our personnel for sales training and/or on a webinar or webcast or other methodologies to effectively reach the appropriate groups within your sales management, dealer network and sales force.

**5.1.4** Sales Management Contract Training.

**5.1.4.1** NJPA will commit to providing contract sales training regarding all aspects of communicating the value of the Contract itself, the authority of NJPA to offer the Contract to its Members, the value the Contract delivers to NJPA Members, the scope of NJPA Membership, and the authority of NJPA Members to utilize NJPA procurement contracts.

**5.1.4.2** Your Sales Management will be needed to provide training regarding employee compensation and internal procedures when delivering the Contract opportunity, and how this Contract purchasing opportunity relates with other such opportunities available.

**5.2** Success in marketing is dependent upon 1) the delivery of value as defined in section 1.4, 2) the delivery of knowledge of the contract and its proper use and utility, and 3) the delivery of the contracted products/equipment and related services and the sales reward which creates a personal commitment to the contract. NJPA desires a marketing plan that:

**5.2.1** identifies the value to a member of a delivered a competitively proposed national cooperative procurement contract that reduces the need by both the NJPA Member and the Vendor/Vendor's sales staff of the responsibility to facilitate and responding to multiple and similar individual RFP's;

**5.2.2** identifies the appropriate Vendor personnel from both management and sales staff who will be trained on the sales and marketing methods, strategy, use and utility of such a contract and a general schedule of when and how those individuals will be trained; and

**5.2.3** identifies in general how the reward system for the marketing, delivery, and service chain of the Vendor will be affected by the implementation of the proposed Contract and how that will be proposed to those individuals in terms of the value created for them and their departments in 5.1.1 above.

**5.3 External Marketing Plan:** NJPA is seeking the ability to serve all our current and potential members nationwide. The Proposer must demonstrate the ability to both market and service their products/equipment and related services to NJPA current and potential members nationwide. As a part of your Marketing Plan, demonstrate your sales and service network and the capability to staff, communicate and offer the contract opportunity while demonstrating your commitment to serving NJPA and NJPA Members nationwide through the awarded contract.

**5.4** The Proposer must exhibit the willingness and ability to develop marketing materials and participate in marketing venues such as:

**5.4.1 Printed Marketing Materials.** Proposer will initially produce and thereafter maintain full color print advertisements in camera ready electronic format including company logos, identifying the Vendor, the Vendor's general utility for NJPA and NJPA Members, and contact information to be used by NJPA and NJPA Members in a full page, half page, and quarter page formats. These advertisements will be used in the NJPA directory and other marketing publications.

5.4.2 Contract announcements and advertisements. Proposer will identify a marketing plan identifying their anticipated contract announcements, advertisements in industry periodicals, or other direct or indirect marketing activities.

5.4.3 Proposer's Website. Proposer will identify how an Awarded Contract will be displayed on the Proposer's website. An on-line shopping experience for NJPA and NJPA Members is desired when applicable and will be viewed as a value-added attribute to a Proposer's Response.

5.4.4 Trade Shows. Proposer will outline their proposed involvement in the promotion of a Contract resulting from this RFP through applicable trade shows. Proposers are encouraged to identify tradeshows and other appropriate venues for the promotion of any such Contract. Proposers are encouraged to consider participation with NJPA at NJPA embraced national trade shows. Examples of such could include:

NAEP	National Association of Education Procurement
I-ASBO	International Association of School Business Officials
NIGP	National Institute of Government Purchasing

**5.5 Proposer must** also work in cooperation with NJPA to develop a marketing strategy and provide avenues to equally market and drive sales through the Contract and program to all NJPA Members nationally. Awarded Vendor agrees to actively market in cooperation with NJPA all contracted equipment/products and services to current and potential NJPA Members. NJPA reserves the right to deem a Proposer non-responsive or to waive an award based on an unacceptable marketing plan.

**5.6 As a part of this response,** submit a complete Marketing Plan on how you would help NJPA roll out this program to current and potential NJPA Members. NJPA requires the Awarded Vendors actively promote the Contract in cooperation with the NJPA. Proposers are advised to consider marketing efforts in the areas of 1) Website Link from Proposer's website to NJPA's website, 2) Attendance and participation with a display booth at national and regional trade shows and meetings when the event is applicable to the Proposer's customer vertical, and 3) Sales team and sales training programs involving both Proposer's sales management and NJPA staff.

**5.7 Facilitating NJPA Membership:** Proposer should express their commitment to develop a process to establish membership status of current and potential agencies with NJPA as a part of the sales or customer communication process.

5.7.1 Membership information: Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA to appropriately facilitate membership.

## 6. PROPOSAL OPENING PROCEDURE

**6.1** Sealed and properly identified Proposer's Responses for this RFP entitled "**PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES**" will be received by Gregg Meierhofer, Manager of Bids and Contracts, at NJPA Offices, 202 12th Street NE, Staples, MN 56479 until the deadline for receipt of, and proposal opening identified on page one of this RFP. **We document the receipt by using an atomic clock; an NJPA employee electronically time and date stamps all Proposals immediately upon receipt.** The NJPA Director of Contracts and Marketing, or Representative from the NJPA Proposal Evaluation Committee, will then read the Proposer's names aloud. A summary of the responses to this RFP will be made available for public inspection in the NJPA office in Staples, MN. A letter or e-mail request is required to receive a complete RFP package. Send or communicate all requests to the attention of Gregg Meierhofer 202 12th Street Northeast Staples, MN 56479 or RFP@njpacoop.org to receive a complete copy of this RFP. Method of delivery needs to be

indicated in the request; an email address is required for electronic transmission. Oral, facsimile, telephone or telegraphic Proposal Submissions or requests for this RFP are invalid and will not receive consideration. All Proposal Responses must be submitted in a sealed package. The outside of the package shall plainly identify **“PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES”** To avoid premature opening, it is the responsibility of the Proposer to label the Proposal Response properly.

## 7. EVALUATION OF PROPOSALS

### A. PROPOSAL EVALUATION PROCESS

**7.1 Overall Evaluation (FORM G)** - The NJPA Proposal Evaluation Committee will evaluate proposals received based on a 1,000 point evaluation system. The Committee will establish both the evaluation criteria and designate the relative importance of those criteria by assigning possible scores for each category.

**7.2** NJPA will use a 1,000 Point Evaluation System to help determine the best overall Proposer(s) selection. Bonus points may be available for specific proposal characteristics identified such as “Green Product Certifications.”

**7.2.1. Bonus Evaluation Points-** Bonus evaluation points may be awarded by the NJPA Proposal Evaluation Committee based on criteria identified as being both “optional” and “having additional value.”

**7.3** NJPA shall use a final overall scoring system to include consideration for best price and cost evaluation. The total possible score is 1,000 points. NJPA reserves the right to assign any number of point awards or penalties it considers warranted if a Proposer stipulates exceptions, exclusions, or limitations of liabilities.

**7.4** Responses will be evaluated first for responsiveness and thereafter for content. The NJPA Board of Directors will make awards to the selected Proposer(s) based on the recommendations of the Proposal Evaluation Committee.

**7.5** To qualify for the final evaluation, a Proposer must have been deemed responsive as a result of the criteria set forth under “Proposer Responsiveness.”

**7.6** NJPA uses a variety of evaluation methodologies, including but not limited to a cost comparison of specific and deemed to be like equipment/products. These processes establish final points for submitted price levels.

**7.7** The procurement activities of the NJPA Proposal Evaluation Committee are limited to document preparation, answering Proposer questions, advertising the solicitation, distribution of this RFP upon request, conducting an evaluation and making recommendation for possible approval to NJPA Board of Directors.

### B. PROPOSER RESPONSIVENESS

**7.8** Proposer’s Response received after the deadline for submission will be invalid and returned to the Potential Proposer unopened.

**7.9** An essential part of the proposal evaluation process is an evaluation to qualify the Proposer being considered. All proposals must contain answers or responses to the information requested in the proposal forms. Any Proposer failing to provide the required documentation may be considered non-responsive.

**7.10** Deviations or exceptions stipulated in Proposer’s Response may result in the proposal being classified as non-responsive.

**7.11** To qualify for evaluation, a proposal must have been submitted on time and materially satisfy all mandatory requirements identified in this document. A proposal must reasonably and substantially conform to all the terms and conditions in the solicitation to be considered responsive.

**7.12** **The Proposal Evaluation Committee shall utilize the following criteria to evaluate all proposals received. Items 1-4 constitute the test for “Level One Responsiveness” and are determined on the proposal opening date. “Level 2” responsiveness is determined through the evaluation of the remaining items listed under Proposal Evaluation Criteria. These items are not arranged in order of importance and each item may encompass multiple areas of information requested.**

1. The proposal response is received prior to the deadline for submission.
2. The proposal package was properly addressed and identified as a sealed proposal with a specific opening date and time.
3. The proposal response contains the required certificate of liability insurance.
4. The proposal response contains original signatures on all documents requiring such.

### C. PROPOSAL EVALUATION CRITERIA

**7.13 Reduction of Evaluation Points.** The following items will be sufficient cause to reduce evaluation points.

**7.13.1** If a manufacturer or supplier chooses not to produce or supply a full selection and representation of product/equipment and related services it has available which fall within the scope of this RFP, such action will be considered sufficient cause to reduce evaluation points.

#### **7.14 Evaluation Criteria**

**7.15** Evaluation of each Proposer’s Response will take into consideration as a minimum response but not necessarily limited to the following:

1. Adherence to all requirements of this RFP as defined by industry standards.
2. Prior knowledge of and experience with a Proposer in terms of past performance and market place success.
3. Capability of meeting or exceeding current and future needs or requirements of NJPA and NJPA Members.
4. Evaluation of Proposer’s ability to market to and provide service to all NJPA Members nationally.
5. Financial condition of the Proposer.
6. Nature and extent of company data furnished in Proposer’s Response.
7. Quality of products, equipment, and services offered including value added related services.
8. History of member service to NJPA type customers.
9. Overall ability to perform sales, solutions and contract support as submitted.
10. Ability to meet service and warranty needs.
11. History of meeting shipping and delivery expectations of contracted products/ services.
12. Technology advancements and related provisions.
13. Ability to market and promote the Contract within current business practices.
14. Willingness to develop and enter into NJPA Contract and business relations.
15. Favorable bond rating and applicable industry standard licensing ability.
16. Past market place successes and brand recognition.
17. Demonstrated warranty and product/service responsibility.
18. Possesses qualifications as a responding Proposer that meets or exceeds those set within the solicitation.
19. Information from government and education references and past performance information including past agency approval.
20. Demonstrates that they offer the most current industry standard equipment/products and related



- services and/or services.
21. Demonstrates financial stability as a company and a favorable banking line of credit.
  22. Demonstrates their equipment/products and related services proposed meet and/or exceed industry standards accepted by educational or governmental agencies nationally.
  23. Demonstrates market place success and their past performance exhibits an acceptable reputation nationally within the government and education market place.
  24. Demonstrates that the company possesses the background, knowledge, capacity, and ability to sell, deliver, and support equipment/products and related services offered to government and education and related agencies.
  25. Response's conformance to terms and conditions as described in the solicitation, including documentation.
  26. Has provided documentation defining, outlining, and describing their concept of a national marketing program they will be implementing to facilitate and coordinate the cooperative activities required by an awarded NJPA Contract.
  27. Has provided all of the required and applicable documentation required i.e. insurance certificates, licenses, and/or registration certificates required to do business nationally.
  28. Line-Item Pricing, or acceptable pricing model in approved excel format, listing of all of the proposed equipment/products and related services and warranty provisions with their associated units of costs.
  29. Hot List Pricing equipment/products and related services in a Line-Item Pricing format (when applicable).
  30. Contract Pricing submitted as requested to include selection of products/equipment and related services in a Line-Item Pricing and/or Percentage Discount from a published gov/ed price list or Catalog.

#### D. OTHER CONSIDERATION

**7.16** Consideration will be given in the award based on the completion and degree of information provided regarding available products/equipment, and accessories, and related services as well as, applicable parts of the Proposer Information and Questionnaire.

**7.17** The Proposer is required to have extensive knowledge and at least three (3) years of experience with the related activities surrounding the selling of the product/equipment, related services or related products/equipment offered.

**7.18** NJPA reserves the right to accept or reject newly formed companies solely based on information provided in the proposal and/or its own investigation of the company.

**7.19** The fact a manufacturer or supplier chooses not to produce or provide equipment products or services to meet the intent and scope of this RFP will not be considered sufficient cause to adjudge this RFP as restrictive.

**7.20** Consideration will be given in the proposal evaluation based upon the selection, variety, technological advances, and demonstrated quality of products submitted, technological advances, and pricing. A positive review will reflect the ability of the Proposer to communicate the value of these factors and to demonstrate how the depth and breadth of their product and service offerings provide NJPA and NJPA Members comfort and assurance understanding that the proposer accepts the sole source of responsibility of the response to the scope of this RFP.

**7.21** Consideration will also be given to proposals demonstrating technological advances, provide increased efficiencies, expanded service and other related improvements beyond today's NJPA member's needs and applicable standards.

**7.22** Strong consideration will be given to a Proposer's past performance, distribution model, and the

demonstration their ability to effectively market and service NJPA Membership nationally.

**7.23** Strong consideration will be given to the best price as it relates to the quality of the product and service. However, price is ultimately only one of the factors taken into consideration in the evaluation and award.

**7.24** The Proposer's ability to follow the proposal preparation instructions set forth in this solicitation will also be considered to be an indicator of the Proposer's ability to follow other future instructions should they receive an award as a result of this solicitation. Any Contract between NJPA and a Proposer requires the delivery of information and data. The quality of organization and writing reflected in the proposal will be considered an indication of the quality of organization and writing which would be prevalent if a Contract was awarded. As a result, the proposal will be evaluated as a sample of data submission.

**7.25** Proposer's audited financial statements from previous year end (or an unaudited copy if an audited copy is not available). The Proposer's audited financial statements from previous year end (or an unaudited copy if an audited copy is not available) are requested and reviewed to get a general feel for the size, strength, and probable scope of the Proposer.

**7.26** NJPA reserves the right to reject the Proposer's Response of the apparent successful Proposer where the available evidence or information does not exhibit the ability or intent to satisfy NJPA that the potential Vendor is unable to properly carry out the terms of this RFP and potential Contract.

**7.27** NJPA shall reserve the right to reject any or all proposals. NJPA also reserves the right to reject a proposal not accompanied by required certificate of insurance, other data required by this RFP, or if a Proposer's Response is incomplete or irregular. The NJPA shall reject all proposals where there has been proven or suspicion of collusion among the Proposers.

#### E. COST COMPARISON

**7.28** NJPA reserves the right to use this process in the event the Proposal Evaluation Committee feels it is necessary to make a final determination.

**7.29** This process will be based on a point system with points being awarded for being low to high Proposer for each cost evaluation item selected. A "Market Basket" of identical (or substantially similar) equipment/products and related services may be selected by the NJPA Evaluation Committee and the unit cost will be used as a basis for determining the point value. The "Market Basket" will be selected by NJPA from all product categories as determined appropriate by NJPA. The low priced Proposer will receive the full point value and all other Proposers will receive points as follows: Lowest price Proposal = 5 (where there are five proposers), and inferior proposals = 4, 3, 2, 1 points each. The Total Score for each proposer will be the sum of all points earned. The result of this process shall not be the sole determination for award.

#### F. PRODUCT TESTING

**7.30** NJPA reserves the right to request and test equipment/products and related services from the apparent successful Proposer. Prior to the award of the Contract, the apparent successful Proposer, if requested by NJPA, shall furnish current information and data regarding the Proposer's resources, personnel, and organization within three (3) days.

#### G. PAST PERFORMANCE INFORMATION

**7.31** Past performance information is relevant information regarding a Proposer's actions under previously awarded contracts to schools, local, state, and governmental agencies and non-profit agencies. It includes the Proposer's record of conforming to specifications and standards of good workmanship. The Proposer's history for reasonable and cooperative behavior and commitment to member satisfaction

shall be under evaluation. Ultimately, Past Performance Information can be defined as the Proposer's businesslike concern for the interests of the NJPA Member.

#### H. WAIVER OF FORMALITIES

7.32 NJPA reserves the right to waive any minor formalities or irregularities in any proposal and to accept proposals, which, in its discretion and according to the law, may be in the best interest of its members.

### 8. POST AWARD OPERATING ISSUES

#### A. SUBSEQUENT AGREEMENTS

**8.1 Purchase Order-** Purchase Orders for product/equipment and related services may be executed between NJPA or NJPA Members (Purchaser) and awarded Vendor(s) or Vendor's sub-contractors pursuant to this invitation and any resulting Contract. NJPA Members are instructed to identify on the face of such Purchase orders that "This purchase order is issued pursuant to NJPA procurement contract #XXXXXX." A Purchase Order is an offer to purchase product/equipment and related services at specified prices by NJPA or NJPA Members pursuant to a Contract resulting from this RFP. Purchase Order flow and procedure will be developed jointly between NJPA and an Awarded Vendor after an award is made.

**8.2 Governing Law-** Purchase Orders, as identified above, shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser. Each and every provision of law and clause required by law to be included in the Purchase Order shall be read and enforced as though it were included. If through mistake or otherwise any such provision is not included, or is not currently included, then upon application of either part the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to Purchase Order(s) shall be a court of competent jurisdiction to the Purchaser.

**8.3 Additional Terms and Conditions-** Additional terms and conditions to a Purchase Order may be proposed by NJPA, NJPA Members, or Vendors. Acceptance of these additional terms and conditions is OPTIONAL to all parties to the Purchase Order. The purpose of these additional terms and conditions is to, among other things; formally introduce job or industry specific requirements of law such as prevailing wage legislation. Additional terms and conditions can include specific local policy requirements and standard business practices of the issuing Member. Said additional terms and conditions shall not interfere with the general purpose, intent or currently established terms and conditions contain in this RFP document.

**8.4 Specialized Service Requirements-** In the event service requirements or specialized performance requirements such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements not addressed in the Contract resulting from this RFP, NJPA Member and Vendor may enter into a separate, standalone agreement, apart from a Contract resulting from this RFP. Any proposed service requirements or specialized performance requirements require pre-approval by Vendor. Any separate agreement developed to address these specialized service or performance requirements is exclusively between the NJPA Member and Vendor. NJPA, its agents, Members and employees shall not be made party to any claim for breach of such agreement. Product sourcing is not considered a service. NJPA Members will need to conduct procurements for any specialized services not identified as a part or within the scope of the awarded Contract.

**8.5 Performance Bond-** At the request of the member, a Vendor will provide all performance bonds typically and customarily required in their industry. These bonds will be issued pursuant to the requirements of Purchase Orders for product/equipment and related services. If a purchase order is cancelled for lack of a required performance bond by the member agency, it shall be the recommendation of NJPA that the current pending Purchase Order be canceled. Each member has the final decision on

Purchase Order continuation. ANY PERFORMANCE BONDING REQUIRED BY THE MEMBER OR CUSTOMER STATE LAWS OR LOCAL POLICY IS TO BE MUTUALLY AGREED UPON AND SECURED BETWEEN THE VENDOR AND THE CUSTOMER/MEMBER.

#### B. NJPA MEMBER SIGN-UP PROCEDURE

**8.6** Awarded Vendors will be responsible for familiarizing their sales and service forces with the various forms of NJPA Membership documentation and shall encourage and assist potential Members in establishing Membership with NJPA. NJPA membership is at no cost, obligation or liability to the member or the vendor.

#### C. REPORTING OF SALE ACTIVITY

**8.7** A report of the total gross dollar volume of all equipment/products and related services purchased by NJPA Members as it applies to this RFP and Contract will be provided quarterly to NJPA. The form and content of this reporting will be developed by NJPA in cooperation with the Vendor to include, but not limited to, name and address of purchasing agency, amount of purchase, and a description of the items purchased.

**8.7.1 Zero sales reports:** Awarded Vendors are responsible for providing a quarterly sales report of contract sales EVERY QUARTER regardless of the existence or amount of sales.

#### D. AUDITS

**8.8** During the Term, however no more than once per calendar year, Vendor(s) may be required to make available to NJPA at the Vendor's corporate offices (during normal business hours) the invoice reports and/or invoice documents from Vendor pertaining to all invoices sent by Vendor and all payments made by NJPA members for all equipment/products and related services purchased under the awarded Contract. NJPA must provide written notice of exercise of this requirement with no less than fourteen (14) business days' notice. NJPA may employ an independent auditor or NJPA may choose to conduct such audit on its own behalf. Vendor shall have the right to approve the independent auditor, which approval shall not be unreasonably withheld. Upon approval and after the auditor has executed an appropriate confidentiality agreement, Vendor will permit the auditor to review the relevant Vendor documents. NJPA shall be responsible for paying the auditor's fees. The parties will make every reasonable effort to fairly and equitably resolve discrepancies to the satisfaction of both parties. Vendor agrees that the NJPA may audit their records with a reasonable notice to establish total compliance and to verify prices charged hereunder of the Contract are being met. Vendor agrees to provide verifiable documentation and tracking in a timely manner.

#### E. HUB PARTNER

**8.9 Hub Partner:** Where applicable, NJPA Members may, from time to time, request to be served in some way through a "Hub Partner" for the purposes of complying with a Law, Regulation, or Rule to which that individual NJPA Member deems to be applicable in their jurisdiction. Hub Partners may bring value to the proposed transactions through consultancy, Disadvantaged Business Entity Credits, or other considerations.

**8.10 Hub Partner Fees:** Fees, costs, or expenses from this Hub Partner levied upon a transaction resulting from this contract, shall be payable by the NJPA Member provide that:

**8.10.1** The fees, costs, or expenses levied by the Hub Vendor must be clearly itemized in the transaction; and

**8.10.2** To the extent that the Vendor stands in the chain of title during a transaction resulting from

this RFP, the documentation shall be documented to show it is “Executed for the Benefit of [NJPA Member Name].”

#### F. TRADE-INS

**8.11** Where Appropriate, the value in US Dollars for Trade-ins will be negotiated between NJPA or an NJPA Member, and an Awarded Vendor. That identified “Trade-In” value shall be credited in full against the NJPA purchase price identified in a purchase order issued pursuant to any Awarded NJPA procurement contract. The full value of the trade-in will be consideration to that purchase order.

#### G. OUT OF STOCK NOTIFICATION

**8.12** Vendor shall immediately notify NJPA members upon receipt of order(s) when an out-of-stock occurs. Vendor shall inform the NJPA member regarding the anticipated date of availability for the out-of-stock item(s), and may suggest equivalent substitute(s).

- The ordering organization shall have the option of accepting the suggested equivalent substitute, or canceling the item from the order.
- Under no circumstance is Proposer permitted to make unauthorized substitutions.
- Unfilled or substituted item(s) shall be indicated on the packing list.

#### H. TERMINATION OF CONTRACT RESULTING FROM THIS RFP

**8.13** NJPA reserves the right to cancel the whole or any part of a resulting Contract due to failure by the Vendor to carry out any obligation, term or condition as described in the below procedure. Prior to any termination for cause, the NJPA will provide written notice to the Vendor, opportunity to respond and opportunity to cure according to the steps in the procedure in this Cancellation Section. Some examples of material breach are the following:

- The Vendor provides products/equipment or related services that does not meet reasonable quality standards and is not remedied under the warranty;
- The Vendor fails to ship the products/equipment or related services or provide the delivery and services within a reasonable amount of time;
- NJPA has reason to believe the Vendor will not or cannot perform to the requirements or expectations of the Contract and issues a request for assurance as described herein and Vendor fails to respond;
- The Vendor fails to observe any of the material terms and conditions of the Contract;
- The Vendor fails to follow the established procedure for purchase orders, invoices and/or receipt of funds as established by the NJPA and the Vendor in the Contract.
- The Vendor fails to report quarterly sales ;
- The Vendor fails to actively market this Contract within the guidelines provided in this RFP and the expectations of NJPA defined in the NJPA Contract Launch.
- In the event the contract has no measurable and defining value or benefit to NJPA or the NJPA member.

**8.14** Each party shall follow the below procedure if the Contract is to be terminated for violations or non-performance issues:

**Step 1:** Issue a warning letter outlining the violations and/or non-performance and state the length of time (10 days) to provide a response and correct the problem(s) if reasonably possible in such time frame.

**Step 2:** Issue a letter of intent to cancel Contract, if the problem(s) is not resolved within fifty (50) days.

**Step 3:** Issue letter to cancel Contract for cause.

**8.15** Upon receipt of the written notice of concern, the Vendor shall have ten (10) business days to provide a satisfactory response to the NJPA. Failure on the part of the Vendor to reasonably address all issues of concern may result in Contract cancellation pursuant to this Section.

**8.16** Any termination shall have no effect on purchases that are in progress at the time the cancellation is received by the NJPA. The NJPA reserves the right to cancel the Contract immediately for convenience, without penalty or recourse, in the event the Vendor is not responsive concerning the remedy, the performance, or the violation issue within the time frame, completely or in part.

**8.17** NJPA reserves the right to cancel or suspend the use of any Contract resulting from this RFP if the Vendor files for bankruptcy protection or is acquired by an independent third party. Prior to commencing services under this Contract, the Proposer/Vendor must furnish NJPA certification from insurer(s) proving level of coverage usual and customary to the specific industry. The coverage is to be maintained in full effect during the Contract period. Vendor must be willing to provide, upon request, certification of insurance to any NJPA member or member using this Contract.

**8.18** Either party may execute Contract termination without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.

**8.19** NJPA may cancel any Contract resulting from this solicitation without any further obligation if any NJPA employee significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the NJPA is found to be in collusion with any Proposer to this RFP for their personal gain. Such cancellation shall be effective upon written notice from the NJPA or a later date if so designated in the notice given. A terminated Contract shall not relieve either party of financial, product or service obligations due to participating member or NJPA.

**8.20** Events of Automatic termination to include:

- Vendor's or NJPA's voluntary or involuntary bankruptcy or insolvency;
- Vendor's failure to remedy a material breach of a Contract resulting from this RFP within sixty (60) days of receipt of notice from NJPA specifying in reasonable detail the nature of such breach; and/or,
- Receipt of written information from any authorized agency finding activities of Vendors engaged in pursuant to a Contract resulting from this RFP to be in violation of the law.

## 9. GENERAL TERMS AND CONDITIONS

### A. ADVERTISEMENT OF RFP

**9.1** As a policy, NJPA shall advertise this solicitation 1) for two consecutive weeks in both the hard copy print and on-line editions of the MINNEAPOLIS STAR TRIBUNE, 2) for two consecutive weeks in both the hard copy print and on-line editions of Oregon's Daily Journal of Commerce, 3) it shall be placed on a national wire service and website by the MINNEAPOLIS STAR TRIBUNE, 4) it shall be posted on NJPA's website, 5) it shall be posted to the "Noticetobidders.com" website, and 6) it shall be posted to other third-party websites deemed appropriate by NJPA. Other third party advertisers may include Onvia and Bidsync.

NJPA also notifies and provides solicitation documentation to each State level procurement departments for possible re-posting of the solicitation within their systems and at their option for future use and to meet specific state requirements.

### B. ADVERTISING OF A CONTRACT RESULTING FROM THIS RFP

**9.2** Proposer/Vendor shall not advertise or publish information concerning this Contract prior to the

award being announced by the NJPA. Once the award is made, a Vendor is expected to advertise the awarded Contract to both current and potential NJPA Members.

#### C. APPLICABLE LAW

**9.3 NJPA Compliance with Minnesota Procurement Law:** Contracts awarded through NJPA are intended to meet the procurement laws of all states and NJPA will exhaust all avenues to comply with each unique state law or requirement whenever possible. It is the responsibility of each participating NJPA member to ensure to their satisfaction that NJPA contracting process falls within these laws and applicable laws are satisfied. An individual NJPA member using these contracts is deemed by their own accord to be in compliance with their own requirements and procurement regulations.

**9.4 Governing Law with respect to delivery and acceptance:** All applicable portions of the Minnesota Uniform Commercial Code, all other applicable Minnesota laws, and the applicable laws and rules of delivery and inspection of the Federal Acquisition Regulations (FAR) laws shall govern NJPA contracts resulting from this solicitation.

**9.5 Jurisdiction:** Any claims pertaining to this RFP and any resulting Contract that develop between NJPA and any other party must be brought forth only in courts in Todd County in the State of Minnesota.

**9.5.1** Purchase Orders issued pursuant to a contract resulting from this solicitation shall be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the purchaser.

**9.6 Vendor Compliance with applicable law:** Vendor(s) shall comply with all federal, state, or local laws applicable to or pertaining to the transaction, acquisition, manufacturer, suppliers or the sale of the equipment/products and relating services resulting from this RFP.

**9.7 Applicable Laws,** whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

**9.8 Indemnity:** Each party agrees it will be responsible for its own acts and the result thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section §3.736, and other applicable law.

**9.9 Prevailing Wage:** It shall be the responsibility of the Vendor to comply, when applicable, with prevailing wage legislation in effect in the jurisdiction of the purchaser (NJPA or NJPA Member). It shall be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this Contract and adjust wage rates accordingly.

**9.10 Patent and Copyright infringement:** If an article sold and delivered to NJPA or NJPA Members hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and save harmless NJPA and NJPA Members against any and all suits, claims, judgments, and costs instituted or recovered against it by any person whatsoever on account of the use or sale of such articles by NJPA or NJPA Members in violation or right under such patent or copyright.

#### D. ASSIGNMENT OF CONTRACT

**9.11** No right or interest in this Contract shall be assigned or transferred by the Vendor without prior written permission by the NJPA. No delegation of any duty of the Vendor shall be made without prior written permission of the NJPA. The NJPA shall notify the members within fifteen (15) days of receipt of written notice by the Vendor. After issuance the awarded Contract may be reassigned to a comparable

and acceptable Vendor at the discretion of NJPA.

**9.12** If the original Vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor in interest must guarantee to perform all obligations under this Contract. NJPA reserves the right to reject the acquiring person or entity as a Vendor. A simple change of name agreement will not change the contractual obligations of the Vendor.

#### E. LIST OF PROPOSERS

**9.13** NJPA will not maintain or communicate to a list of proposers. All interested proposers must respond to the solicitation as a result of NJPA solicitation advertisements indicated. Because of the wide scope of the potential Members and qualified national Vendors, NJPA has determined this to be the best method of fairly soliciting proposals.

#### F. CAPTIONS, HEADINGS, AND ILLUSTRATIONS

**9.14** The captions, illustrations, headings, and subheadings in this solicitation are for convenience and ease of understanding and in no way define or limit the scope or intent of this request.

#### G. DATA PRACTICES

**9.15** All materials submitted in response to this RFP will become property of the NJPA and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted,
- include a statement with its response justifying the trade secret designation for each item, and
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the NJPA, its agents and employees, from any judgments or damages awarded against the NJPA in favor of the party requesting the materials, and any and all costs connected with that defense.

This indemnification survives the NJPA's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the NJPA. Proposer can redact additional confidential information at any time after the evaluation process if appropriate legal justification is provided.

#### H. ENTIRE AGREEMENT

**9.16** The Contract, as defined herein, shall constitute the entire understanding between the parties to that Contract.

**9.17** A Contract resulting from this RFP is formed when the NJPA Board of Directors approves and signs the applicable Contract Award Form document (see Form E).

#### I. FORCE MAJEURE

**9.18** Except for payments of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented due to force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence including, but not limited to, the following: acts of



God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquakes, tornadoes or violent wind, tsunamis, wind shears, squalls, Chinooks, blizzards, hail storms, volcanic eruptions, meteor strikes, famine, sink holes, avalanches, lockouts, injunctions-intervention-acts, terrorist events or failures or refusals to act by government authority and/or other similar occurrences where such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with a Contract resulting from this RFP. Force majeure shall not include late deliveries of equipment/products and services caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or other similar occurrences. If either party is delayed at any time by force majeure, then the delayed party shall notify the other party of such delay within forty-eight (48) hours.

#### J. GRATUITIES

**9.19** NJPA may cancel an awarded Contract by written notice if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor, to any employee of the NJPA are deemed to be excessive with a view or demonstrated intent toward securing a contract or with respect to the performance of a pending or awarded Contract.

#### K. HAZARDOUS SUBSTANCES

**9.20** Proper and applicable Material Safety Data Sheets (MSDS) that are in full compliance with OSHA's Hazard Communication Standard must be provided by the Vendor to NJPA or NJPA Member at the time of purchase.

#### L. LEGAL REMEDIES

**9.21** All claims and controversies between NJPA and Vendor shall be subject to the laws of the State of Minnesota and are to be resolved in Todd County, Minnesota, the county in which NJPA is located and domiciled.

#### M. LICENSES

**9.22** Proposer shall maintain a current status on all required federal, state, and local licenses, bonds and permits required for the operation of the business that is anticipated to be conducted with NJPA and NJPA members by the Proposer.

**9.23** All responding Proposers must be licensed (where required) and have the authority to sell and distribute offered equipment/products and related services to NJPA and NJPA Members nationally. Documentation of required said licenses and authorities, if applicable, is requested to be included in the proposer's response.

#### N. MATERIAL SUPPLIERS AND SUB-CONTRACTORS

**9.24** The awarded Vendor shall be required to supply the names and addresses of sourcing suppliers and sub-contractors as a part of the purchase order when requested by NJPA or the NJPA member.

**9.25** Awarded Vendors under this RFP will be the sole source of responsibility for transactions originating that award. The Awarded Vendor is solely responsible for equipment/products and related services and products/equipment and related services provided by third-party sourcing or service providers.

#### O. NON-WAIVER OF RIGHTS

**9.26** No failure of either party to exercise any power given to it hereunder, nor to insistence upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under a Contract resulting from this RFP shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Failure by NJPA to take action or assert any right hereunder shall not be deemed as waiver of such right.

#### P. PROTESTS OF AWARDS MADE

**9.27** Protests shall be filed with the NJPA's Executive Director and shall be resolved in accordance with appropriate Minnesota state statutes. Protests will only be accepted from Proposers. A protest must be in writing and filed with NJPA. A protest of an award or proposed award must be filed within ten (10) days after the public notice or announcement of the award. No protest shall lie for a claim that the selected Proposer is not a responsible Proposer. A protest must include:

1. The name, address and telephone number of the protester;
2. The original signature of the protester or its representative (you must document the authority of the Representative);
3. Identification of the solicitation by RFP number;
4. Identification of the statute or procedure that is alleged to have been violated;
5. A precise statement of the relevant facts;
6. Identification of the issues to be resolved;
7. The aggrieved party's argument and supporting documentation;
8. The aggrieved party's statement of potential financial damages;
9. A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party's statement of potential financial damages.

#### Q. PROVISIONS REQUIRED BY LAW

**9.28** Proposer agrees in the performance of a Contract resulting from this RFP, it has complied with or will comply with all applicable statutes, laws, regulations, and orders of the United States and any State thereof.

#### R. RIGHT TO ASSURANCE

**9.29** Whenever one party to the awarded Contract has reason to question the other party's intent to perform, he/she may demand a written assurance of this intent. In the event a demand is made and no written assurance is given, the demanding party may treat this failure as an anticipatory repudiation of the Contract provided, however, in order to be effective, any such demand shall be addressed to the authorized signer for the party from whom the assurance is being sought, and sent via U.S. Postal Service, certified mail, return receipt requested or national overnight delivery service with proof of delivery.

#### S. SUSPENSION OR DISBARMENT STATUS

**9.30** If within the past five (5) years, any firm, business, person or Proposer responding to NJPA solicitation and submitting a proposal has been lawfully terminated, suspended or precluded from participating in any public procurement activity with a federal, state or local government or education agency the Proposer must include a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter or to disclose pertinent information may result in the cancellation of any Contract. By signing the proposal affidavit, the Proposer certifies that no current suspension or debarment exists.

#### T. AFFIRMATIVE ACTION AND IMMIGRATION STATUS CERTIFICATION

9.31 An Affirmative Action Plan, Certificate of Affirmative Action or other documentation regarding Affirmative Action may be required by certain Members may be required by NJPA or NJPA Members relating to a transaction relating to this RFP. Vendors shall comply with any such requirements or requests.

9.32 Immigration Status Certification may be required by NJPA or NJPA Members relating to a transaction relating to this RFP. Vendors shall comply with any such requirements or requests.

#### U. SEVERABILITY

9.32 In the event that any of the terms of a Contract resulting from this RFP are in conflict with any rule, law, statutory provision or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from an awarded Contract resulting from this RFP, but such invalidity or unenforceability shall not invalidate any of the other terms of an awarded Contract resulting from this RFP.

#### V. RELATIONSHIP OF PARTIES

9.33 No Contract resulting from this RFP shall be considered a contract of employment. The relationship between NJPA and an Awarded Contractor is one of independent contractors each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties do not intend the proposed Contract to create, or is to be construed as creating a partnership, joint venture, master-servant, principal-agent, or any other relationship. Except as provided elsewhere in this RFP, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate the other party by contract, agreement, warranty, representation or otherwise in any manner whatsoever except as may be expressly provided herein.

#### 10. FORMS

**[THE REST OF THIS PAGE WAS LEFT INTENTIONALLY BLANK. FORMS BEGIN ON NEXT PAGE]**

**Form A**



**PROPOSER QUESTIONNAIRE- General Business Information**

*(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on **Form P**)*

Proposer Name: \_\_\_\_\_

Questionnaire completed by: \_\_\_\_\_

Please provide an answer to all questions below and address all requests made in this RFP. Please use the Microsoft Word/Excel document version of this questionnaire to respond to the questions contained herein. Please provide your answer to each question indented below the question. Please supply any applicable supporting information and documentation you feel appropriate in addition to answers entered to the Word document. All information must be typed, organized, and easily understood by evaluators.

**Company Information**

- 1) Why did you respond to this RFP?
- 2) What are your company's expectations in the event of an award?
- 3) Provide the full legal name, address, tax identifications number, and telephone number for your business.
- 4) Provide a copy of your audited financial statements from previous year end (or an unaudited copy if an audited copy is not available) for your organization.
- 5) Does your company name match the name identified on your audited financial statements from previous year end (or an unaudited copy if an audited copy is not available)? If no, why not?
- 6) Provide a brief history of your company that includes your company's core values and business philosophy.
- 7) Provide profiles and an organizational chart for key management, sales management and marketing executives of your company that will oversee and ensure the successful implementation, execution and operation of a Contract resulting from this RFP.
- 8) How long has your company been in the "**PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES**", industry?
- 9) Is your organization best described as a manufacturer or a distributor/dealer/re-seller for a manufacturer of the products/equipment and related services being proposed?
  - a) If the Proposer is best described as a re-seller, manufacturer aggregate, or distributor, please provide evidence of your authorization as a dealer/re-seller/manufacturer aggregate for the manufacturer of the products/equipment and related services you are proposing.
  - b) If the Proposer is best described as a manufacturer, please describe your relationship with your sales/service force and/or Dealer Network in delivering the products/equipment and related services proposed.
  - c) Are these individuals your employees, or the employees of a third party?
  - d) If applicable, is the Dealer Network independent or company owned?
- 10) Please provide your bond rating, and/or a credit reference from your bank.
- 11) Provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held by your organization in pursuit of the commerce and business contemplated by this RFP.
- 12) Provide a detailed explanation outlining licenses and certifications both required to be held, and actually held, by third parties and sub-contractors to your organization in pursuit of the commerce contemplated by this RFP. If not applicable, please respond with "Not Applicable."
- 13) Provide all "Suspension or Disbarment" information as defined and required herein. See Section U 9.31.

**Industry-Marketplace Successes**

- 14) List and document recent industry awards and recognition.
- 15) Supply three references/testimonials from customers of like status to NJPA Members to include Government and

Education agencies. Please include the customer's name, contact, and phone number.

- 16) Provide names and addresses of the top five (5) government or education agency customers to include the scope of projects, size of transaction, and dollar volumes from the past three (3) fiscal years.
- 17) Provide documentation indicating the total dollar volume for each of your sales to government, education, and non-profit agencies for the last three (3) fiscal years.
- 18) What percentages of your current (within the past three (3) fiscal years) national sales are to the government and education verticals? Indicate government and education verticals individually

**Proposer's ability to sell and service nationwide**

- 19) Please describe your company sales force in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale and services of the equipment/products contemplated in this RFP?
- 20) Please describe your dedicated dealer network and number of individual sales force within your dealer network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sales distribution and delivery of your equipment/products and related services contemplated in this RFP?
- 21) Please describe your dedicated company service force or dedicated network in terms of numbers, geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP?
- 22) Please describe your dedicated dealer service force or network in terms of numbers geographic dispersion, and the proportion of their attention focused on the sale of the equipment/products and related services contemplated in this RFP? Additionally, please describe any applicable road service and do they offer the ability to service customers at the customer's location?
- 23) Describe in detail your customer service program regarding process and procedure. Please include, where appropriate, response time capabilities and commitments as a part of this RFP response and awarded contract.
- 24) Identify any geographic areas or NJPA market segments of the United States you will NOT be fully serving through the proposed contract.
- 25) Identify any of NJPA Member segments or defined NJPA verticals you will NOT be offering and promoting an awarded contract to? (Government, Education, Non-profit)
- 26) Describe your off shore contract sales capabilities and requirements. Define any specific requirements or restrictions as it applies to our members located off shores such as Hawaii and Alaska and the US Islands. Address your off shore shipping program on the Pricing form P of this document.

**Marketing Plan**

- 27) Describe your contract sales training program to your sales management, dealer network and/or direct sales teams relating to a NJPA awarded contract.
- 28) Describe your general marketing program strategy to promote the proposed Contract nationally and ensure success.
- 29) Describe your marketing material, and overall marketing ability, relating to promoting this type of partnership and contract opportunity. As much as possible, please send examples of your marketing materials in electronic format.
- 30) Describe your use of technology and the internet to provide marketing and ensure national contract awareness.
- 31) Describe your perception of NJPA's role in marketing the contract and your contracted products/equipment and related services.
- 32) Describe in detail any unique marketing techniques and methods as a part of your proposal that would separate you from other companies in your industry.
- 33) Describe your company's Senior Management level commitment with regards to embracement, promoting, supporting and managing a resultant NJPA awarded contract
- 34) Do you view your products/equipment applicable to an E-procurement ordering process? Yes/ No.
- 35) If yes, describe examples of E-procurement system(s) that your products/equipment was available through. Demonstrate the success of government and educations customers to ordering through E-procurement.
- 36) Please describe how you will communicate your pricing and pricing strategy to your sales force nationally?

**Other Cooperative Procurement Contracts Held**

- 37) Identify all cooperative contracts hosted by any government or education agency or government or education cooperative or by a third party marketing company, which are marketed in more than one state, held or utilized by the

Proposer.

- 38) What is the annual dollar sales volume generated through each of the contract(s) identified in your answer to the previous question.
- 39) Identify awarded WSCA or specific state procurement contracts held or utilized by the Proposer with any State of the United States.
- 40) What is the annual combined dollar sales volume for each of these contracts?
- 41) Identify any GSA Contracts held or utilized by the Proposer.
- 42) If you are awarded the NJPA contract, are there any market segments or verticals (e.g., higher education, K-12 local governments, non-profits etc.) or geographical markets where the NJPA contract will not be your primary contract purchasing vehicle? If so, please identify those markets and which cooperative purchasing agreement will be your primary vehicle.
- 43) If you are awarded the NJPA contract, is it your intention and commitment to lead with your NJPA contract? \_\_\_ Yes \_\_\_ No Explain and demonstrate your commitment and/or restrictions.
- 44) Identify a proposed administrative fee payable to NJPA for facilitation, management and promotion of the NJPA contract, should you be awarded. This fee is typically calculated as a percentage of Contract sales and not a line item addition to the customers cost of goods.

**Value Added Attributes**

- 45) If applicable, describe any product/equipment training programs available as options for NJPA members. If applicable, do you offer equipment operator training as well as maintenance training? \_\_\_ Yes \_\_\_ No
- 46) Is this training standard as a part of a purchase or optional?
- 47) Describe current technological advances your proposed equipment/products and related services offer.
- 48) Describe your “Green” program as it relates to your company, your products/equipment, and your recycling program, including a list of all green products accompanied by the certifying agency for each (if applicable).
- 49) Describe any Women or Minority Business Entity (WMBE) or Small Business Entity (SBE) accreditations and the general minority and small business program of your organization as it relates to a Contract resulting from this RFP.
- 50) Identify any other unique or custom value added attributes of your company or your products/equipment or related services.
- 51) Other than what you have already demonstrated or described, what separates your company, your products/equipment and related services from your competition? What makes your proposed solutions unique in your industry as it applies to NJPA members?
- 52) Identify and describe any service contract options included in the proposal, or offered as a proposed option, for the products/equipment being offered.
- 53) Identify your ability and willingness to offer an awarded contract to qualifying member agencies in Canada specifically and internationally in general.
- 54) Describe any unique distribution and/or delivery methods or options offered in your proposal.

**(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on Form P)**

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



**PROPOSER INFORMATION**

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Toll Free Number: \_\_\_\_\_ E-mail: \_\_\_\_\_  
Web site: \_\_\_\_\_

Voids sometimes exist between management (those who respond to RFPs) and sales staff (those who contact NJPA Members) that result in communication problems. Due to this fact, provide the names of your key sales people, phone numbers, and geographic territories for which they are responsible

**COMPANY PERSONNEL CONTACTS**

Contract Manager \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Other contract management personnel

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

**Form C**

**EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS  
AND SOLUTIONS REQUEST**



Company Name: \_\_\_\_\_

Note: **Original must be signed** and inserted in the inside front cover pouch.

Any exceptions to the Terms, Conditions, Specifications, or Proposal Forms contained herein shall be noted in writing and included with the proposal submittal. Proposer acknowledges that the exceptions listed may or may not be accepted by NJPA and may or may not be included in the final contract. NJPA may clarify exceptions listed here and document the results of those clarifications in the appropriate section below.

Section/page	Term, Condition, or Specification	Exception	NJPA Accepts	NJPA Rejects

Proposer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**NJPA's clarification on exception/s listed above:**

**Contract Award  
RFP #022113**



**Formal Offering of Proposal**  
(To be completed Only by Proposer)



**PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES,**

In compliance with the Request for proposal (RFP) for “PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES”, the undersigned warrants that I/we have examined this RFP and, being familiar with all of the instructions, terms and conditions, general specifications, expectations, technical specifications, service expectations and any special terms, do hereby propose, fully commit and agree to furnish the defined equipment/products and related services in full compliance with all terms, conditions of this RFP, any applicable amendments of this RFP, and all Proposer’s Response documentation. Proposer further understands they accept the full responsibility as the sole source of responsibility of the proposed response herein and that the performance of any sub-contractors employed by the Proposer in fulfillment of this proposal is the sole responsibility of the Proposer.

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

Company Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Authorized Signature (ink only): \_\_\_\_\_  
(Name printed or typed)



## **Contract Acceptance and Award**

(To be completed only by NJPA)

### **NJPA 022113 PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES**

\_\_\_\_\_  
**Proposer's full legal name**

Your proposal is hereby accepted and awarded. As an awarded Proposer, you are now bound to provide the defined product/equipment and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your Response, and any exceptions accepted or rejected by NJPA on Form C.

The effective date of the Contract will be \_\_\_\_\_, 20\_\_\_\_\_ and continue for four years thereafter AND which is subject to annual renewal at the option of both parties. This contract has the consideration of an optional fifth year renewal option at the discretion NJPA.

**National Joint Powers Alliance® (NJPA)**

NJPA Authorized signature: \_\_\_\_\_  
NJPA Executive Director (Name printed or typed)

Awarded this \_\_\_\_\_ day of 20\_\_\_\_\_ NJPA Contract Number # 022113

NJPA Authorized signature: \_\_\_\_\_  
NJPA Board Member (Name printed or typed)

Executed this \_\_\_\_\_ day of 20\_\_\_\_\_ NJPA Contract Number # 022113

Proposer hereby accepts contract award including all accepted exceptions and NJPA clarifications identified on FORM C.

**Vendor Name** \_\_\_\_\_

Vendor Authorized signature: \_\_\_\_\_  
(Name printed or typed)

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

Executed this \_\_\_\_\_ day of 20\_\_\_\_\_ NJPA Contract Number # 022113



**Proposal Affidavit Signature Page**

**PROPOSER'S AFFIDAVIT**

The undersigned, representing the persons, firms and corporations joining in the submission of the foregoing proposal (such persons, firms and corporations hereinafter being referred to as the "Proposer"), being duly sworn on his/her oath, states to the best of his/her belief and knowledge:

1. The undersigned certifies the Proposer is submitting their proposal under their true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, that the Proposer possesses, or will possess prior to the delivery of any product/equipment and related services, all applicable licenses necessary for such delivery to NJPA members agencies nationally, and that they are authorized to act on behalf of, and encumber the "Proposer" in this Contract, and
2. To the best of my knowledge, no Proposer or Potential Proposer, nor any person duly representing the same, has directly or indirectly entered into any agreement or arrangement with any other Proposers, Potential Proposers, any official or employee of the NJPA, or any person, firm or corporation under contract with the NJPA in an effort to influence either the offering or non-offering of certain prices, terms, and conditions relating to this RFP which tends to, or does, lessen or destroy free competition in the letting of the Contract sought for by this RFP, and
3. The Proposer or any person on his/her behalf, has not agreed, connived or colluded to produce a deceptive show of competition in the manner of the proposal or award of the referenced contract, and
4. Neither I, the Proposer, nor, any officer, director, partner, member or associate of the Proposer, nor any of its employees directly involved in obtaining contracts with the NJPA or any subdivision of the NJPA, has been convicted of false pretenses, attempted false pretenses or conspiracy to commit false pretenses, bribery, attempted bribery or conspiracy to bribe under the laws of any state or federal government for acts or omissions after January 1, 1985, and
5. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request and other documents of this solicitation and that any and all exceptions have been noted in writing and have been included with the proposal submittal, and
6. If awarded a contract, the Proposer will provide the equipment/products and services and/or services to qualifying members of the NJPA in accordance with the terms, conditions, scope of this RFP, Proposer offered specifications and other documents of this solicitation, and
7. The undersigned, being familiar with and understand the expectations requested and outlined in this RFP under consideration, hereby proposes to deliver through valid requests, Purchase Orders or other acceptable forms ordering and procurement by NJPA Members. Unless otherwise indicated, requested and agreed to on a valid purchase order per this RFP, only new, unused and first quality equipment/products and related services are to be transacted with NJPA Members relating to an awarded contract, and
8. The Proposer has carefully checked the accuracy of all proposed products/equipment and related services and listed total price per unit of purchase in this proposal to include shipping and delivery considerations. In addition, the Proposer accepts all general terms and conditions of this RFP, including all responsibilities of commitment as outlined and proposed, and
9. In submitting this proposal, it is understood that the right is reserved by the NJPA to reject any or all proposals and it is agreed by all parties that this proposal may not be withdrawn during a period of 90 days from the date

proposals were opened regarding this RFP, and

- 10. The Proposer certifies that in performing this Contract they will comply with all applicable provisions of the federal, state, and local laws, regulations, rules, and orders, and
- 11. If Proposer has more than 40 employees in the state in which their principal place of business is located, Proposer hereby certifies their compliance with federal affirmative action requirements.

Company Name: \_\_\_\_\_

Contact Person for Questions: \_\_\_\_\_

(Must be individual who is responsible for filling out this Proposer's Response form)

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Authorized Name (typed): \_\_\_\_\_

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

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

**Notarized**

Subscribed and sworn to before me this \_\_\_\_\_ the day of \_\_\_\_\_, 20 \_\_\_\_\_

Notary Public in and for the County of \_\_\_\_\_ State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Signature: \_\_\_\_\_

**Form G.**



**OVERALL EVALUATION AND CRITERIA**

For the Proposed Subject "**PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES, AND SUPPLIES**"

Conformance to terms and conditions to include documentation	50	
Pricing	400	
Financial, Industry and Marketplace Successes	75	
Bidder's Ability to Sell and Service Contract Nationally	100	
Bidder's Marketing Plan	50	
Value Added Attributes	75	
Warranty Coverages and Information.	50	
Selection and Variety of Products and Services Offered	200	
Total Points	1000	0
Bonus Points awarded for:		
Bidders "Green" characteristics	50	
Bidders Dissadvantaged Business Entity Characteristics	50	
Overall Evaluation Points	1100	0

Reviewed by: \_\_\_\_\_ Its \_\_\_\_\_  
 \_\_\_\_\_ Its \_\_\_\_\_



**Form P**

**PROPOSER QUESTIONNAIRE  
Products/Equipment, Pricing, Sector Specific, Services, Terms and Warranty**

Proposer Name: \_\_\_\_\_

Questionnaire completed by: \_\_\_\_\_

**Payment Terms and Financing Options**

- 1) Identify your payment terms if applicable. (Net 30, etc.)
- 2) Identify any applicable leasing or other financing options as defined herein.
- 3) Briefly describe your proposed order process for this proposal and contract award. (Note: order process may be modified or refined during an NJPA member's final Contract phase process).
- 4) Do you accept the P-card procurement and payment process?
- 5) Describe your ability to serve NJPA and NJPA Members through an E-Marketplace solution?

**Warranty**

- 6) Describe, in detail, your Manufacture Warranty Program including conditions and requirements to qualify, claims procedure, and overall structure.
- 7) Do all warranties cover all products/equipment parts and labor?
- 8) Do warranties impose usage limit restrictions?
- 9) Do warranties cover the expense of technicians travel time and mileage to perform warranty repairs?
- 10) Please list any other limitations or circumstances that would not be covered under your warranty.
- 11) Please list any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs. How will NJPA Members in these regions be provided service for warranty repair?

**Equipment/Products and Related Services and Pricing**

- 12) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.
- 13) Provide a general narrative description of your pricing model identifying how the model works (line item and/or published catalog percentage discount).
- 14) Propose a strategy, process, and specific method of facilitating "Sourced Product/equipment and related services" or "Non-Standard Options" solution as defined herein.
- 15) Provide an overall proposed statement of method of pricing for individual line items, percentage discount off published product/equipment catalogs and/or category pricing percentage discount with regard to all equipment/products and related services and being proposed. Provide a SKU number for each item being proposed.
- 16) Describe your ability to take advantage of, or operate with electronic marketplace solutions, if any.
- 17) If applicable, provide a "CORE LIST" of equipment/products and related services (defined as products/equipment or services most frequently used and highlighted with additional discounts when compared to the standard "Pricing") as a separate and named spreadsheet. Include special pricing, if any, on these items.
- 18) If applicable, provide a "Hot List" format of specific product/equipment and related services as defined herein.
- 19) Provide your NJPA customer volume rebate programs, as applicable.
- 20) Identify any Total Cost of Acquisition (as defined herein) cost(s) which is **NOT** included "Pricing" submitted with your proposal response. Identify to whom these charges are payable to and their relationship to Proposer.
- 21) If freight, delivery or shipping is an additional cost to the NJPA member, describe in detail the complete shipping and delivery program.

- 22) As an important part of the evaluation of your offer, you must indicate the level of pricing you are offering. Prices offered in this proposal are **(Your proposal will be deemed “Non-Responsive” if this question is not answered)**:
- \_\_\_\_\_ a. Pricing is the same as typically offered to an individual municipality, Higher ed or school district.
  - \_\_\_\_\_ b. Pricing is the same as typically offered to GPOs, cooperative procurement organizations or state purchasing departments.
  - \_\_\_\_\_ c. Better than typically offered to GPOs, cooperative procurement organizations or state purchasing departments.
- 23) Do you offer quantity or volume discounts? \_\_\_\_\_ YES \_\_\_\_\_ NO Outline guidelines and program.
- 24) Describe in detail your proposed exchange and return program(s) and policy(s).
- 25) Specifically identify those shipping and delivery and exchange and returns programs as they relate to Alaska and Hawaii and any related off shore delivery of contracted products/ equipment and related services
- 26) Please describe any self-audit process/program you plan to employ to verify compliance with your anticipated contract with NJPA. Please be as specific as possible.

**Industry or Sector Specific Questions**

27) NA

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

11. PRE-SUBMISSION CHECKLIST



**Pre-submission Checklist**

- Have you read, and do you understand the intent this RFP?
- Have you attended the Pre-Proposal Conference for this RFP?
- Have you completed the questionnaires (Forms A & P) to the best of your ability?
- Have you submitted pricing for all of the product/equipment and related services you are proposing within the scope of this RFP?
- Have you packaged your Proposal submission identifying conspicuously “Competitive Proposal Enclosed, Please hold for public opening XX-XX-XXX”?
- Have you sent your package in sufficient time for physical delivery at 202 12th ST NE Staples, MN 56479 to occur prior to the deadline for delivery?
- Have you submitted hard copy original signed, completed, and dated forms C, D, E, and hard copy signed signature page only from forms A and P of this RFP?
- Have you submitted verification of liability insurance with the coverage and limits required in the RFP?
- Have you provided an electronic copy (saved on a CD or flash drive) of your **entire** proposal including, but not limited to, Forms A, B, C, D, E, F, & P in your proposal?

**Contents of your Proposal response:**

- Hard copy original signed, completed, and dated forms C, D, E, and hard copy signed signature page only from forms A and P.**
- Electronic submission of proposal forms A, B, C, D, E, F, & P (CD or flash drive).**
- Certificate of Insurance (demonstration of insurability)**

**Form Titles**

Form A	Proposer Questionnaire – General Business Information
Form B	Proposer Information
Form C	Exceptions to Proposal, Terms, Conditions, and Solutions Request
Form D	Formal Offering of Proposal
Form E	Contract Acceptance and Award
Form F	Proposer Assurance of Compliance
Form G	Overall Evaluation and Criteria
Form P	Proposer Questionnaire – Products/equipment, Pricing, Sector Specific, Services, Terms and Warranty



## Addendum 012513

To that certain

RFP#022113

Issued by

The National Joint Powers Alliance®

For the procurement of

PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES,  
AND SUPPLIES

Please consider the following to be a part of the above RFP:

Question:

Are you able to tell us how much has been sold under this contract specifically as it relates to playground equipment, installation, etc over the past several years?

Answer:

Approximately \$10 Million contract to date.

## Addendum 012513

To that certain  
RFP#022113  
Issued by  
The National Joint Powers Alliance®  
For the procurement of

PLAYGROUND AND RECREATION RELATED EQUIPMENT, ACCESSORIES,  
AND SUPPLIES

Please consider the following to be a part of the above RFP:

Question:

Are you able to tell us how much has been sold under this contract specifically as it relates to playground equipment, installation, etc over the past several years?

Answer:

Approximately \$10 Million contract to date.

 1-25-17

**NJPA Pricing:**

***Little Tikes Commercial***

PREPAID FREIGHT

Little Tikes Order Size

Destination	\$0-\$999	\$1,000-\$4,999	\$5,000-\$14,999	\$15,000-\$24,999	\$25,000-\$49,000	\$50,000-\$99,999	\$100,000 & above
Structures, Sculptures, Park Services, & PPLT Surfacing Products	List Plus Freight	List Plus 7%	List Less 3%	List Less 8%	List Less 13%	List Less 17%	List Less 20%

Early Childhood Products	List Plus Freight	List Plus 7%	List Price	List Price	List Less 5%	List Less 10%	List Less 15%
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Structures, Sculptures, Park Services, & PPLT Surfacing Products	List Plus Freight	List Plus 17%	List Plus 10%	List Plus 5%	List Plus 2%	List Less 2%	List Less 5%
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Early Childhood Products	List Plus Freight	List Plus 27%	List Plus 20%	List Plus 20%	List Plus 15%	List Plus 10%	List Plus 5%
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FOB ORIGIN (FREIGHT NOT INCLUDED)

Little Tikes Order Size

Destination	\$0-\$999	\$1,000-\$4,999	\$5,000-\$14,999	\$15,000-\$24,999	\$25,000-\$49,000	\$50,000-\$99,999	\$100,000 & above
Structures, Sculptures, Park Services, & PPLT Surfacing Products	List Plus Freight	List Less 3%	List Less 8%	List Less 13%	List Less 17%	List Less 20%	List Less 23%

Early Childhood Products	List Plus Freight	List Less 3%	List Less 7%	List Less 7%	List Less 10%	List Less 15%	List Less 20%
--------------------------	-------------------	--------------	--------------	--------------	---------------	---------------	---------------

Pricing Incentives and Rebates:

Little Tikes agrees to the following customer volume rebate based on the calendar year:

\$500,000 to \$999,999	1% Rebate
\$1,000,000 to \$1,499,999	2% Rebate
\$1,500,000 and above	3% Rebate

**NJPA Pricing:**

**Little Tikes Commercial Equipment Installation**

State	Install %
Alabama	30%
Alaska	35%
Arizona	30%
Arkansas	30%
California	30%
Colorado	30%
Connecticut	40%
Delaware	30%
Florida	30%
Georgia	30%

State	Install %
Hawaii	40%
Idaho	30%
Illinois	40%
Indiana	35%
Iowa	30%
Kansas	30%
Kentucky	30%
Louisiana	30%
Maine	40%
Maryland	30%

State	Install %
Massachusetts	40%
Michigan	30%
Minnesota	30%
Mississippi	30%
Missouri	30%
Montana	30%
Nebraska	30%
Nevada	35%
New Hampshire	40%
New Jersey	30%

State	Install %
New Mexico	30%
New York	40%
North Carolina	30%
North Dakota	30%
Ohio	30%
Oklahoma	30%
Oregon	30%
Pennsylvania	30%
Rhode Island	40%
South Carolina	30%

State	Install %
South Dakota	30%
Tennessee	30%
Texas	30%
Utah	30%
Vermont	40%
Virginia	30%
Washington	30%
West Virginia	30%
Wisconsin	30%
Wyoming	30%

**Notes:**

- Installation costs are quoted as a percentage of the equipment list price (before discount)
- Prices are based on minimum equipment purchases of a minimum of \$5,000
- Specific job requirements may dictate a variance of +/- 3% to the above installation charge
- Jobs that require prevailing wages will be quoted on a separate basis
- Customer is responsible for providing a clear and level site for installation
- If existing subsurface is concrete or asphalt, additional charges may apply
- Customer is responsible for unknown conditions such as any underground obstructions or utilities
- Customer will be required to sign a rock clause
- Customer is responsible for obtaining any permits
- The above pricing and discounts are for L.T.C equipment only
- Little Tikes Commercial surfacing installation varies on the size and location of the project
- Additional products or services needed to complete the project but not offered directly by Little Tikes will be negotiated between installer and customer (sitework, concrete, etc.)

## Attachment B

Authorization Letter dated March 4, 2014, from PlayPower, Inc., to the City of Los Angeles, Department of Recreation and Parks allowing to piggyback on Contract #022113-LTS with NJPA.

March 4, 2014

Mr. Jim Newsom  
City of Los Angeles/Dept. of Recreation and Parks  
221 N. Figueroa St.  
Los Angeles, CA 90012

RE: PlayPower NJPA Contract #022113-LTS

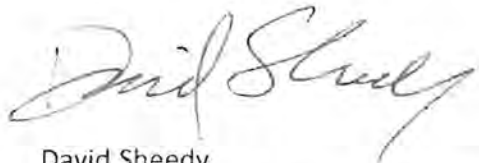
Jim,

As included in PlayPower's contract #022113-LTS with the National Joint Powers Alliance (NJPA), the City of Los Angeles, and any public or non-profit agency, is allowed to piggy-back on our contract.

We're very excited that the City of Los Angeles has chosen to take advantage of this contract and we look forward to continuing to work with you.

Please let us know if you have any other questions or concerns.

Best Regards,



David Sheedy  
Director of Sales & Business Development, PlayPower  
david.sheedy@playpower.com  
P. 573-366-6337



REPORT OF GENERAL MANAGER

NO. 14-048

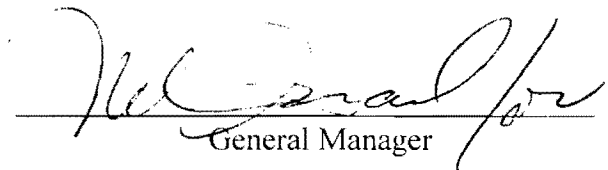
DATE April 2, 2014

C.D. ALL

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: PLAYGROUND EQUIPMENT, SURFACING, SITE FURNISHINGS, AND RELATED PRODUCTS AND SERVICES CONTRACT – USE OF THE STATE OF NORTH CAROLINA, COUNTY OF MECKLENBURG SELECTION PROCESS TO PROVIDE PLAYGROUND EQUIPMENT, SURFACING, SITE FURNISHINGS AND RELATED PRODUCTS AND SERVICES (CONTRACT NO. 110179 WITH PLAYCORE WISCONSIN, INC. DBA GAMETIME)

R. Adams	<u>                    </u>	V. Israel	<u>                    </u>
*R. Barajas	<u><i>R. Barajas</i></u>	K. Regan	<u>                    </u>
H. Fujita	<u>                    </u>	N. Williams	<u>                    </u>

  
General Manager

Approved                                           Disapproved                                           Withdrawn                     

RECOMMENDATIONS:

That the Board:

1. Approve the proposed contract, substantially in the form on file in the Board Office, between the City of Los Angeles (City) and PlayCore Wisconsin, Inc., dba GameTime (GameTime), for the purchase of playground equipment, surfacing, site furnishings and related products and services on an occasional and as-needed basis with a contract term expiring on September 16, 2015;
2. Find that Mecklenburg County, acts as the agent for participating governmental agencies for the purchase of playground equipment, surfacing, site furnishings and related products and services offered by GameTime and City is a participating agency;
3. Find that GameTime by written communication dated February 4, 2014, attached hereto and incorporated herein by reference as Attachment B, authorized City to utilize the Mecklenburg County contract terms and conditions for purchase of playground equipment, surfacing, site furnishings and related products and services;

REPORT OF GENERAL MANAGER

PG. 2                      NO. 14-048

4. Find as the contract awarding authority, in accordance with Charter Section 371(e)(2), the professional, scientific, expert, technical or other special services to be provided by GameTime are of a temporary and occasional character for which competitive bidding is not practicable or advantageous;
5. Find in accordance with Charter Section 371(e)(8), that the City may piggyback on the Mecklenburg County, a political subdivision of North Carolina, contract with GameTime, because contracts for cooperative arrangements with other governmental agencies for the utilization of the purchasing contracts and professional, scientific, expert or technical services contracts of those agencies and any implementing agreements are an exception to the City's competitive bidding requirements;
6. Find as the contract awarding authority, in accordance with Charter Section 371(e)(10), that the services to be provided by GameTime, are for the performance of professional, scientific, expert or technical services and the use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by common law;
7. Find as the contract awarding authority, in accordance with Charter Section 1022, that the Department of Recreation and Parks (Department) does not have, available in its employ, personnel with the necessary expertise to undertake the specialized professional tasks sought and the work can be performed more economically or feasibly by an independent contractor;
8. Authorize the General Manager, at his sole discretion, to extend the term of the Agreement, if Mecklenburg County exercises its options to renew its contract with GameTime, for two (2) additional one (1) year terms;
9. Direct the Board Secretary to transmit forthwith the proposed Contract to the Mayor for approval and to the City Attorney for review and approval as to form; and,
10. Authorize the Board President and Secretary to execute the proposed Contract upon receipt of the necessary approvals.

SUMMARY:

The Department has an ongoing need for the purchase and installation of playground equipment, surfacing, site furnishings and related products and services. The ability to purchase and install such material and equipment is critical to meeting the Department's needs to build new and retrofit and repair existing park property.



## REPORT OF GENERAL MANAGER

PG. 3                      NO. 14-048

The GameTime contract will provide the Department with a variety of turnkey designs, manufacturing and installation options for playground equipment, poured in place surfaces, and site furnishing. The contract will allow the Department the ability to select a wide variety of standard manufactured and customized recreation and parks equipment. If desired, the Department may use this contract to install, construct, build new and/or to retrofit, repair and maintain the Department's existing recreation & parks equipment.

Department staff is recommending that the Board authorize the Department to piggyback on Mecklenburg County's competitively bid contract with GameTime. GameTime has issued a letter dated February 4, 2014 (attached hereto and incorporated herein by reference as Attachment B) to the City which authorizes use of the contract with the Mecklenburg County. Under the current Mecklenburg County's contract agreement (Contract No. 110179), Section "D" of the "Statement of Background and Intent" and Section 2.6 expressly allows other entities to enter into their own contract with Gametime utilizing the terms and conditions of the Mecklenburg County's contract (Attachment A). Also, public agencies wishing to utilize the County of Mecklenburg's contract agreement must register on-line with the U.S. Communities at [www.uscommunities.org](http://www.uscommunities.org). In compliance with this requirement, the City has registered with the U.S. Communities which is a prerequisite for Participating Public Agencies who wish to access the County of Mecklenburg's Master Agreement.

The Board Office will issue a separate contract number and the Agreement will be executed between GameTime and the City through the Board. GameTime's current contract with Mecklenburg County will expire on September 16, 2015. However, Mecklenburg County has the option to extend their contract with GameTime, which if exercised would extend the term of their Contract by two (2) years to September 16, 2017. In the event that Mecklenburg County exercises its options, Department staff recommends that the Department's General Manager be given the sole discretion to extend the term of the City's Agreement for two (2) additional years.

### FISCAL IMPACT STATEMENT:

This contract will enable the Department to carry out various construction and maintenance projects that involve the construction, maintenance and/or retrofit of various recreation and parks equipment on an occasional and as-needed basis in order to enhance the recreational experience of the public. There will be no direct fiscal impact to the Department's General Fund as funding will be identified on a per project basis.

This Report was prepared by Jim Newsom, Management Analyst II, reviewed by Cid Macaraeg, Senior Management Analyst II, Planning, Construction and Maintenance Branch.

Attachment A

Contract Executed on July 6, 2010, between The State of North Carolina, County of Mecklenburg and Playcore Wisconsin, Inc. dba Gametime.



STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

CONTRACT # 110179.04

#### FOURTH AMENDMENT TO MASTER PURCHASE AGREEMENT

**THIS FOURTH AMENDMENT** to the Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 1st day of May 2013 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and GameTime Division of Playcore Wisconsin, Inc., a corporation doing business in the State of North Carolina (the "Company").

#### STATEMENT OF BACKGROUND AND INTENT

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The County and the Company agreed to amend the contract on April 7, 2011 to incorporate a four percent (4%) price increase.
- C. The County and the Company agreed to amend the contract on January 2, 2012 to incorporate a 1.8 percent (1.8%) price increase, revised freight rates, and new products.
- D. The County and the Company agreed to amend the contract on February 1, 2013 to incorporate a 2.47 percent (2.47%) price increase and new products offered by the Company.
- E. The parties now desire to amend the Agreement by making certain changes to the product and pricing provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

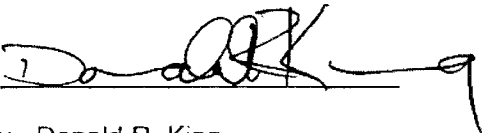
#### AGREEMENT

- I. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- II. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Master Agreement is hereby amended as follows:
  - a) Incorporate the new Colorado Timing Systems products as specified in the revised 2013 Pricing Schedules included as Exhibit A.
- III. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.

IV. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

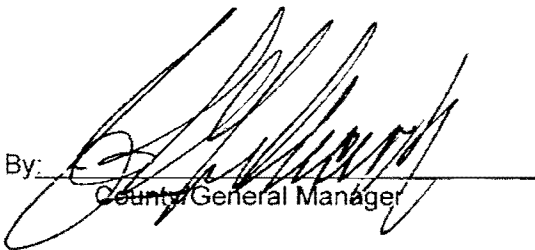
IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

GAMETIME DIVISION, PLAYCORE WISCONSIN, INC.

By:   
Title: Donald R. King  
Director of Sales Administration

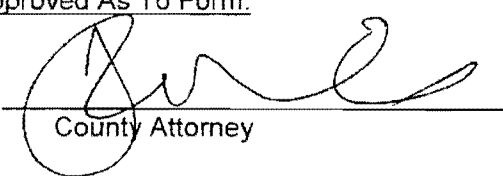
Attested:  
By:   
Title: Bethany Pelts  
Executive Assistant

MECKLENBURG COUNTY:

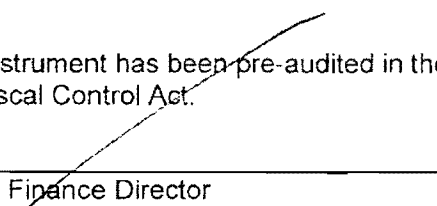
By:   
County General Manager

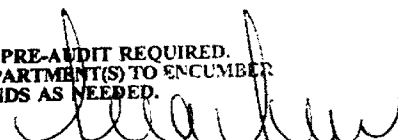
By: \_\_\_\_\_  
Park and Recreation Director

Attested:  
By:   
Clerk to the Board

Approved As To Form:  
By:   
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By:   
Finance Director

**NO PRE-AUDIT REQUIRED.  
DEPARTMENT(S) TO ENCUMBER  
FUNDS AS NEEDED.**  
BY:   
**DIRECTOR OF FINANCE**

Approved As To Insurance Requirements:  
By: \_\_\_\_\_  
Risk Management

110179.04



STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

CONTRACT # 110179.03

**THIRD AMENDMENT TO MASTER PURCHASE AGREEMENT**

**THIS THIRD AMENDMENT** to the Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 1st day of February 2013 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and GameTime Division of Playcore Wisconsin, Inc., a corporation doing business in the State of North Carolina (the "Company").

**STATEMENT OF BACKGROUND AND INTENT**

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The County and the Company agreed to amend the contract on April 7, 2011 to incorporate a four percent (4%) price increase.
- C. The County and the Company agreed to amend the contract on January 2, 2012 to incorporate a 1.8 percent (1.8%) price increase, revise freight rates, and incorporate new products.
- D. The parties now desire to amend the Agreement by making certain changes to the product and pricing provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

**AGREEMENT**

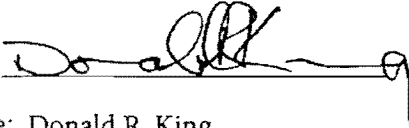
- I. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- II. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Master Agreement is hereby amended as follows:
  - a) Incorporate the new products offered by the GameTime 2013 Playground Design Guide.
  - b) Incorporate an average price increase of 2.47 percent (2.47%) for all playground equipment, site furnishings, surfacing materials, and all related products as specified in Exhibit A.
  - c) Incorporate addition of new products offered by GameTime strategic partners and corresponding 2013 price lists as specified in Exhibit A.

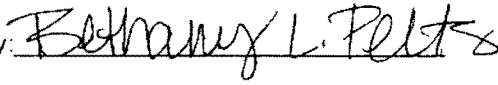
- III. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.
- IV. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

GAMETIME DIVISION, PLAYCORE WISCONSIN, INC.

Attested:

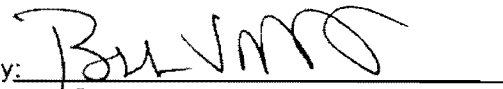
By:   
Title: Donald R. King  
Director of Sales Administration

By:   
Title: Bethany Pelts  
Executive Administrator

MECKLENBURG COUNTY:

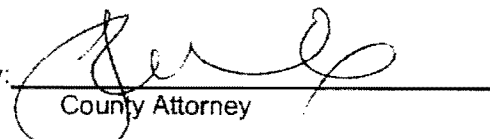
By:   
Park and Recreation Director

Attested:

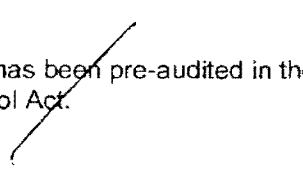
By:   
County/General Manager

By:   
Clerk to the Board

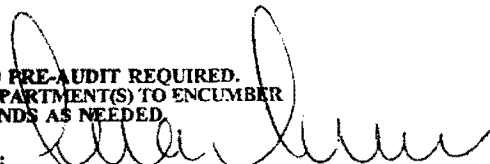
Approved As To Form:

By:   
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By:   
Finance Director

Approved As To Insurance Requirements:

**NO PRE-AUDIT REQUIRED.  
DEPARTMENT(S) TO ENCUMBER  
FUNDS AS NEEDED.**  
By:   
BY: DIRECTOR OF FINANCE  
Risk Management





**STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG**

**CONTRACT # 110179.02**

**SECOND AMENDMENT TO MASTER PURCHASE AGREEMENT**

**THIS SECOND AMENDMENT** To The Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 1st day of February 2012 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and GameTime Division of Playcore, Inc., a corporation doing business in the State of North Carolina (the "Company").

**STATEMENT OF BACKGROUND AND INTENT**

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The County and the Company agreed to amend the contract on April 7, 2011 to incorporate a four percent (4%) price increase.
- C. The parties now desire to amend the Agreement by making certain changes to the product and pricing provisions of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

**AGREEMENT**

- I. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- II. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Master Agreement is hereby amended as follows:
  - a) Incorporate the new products offered by the GameTime 2012 Playground Design Guide, Everlast Climbing Industries, Inc., and Ultra Play Systems, Inc.
  - b) Incorporate an average price increase of 1.8 percent for all playground and surfacing products as specified in Exhibit A.
  - c) Incorporate revised GameTime freight rates as specified in Exhibit E.
- III. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.
- IV. In all other respects and except as modified herein, the terms of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

GAMETIME DIVISION

By: [Signature]  
Title: Director of Sales Administration

Attested:

By: [Signature]  
Title: Executive Administrative Assistant

MECKLENBURG COUNTY:

By: [Signature]  
County/General Manager

By: [Signature]  
Park and Recreation Director

Attested:

By: [Signature]  
Clerk to the Board

Approved As To Form:

By: [Signature]  
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: [Signature]  
Finance Director

Approved As To Insurance Requirements:

By: \_\_\_\_\_  
Risk Management

**NO PRE-AUDIT REQUIRED,  
DEPARTMENT(S) TO ENCUMBER  
FUNDS AS NEEDED.**

BY: [Signature]  
DIRECTOR OF FINANCE



**STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG**

**CONTRACT # 110179.01**

**FIRST AMENDMENT TO MASTER PURCHASE AGREEMENT**

**THIS FIRST AMENDMENT** To The Agreement to provide Park And Playground Equipment, Surfacing, Site Furnishings And Related Commodities and Services (the "Amendment") is made and entered into this 7th day of April 2011 by and between Mecklenburg County, a North Carolina municipal corporation (the "County") and GameTime Division of Playcore, Inc., a corporation doing business in the State of North Carolina (the "Company").

**STATEMENT OF BACKGROUND AND INTENT**

- A. The County and the Company entered into a written Agreement dated September 17, 2010 (the "Agreement") pursuant to which the Company agreed to provide Park and Playground Equipment, Surfacing, Site Furnishings and Related Products and Services to the County and other Participating Public Agencies.
- B. The parties now desire to amend the Agreement by making certain changes and clarifications to the term and pricing provisions of the Agreement.


**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties hereby amend the Agreement as follows:

**AGREEMENT**

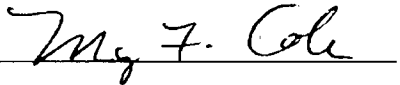
- I. Defined terms used in this Amendment shall have the same meaning as are assigned to such terms in the Agreement.
- II. Changes to Original Agreement. In order to effectuate the intent of the parties, the Original Master Agreement is hereby amended as follows:
  - a) Incorporate a price increase of four percent (4%) for all GameTime products except GTH20 water play and GTImpax surfacing, due to the escalation in steel and plastic resin material costs. Price increases will be effective on orders entered April 7, 2011. Orders entered before April 7<sup>th</sup> will be exempt from the price increase providing the order ships prior to April 29, 2011.
- III. Except to the extent specifically provided in the amendment contained herein, this Amendment shall not be interpreted or construed as waiving any rights, obligations, remedies or claims the parties may otherwise have under this Agreement.
- IV. In all other respects and expect as modified herein, the terms of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, an in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have each caused this Amendment to be executed by its duly authorized representative, all as of the date first set forth above.

GAMETIME:

By:   
Title: Director of Sales Administration

Attested:

By:   
Title: Sales Administration Manager

MECKLENBURG COUNTY:

By:   
County/General Manager

By:   
Park and Recreation Director

Attested:

By:   
Clerk to the Board

Approved As To Form:

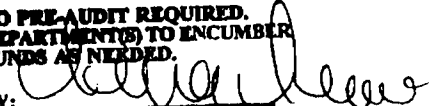
By:   
County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By:   
Finance Director

Approved As To Insurance Requirements:

By: \_\_\_\_\_  
Risk Management

**NO PRE-AUDIT REQUIRED.  
DEPARTMENTS TO ENCUMBER  
FUNDS AS NEEDED.**  
BY:   
DIRECTOR OF FINANCE



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/24/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA, Inc. Two Alliance Center 3560 Lenox Road, Suite 2400 Atlanta, GA 30326 Attn: Atlanta.CarRequest@marsh.com / Fax: 212-948-4321 457102-Cas-GAUWX-10-11      GAMETI		<b>CONTACT NAME:</b> <b>PHONE (A/C, No, Ext):</b> <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> <b>PRODUCER CUSTOMER ID #:</b>	
<b>INSURED</b> GameTime 150 PlayCore Drive SE Fort Payne, AL 35967		<b>INSURER(S) AFFORDING COVERAGE</b> <b>NAIC #</b>	
		<b>INSURER A :</b> Columbia Casualty Company      31127	
		<b>INSURER B :</b> Travelers Property Casualty Company Of America      25674	
		<b>INSURER C :</b> National Union Fire Ins Co Pittsburgh PA      19445	
		<b>INSURER D :</b> Phoenix Insurance Company      25623	
		<b>INSURER E :</b> Ohio Casualty Insurance Company      24074	
		<b>INSURER F :</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** ATL-002237295-35      **REVISION NUMBER: 7**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> SIR \$150,000 Per Occ.  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC		4015728458	08/01/2010	08/01/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		TJCAP95188945-10	08/01/2010	08/01/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Comp Ded: \$1,000 \$ Coll Ded: \$1,000 \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10,000		BE35053165	08/01/2010	08/01/2011	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 \$ \$
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N    N/A	TC2NUB-9520B24-6-10 (AOS) TRJUB-9520B25-9-10 (AZ & WI)	08/01/2010	08/01/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
E	Excess Umbrella		ECO11 53059239	08/01/2010	08/01/2011	\$25,000,000 Excess \$25,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

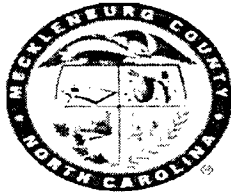
Re: All Jobs.

The City of Charlotte/Mecklenburg County is listed as additional insured (except Workers' Compensation) as their interests may appear until completion of each job performed by the Insured.

**CERTIFICATE HOLDER****CANCELLATION**

The City of Charlotte/Mecklenburg County Procurement Services Division 600 East Fourth Street Charlotte, NC 28202	<b>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</b>  <b>AUTHORIZED REPRESENTATIVE</b> of Marsh USA Inc. Ted L. Young <i>Ted L. Young</i>
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STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

CONTRACT NO. 17879

**AGREEMENT TO PROVIDE PLAYGROUND EQUIPMENT,  
SURFACING, SITE FURNISHINGS AND RELATED  
PRODUCTS AND SERVICES**

This Agreement (the "Agreement") is entered into as of this 17<sup>th</sup> Day of September, 2010 (the "Effective Date"), by and between PlayCore Wisconsin, Inc. dba GameTime (the "Company") a corporation doing business in North Carolina (the "Company"), and Mecklenburg County, a political subdivision of the State of North Carolina (the "County").

**Statement of Background and Intent**

- A. The County issued a Request for Proposals (RFP Number 269-2010-183) dated March 19, 2010 requesting proposals from qualified firms to provide the County and other Participating Public Agencies with Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services hereafter referred to as ("Products"). This Request for Proposals, together with all attachments and any amendments, is referred to herein as the "RFP".
- B. The Company submitted a proposal in response to RFP Number 269-2010-183 on May 5, 2010. This bid, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Proposal."
- C. The County awarded this contract on July 6, 2010, to Company to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services to the County all in accordance with the terms and conditions set forth herein.
- D. Charlotte-Mecklenburg (herein "Lead Public Agency"), in cooperation with the U.S. Communities Government Purchasing Alliance (herein "U.S. Communities"), and on behalf of other public agencies that elect to access the Master Agreement (herein "Participating Public Agencies"), competitively solicited and awarded the Master Agreement to the Company. Lead Public Agency has designated U.S. Communities as the administrative and marketing conduit for the distribution of the Master Agreement to Participating Public Agencies.

Lead Public Agency is acting as the "Contracting Agent" for the Participating Public Agencies, and shall not be liable or responsible for any costs, damages, liability or other obligations incurred by the Participating Public Agencies. The Company shall deal directly with each Participating Public Agency concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing, payment and all other matters relating or referring to such Participating Public Agency's access to the Master Agreement.

The Master Agreement shall be construed to be in accordance with and governed by the laws of the State in which the Participating Public Agency exists. Participating Public Agencies are required to register on-line with U.S. Communities at [www.uscommunities.org](http://www.uscommunities.org). The registration allows the Participating Public Agency to enter into a Master Intergovernmental Cooperative Purchasing Agreement ("MICIPA"), which is intended to allow the Participating Public Agencies to meet applicable legal requirements and facilitate access to the Master Agreement and the Company.

**NOW, THEREFORE.** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

### A G R E E M E N T

1. **INCORPORATION OF EXHIBITS.** The following Exhibits are attached to this Agreement and incorporated into and made a part of this Agreement by reference:

Exhibit A:	Contract Pricing, Discount Structures and Pricing Incentives
Exhibit B:	Installation Fees
Exhibit C:	National Network of Distributors and Certified Installers
Exhibit D:	U.S. Communities Administrative Agreement
Exhibit E:	Freight Rate Schedules
Exhibit F:	Product Warranties
Exhibit G:	Company's Proposal (not attached, but incorporated herein by reference)
Exhibit H:	RFP #269-2010-183 (not attached, but incorporated herein by reference)

Each reference to the Agreement shall be deemed to include all Exhibits. Any conflict between language in an Exhibit to this Agreement and the main body of this Agreement shall be resolved in favor of the main body of this Agreement. Each reference to GameTime in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.** The following terms shall have the following meanings for purposes of this Agreement (including all Exhibits):

- 2.1. **AGREEMENT.** The term "Agreement" shall mean this Agreement including the Company's Proposal, the RFP and all attachments, exhibits, and addenda (all as defined in the Statement of Background and Intent).
- 2.2. **DOCUMENTATION.** The term "Documentation" shall mean all written, electronic, or recorded works, and all enhancements and updates thereto, that describe the use, functions, features, or purpose of the Products and Services, including without limitation all functional and technical specifications, end user manuals, guides and other materials which relate to the Products and Services, or which are necessary to fully utilize the Products and Services.
- 2.3. **DELIVERABLES.** The term "Deliverables" shall mean all equipment, materials, drawings, data, wiring, cable, installation services, incidentals and all other items that the Company is required to complete and deliver to the County in connection with this Agreement.
- 2.4. **DEFECT.** The term "Defect" shall mean any failure of the Products, or any component thereof, to conform fully to the Specifications and Requirements. Non-conformity is not a Defect if it results from the County's misuse, improper use, alteration, or damage of the Products.
- 2.5. **EFFECTIVE DATE.** The term "Effective Date" refers to the date this Agreement is fully executed by all parties to the Agreement.
- 2.6. **PARTICIPATING PUBLIC AGENCY.** The term shall mean any and all states, local governments, school districts, and higher education institutions and other public agencies and nonprofit organizations that have authority to purchase from another public agency's competitively solicited contract.

- 2.7. **PRODUCTS.** The term "Products" shall mean Playground Equipment, Surfacing, Site Furnishings, and Related Products that the Company agreed to provide in the Company's Proposal.
- 2.8. **SERVICES.** The term "Services" shall include all services that the Company agreed to provide in the Company's Proposal, including all design, assembly, installation, reporting, and optional work.
- 2.9. **SPECIFICATIONS AND REQUIREMENTS.** The term "Specifications and Requirements" shall mean all definitions, descriptions, requirements, criteria, warranties and performance standards relating to the Products and Services which are set forth or referenced in: (a) this Agreement, including all Exhibits; (b) the Company's proposal; (c) the RFP; (d) the Documentation; and (e) any functional and/or technical specifications which are published or provided by the Company or its licensors or suppliers from time to time with respect to all or any part of the Products. Notwithstanding the forgoing, if the Company improves the Products or Services over time to incorporate new technology or improved features or functionality, and provided the improved Products or Services under this Agreement, the descriptions, specifications and requirements for such improvements shall be deemed part of the Specifications and Requirements. Also notwithstanding the forgoing, the Company's Bid shall only take precedence over the ITB to the extent the Company properly took exception to the terms of the ITB in the manner required by the ITB.
3. **TERM.**  
The initial term of this Agreement will be for five (5) years from the Effective Date with an option to renew for two (2) additional one-year terms. This Agreement may be extended only by a written amendment to the contract signed by both parties.
4. **GENERAL DESCRIPTION OF PRODUCTS AND SERVICES.**  
The Company shall provide the Products and Services in accordance with the terms of the Company's proposal, and in compliance with all other conditions, covenants, stipulations, terms and provisions contained in this Agreement.
5. **SHIPPING AND DELIVERY.**  
All shipments shall be F.O.B. destination with freight charges prepaid and listed separately. Actual freight charges shall be added at time of invoicing as determined and supported by the carrier's freight bill. Estimated freight charges shall be provided at the time of quotation utilizing the freight rate schedules incorporated into this Agreement as Exhibit E.
6. **INSTALLATION, MAINTENANCE AND SAFETY INSPECTIONS.**  
The County and Participating Public Agencies shall be responsible for contracting installation services on a project-by project basis as needed. If included with purchase, all equipment shall be installed by a GameTime Installer in accordance with the standards established by the terms, specifications, drawings, and construction notes for each project and meet manufacturer's specifications and industry standards. County and Participating Public Agencies shall be responsible for scheduling coordination and site preparation. Site should be level and permit installation equipment access. Participating Public Agency shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed materials or conditions that may result in additional labor or material costs.
7. **COMPENSATION.**
- 7.1. The County shall pay the Company for Products and Services compliant with the Specifications and requirements of this Agreement based on the fixed percentage discounts from the current manufacturer's price index as identified and incorporated into this Agreement as Exhibit A.
- 7.2. The Company agrees the fixed percentage discounts will remain firm for the entire contract term.
- 7.3. Pricing shall remain in effect until December 31, 2011. Thereafter, the Company shall advise the Charlotte-Mecklenburg Procurement Services Department in writing of any proposed price increases no later than sixty (6) days prior to the effective date of the requested increase.



- 7.4. The Company shall be responsible for furnishing and delivering approved price lists and the most current catalogs to the County and other participating public entities, upon request.
- 7.5. The Company agrees that if a public agency is otherwise eligible for lower pricing through a federal, state, regional, or local contract, the Company will match the pricing.

8. **OPTIONAL WORK.**

The County and Participating Public Agencies may elect to request quotations for additional services not specifically listed in the Company's proposal or this Agreement. The Company shall provide quotations for optional products and services as requested, to provide a full turnkey solution.

9. **BILLING.**

Each invoice sent by the Company shall detail all items delivered which are necessary to entitle the Company to the requested payment under the terms of this Agreement. The Company shall mail all invoices to:

Mecklenburg County  
Finance - Accounts Payable  
600 East 4<sup>th</sup> St.  
Charlotte, NC 28202

The County will pay all accurate, properly submitted, uncontested invoices within thirty (30) days of receipt. Proposals may include an incentive discount for early payment. Invoices must include state and local sales tax.

10. **GENERAL WARRANTIES.**

Company represents and warrants that:

- 10.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of North Carolina, and is qualified to do business in North Carolina;
- 10.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- 10.3 The execution, delivery, and performance of this Agreement have been duly authorized by Company;
- 10.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement;
- 10.5 In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 10.6 The Company shall not violate any agreement with any third party by entering into or performing this Agreement.

11. **ADDITIONAL REPRESENTATIONS AND WARRANTIES.**

Company represents warrants and covenants that:

- 11.1 The Services shall satisfy all requirements set forth in this Agreement, including but not limited to the attached Exhibits;

- 11.2 All work performed by the Company and/or its subcontractors pursuant to this Agreement shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
- 11.3 Neither the Services, nor any Deliverables provided by the Company under this Agreement will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and
- 11.4 The Company has taken and will continue to take precautions sufficient to ensure that it will not be prevented from performing all or part of its obligations under this Agreement by virtue of interruptions in the computer systems used by the Company.

12. **TERMINATION.**

- 12.1. *TERMINATION WITHOUT CAUSE.* The County may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the Company.
- 12.2. *TERMINATION FOR DEFAULT BY EITHER PARTY.* By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:
  - (a) The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
  - (b) The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or
  - (c) The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

- 12.3. *ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE COUNTY.* By giving written notice to the Company, the County may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):
  - (a) The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or
  - (b) The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

12.4. **CANCELLATION OF ORDERS AND SUBCONTRACTS.**

In the event this Agreement is terminated by the County for any reason prior to the end of the term, the Company shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the County showing in detail the services performed under this Agreement to the date of termination.

12.5. **NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS.**

Any termination of the Agreement shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.

12.6. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Agreement, the Company shall promptly (a) return to the County all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the County; (b) deliver to the County all Work Product; (c) allow the County or a new service provider access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate the Services to a new service provider; and (d) refund to the County all pre-paid Warranty Fees (other than pre-paid Warranty Fees for the then current year).

12.7. **NO SUSPENSION.** In the event that the County disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Agreement, the Company agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

12.8. **AUTHORITY TO TERMINATE.** The County Manager or their designee is authorized to terminate this Agreement on behalf of the County.

12.9. **AUDIT.** During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Agreement or the County's payment obligations. The County shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the County in excess of \$5,000 but for the audit, then the Company shall be required to reimburse the County for the cost of the audit.

13. **TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Agreement, the Company shall cooperate with the County to assist with the orderly transfer of the Services, functions and operations provided by the Company hereunder to another provider or to the County as determined by the County in its sole discretion. The transition services that the Company shall perform if requested by the County include but are not limited to:

- a. Working with the County to jointly develop a mutually agreed upon transition services plan to facilitate the termination of the Services; and

- b. Notifying all affected service providers and subcontractors of the Company of transition activities;
- c. Performing the transition service plan activities;
- d. Answering questions regarding the products and services on an as-needed basis; and
- e. Providing such other reasonable services needed to effectuate an orderly transition to a new system.

14. **AMENDMENTS.** In the event changes to the Agreement become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties which expressly references and is attached to this Agreement (an "Amendment"). The Amendment shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on any associated price.

In the event either party desires an Amendment, the party shall submit to the other party a proposed change. If the receiving party does not accept the Contract Amendment in writing within ten (10) days, the receiving party shall be deemed to have rejected the proposed change. If the parties cannot reach agreement on a proposed change, the Company shall nevertheless continue to render performance under this Agreement in accordance with its (unchanged) terms and conditions.

15. **INDEMNIFICATION.** The Company shall indemnify, defend and hold harmless the County and the County's officers, employees and agents from and against any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations and other liabilities (including settlement amounts) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) copyright, trademark or patent infringement or other infringement of proprietary rights with respect to any of the Products or Services delivered to the County pursuant to this Agreement ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Agreement; or (iii) arising from the Company's failure to perform its obligations under this Agreement, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Agreement, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that a Company employee or subcontractor is an employee of the County, including claims relating to worker's compensation, failure to withhold taxes and the like.

If an Infringement Claim occurs, the Company shall either: (i) procure for the County the right to continue using the affected Product or Service; or (ii) repair or replace the infringing Product or Service so that it becomes non-infringing, provided that the performance of the System or any component thereof shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty days after the County is directed to cease use of a Product or Service, the Company shall promptly refund to the County all amounts paid under this Agreement, other than Extended Maintenance Fees.

The indemnification requirement is not intended to cover, and the Company is not responsible for, any damages that result from lack of maintenance; inadequate supervision; negligence; intentional acts of anyone other than the Company or their affiliates; inadequate surfacing; or vandalism.

It is the intent of any insurance provided by the Company to indemnify for product liability claims arising solely from the negligent design or manufacture of the Playground Equipment when such goods and services are provided by Company or Company's subcontractors. This clarifies and supersedes any other section of the contract concerning indemnification that could be interpreted otherwise.

16. **INSURANCE.** Throughout the term of this Agreement, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Agreement, or in the event the Company fails to provide the County with the required certificates of insurance, the County shall be entitled to terminate this Agreement immediately upon written notice to the Company.

16.1. General Requirements.

- (a) The Company shall not commence any work in connection with this Agreement until it has obtained all of the types of insurance set forth in this Section and such insurance has been approved by the County. The Company shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.
- (b) All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall furnish the County with proof of insurance coverage by certificates of insurance accompanying this Agreement and shall name the County as an additional named insured under the commercial general liability.
- (c) The County shall be exempt from, and in no way liable for any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

16.2. Types of Insurance. The Company agrees to purchase and maintain during the life of this Agreement with an insurance company, acceptable to the County, authorized to do business in the State of North Carolina the following insurance:

- (a) Automobile Liability. Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
- (b) Commercial General Liability. Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and contractual liability, assumed under the indemnity provision of this Agreement.
- (c) Workers' Compensation Insurance. The Company shall meet the statutory requirements of the State of North Carolina, \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

The County shall be named as additional insured under the commercial general liability insurance for operations or services rendered under this Agreement. Certificates of all required insurance shall be furnished to the County and shall contain the provision that the County will be given thirty (30) day written notice of any intent to amend or terminate by either the insured or the insuring company.

It is understood that Playground Equipment will be in the care, custody, and control of the County or Participating Public Agency following installation. It is further understood that the Company cannot additionally insure the eventual owners of the equipment for Participating Public Agencies nationwide for any damages that result from lack of maintenance, inadequate supervision, negligence, or intentional acts

by anyone other than the Company or their affiliates; inadequate surfacing, or vandalism. The responsibility for maintenance and supervision belongs to the County or Participating Public Agency and the public user respectively.

17. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the County that may arise under law or under the terms of this Agreement.

18. **SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Agreement without the County's prior written consent. In the event the County does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Agreement. Any subcontract entered into by Company shall name the County as a third party beneficiary.

11. **NON-DISCRIMINATION.** The Company agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or disability.

The Company agrees that it will inform the County of any alleged violation(s) of employment practices involving any employees who work on the Project which are asserted in any claims filed with the Equal Employment Opportunity Commission, Labor Department or any other federal or state compliance agency. The Company will also inform the County of the final disposition of such cases.

19. **AUDIT.** During the term of this Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the County shall have the right to audit, either itself or through a third party, the books and records (including but not limited to the technical records) of the Company in connection with this Agreement, to ensure the Company's compliance with all the terms and conditions of this Agreement or the County's payment obligations.

20. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the County in connection with this agreement. County data processed by the Company shall remain the exclusive property of the County. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the County in any manner except that contemplated by this agreement.

21. **WORK ON COUNTY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the County's premises, obey all instructions and directions issued by the County's project manager with respect to work on the County's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the County when on the County's premises.

22. **DRUG-FREE WORKPLACE.** The County is a drug-free workplace employer. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Agreement:

22.1. Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substance is prohibited in the workplace and specifying actions that will be taken for violations of such prohibition;

22.2. Establish a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the Company's policy of maintaining a drug-free workplace, (iii) any

available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations:

- 22.3. Notify each employee that as a condition of employment, the employee will (i) abide by the terms of the prohibition outlines in (a) above, and (ii) notify the Company of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- 22.4. Impose a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by an employee convicted of a drug crime;
- 22.5. Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 22.6. Require any party to which it subcontracts any portion of the work under the contract to comply with the provisions of this Section.

A false certification or the failure to comply with the above drug-free workplace requirements during the performance of this Agreement shall be ground for suspension, termination or debarment.

23. **NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

23.1. Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Agreement shall be sent to:

<b>For The Company:</b>	<b>For The County:</b>
Don King	Karen Ruppe
PlayCore Wisconsin, Inc. dba GameTime	Charlotte-Mecklenburg Procurement Services
150 Playcore Drive	600 East 4 <sup>th</sup> Street
Fort Payne, AL 35967	Charlotte, NC 28202
Phone: 256.997.5255	Phone: 704.336.2992
Fax: 256.997.5455	Fax: 704.632.8254
E-mail: dking@playcore.com	E-mail: kruppe@ci.charlotte.nc.us
<b>With Copy To:</b>	<b>With Copy To:</b>
	Tyrone Wade
	Deputy County Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704.336.4135
	Fax:
	E-mail: Tyrone.Wade@mecklenburgcountync

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

24. **MISCELLANEOUS**

24.1. **ENTIRE AGREEMENT.** This Agreement, (including all Exhibits) and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter

herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.

- 24.2. AMENDMENT. No amendment or change to this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought.
- 24.3. GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Agreement, and any other matters relating to this Agreement (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 24.4. BINDING NATURE AND ASSIGNMENT. This Agreement shall bind the parties and their successors and permitted assigns. Neither party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 25.10 constitute an assignment.
- 24.5. FORCE MAJEURE. Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Contract, and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following conditions are satisfied:
- (a) if such failure or delay:
    - i. could not have been prevented by reasonable precaution;
    - ii. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
    - iii. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.
  - (b) An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the Service Provider shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Service Provider continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
  - (c) Upon the occurrence of a Force Majeure Event, the Service Provider shall immediately notify the County by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents Service Provider from performing its obligations for more than five (5) days, the County shall have the right to terminate this Agreement by written notice to the Service Provider.

Strikes, slowdowns, lockouts, walkouts, industrial disturbances and other labor disputes shall not constitute Force Majeure Events and shall not excuse the Service Provider from the performance of its obligations under this Agreement.

An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force



Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the County shall have the right to terminate this Agreement by written notice to the Company.

- 24.6. SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portion of this Agreement so long as the material purposes of this Agreement can be determined and effectuated. If any provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 24.7. NO PUBLICITY. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Agreement or the County in any manner without the prior written consent of the County. Notwithstanding the forgoing, the parties agree that the Company may list the County as a reference in responses to requests for proposals, and may identify the County as a customer in presentations to potential customers.
- 24.8. WAIVER. No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.
- 24.9. CHANGE IN CONTROL. In the event of a change in "Control" of the Company (as defined below), the County shall have the option of terminating this Agreement by written notice to the Company. The Company shall notify the County within ten days of the occurrence of a change in control. As used in this Agreement, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 24.10. NO BRIBERY. The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the County in connection with this Agreement.
- 24.11. FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES. The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Agreement be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- 24.12. TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services.

22.13 *WAIVER OF RIGHT TO JURY TRIAL.* The County and Company waive and will waive all rights to have a trial by jury in any action, proceeding, claim or counterclaim brought by either of them against the other on any matter whatsoever arising out of or in any way related to or connected with this Agreement.


25. **Non-Appropriation of Funds.** If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Company of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.

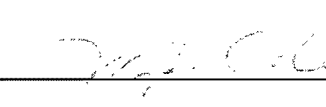
11.19

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Agreement to be executed on the date first written above.

PLAYCORE WISCONSIN, INC.  
dba GAMETIME:

ATTEST:

  
\_\_\_\_\_

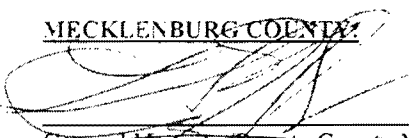
  
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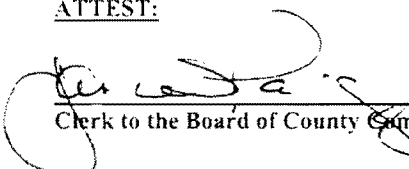
Company Signature  
Donald R. King  
Director of Sales Administration  
Title

Mary Cole  
Sales Administration Manager  
Title

MECKLENBURG COUNTY:


ATTEST:

  
\_\_\_\_\_

  
\_\_\_\_\_

General Manager/Deputy County Manager

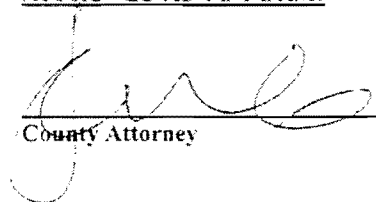
Clerk to the Board of County Commissioners

  
\_\_\_\_\_

Park and Recreation Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

APPROVED AS TO FORM:

  
\_\_\_\_\_

County Attorney

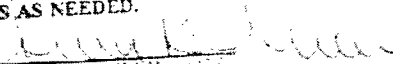
Finance Director

APPROVED AS TO INSURANCE REQUIREMENTS:

  
\_\_\_\_\_

Director, Charlotte-Mecklenburg Division of Insurance Risk Management

NO PRE-AUDIT REQUIRED.  
DEPARTMENT(S) TO ENCLUMBER  
FUNDS AS NEEDED.

BY:   
DIRECTOR OF FINANCE

**EXHIBIT A**  
**Contract Pricing and Discount Structures**

The attached Pricing Sheets is incorporated into and made a part of the Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and PlayCore-Wisconsin, Inc. dba GameTime (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.



GameTime Division  
 PlayCore Wisconsin, Inc.  
 150 PlayCore Drive, S.E.  
 Fort Payne, Alabama 35967  
 Telephone: 256/845-5610  
 Facsimile: 256/845-9361

## REQUEST FOR PROPOSAL #269-2010-183

### PRICING SCHEDULES

#### Accompanying Pricing Schedules:

1. *GameTime Year One U.S. Communities Contract Net Price List*
2. *Snug Year One U.S. Communities Contract Net Price List*
3. *GTImpax Year One U.S. Communities Contract Net Price List*
4. *Ultra Play Year One U.S. Communities Contract Net Price List*
5. *GT Grandstands Year One U.S. Communities Contract Net Price List*
6. *RCP Shelters Price List RCP402524015*
7. *GTH20 Year One U.S. Communities Contract Net Price List*
8. *Everlast Year One U.S. Communities Contract Net Price List*
9. *Spohn Ranch U.S. Communities Year One Budget Pricing*
10. *Recreation Equipment Manufacturing Year One U.S. Communities Contract Net Price List*
11. *GameTime Year One U.S. Communities Discounts and Installation charges*

#### GameTime Discounts:

- |                                      |                                    |
|--------------------------------------|------------------------------------|
| a. Equipment (including components): | 24% (see Quantity Discounts below) |
| Freestanding Events:                 | 16%                                |
| Snug Early Childhood Play Equipment: | 6%                                 |
| PlayWorx GFRC ThemeScapes:           | 6%                                 |
| b. Surfacing:                        | 18%                                |
| c. Site Furnishing:                  | 6%                                 |
| d. Related Products :                | 6%                                 |
| Fitness and Sports:                  | 9%                                 |
| GTShade Structures and Shelters:     | 4%                                 |
| GTH20 Water Slides:                  | 3%                                 |
| GTH20 Spray Grounds:                 | 3%                                 |
| GTNets Climbing Nets:                | 3%                                 |
| Everlast Indoor Climbing Walls:      | 10%                                |
| NatureROCKS Climbing Boulders:       | 5%                                 |
| Shelters:                            | 4%                                 |

## PRICING SCHEDULES

Dog Parks:	6%
Skate Parks:	6%
Drinking Fountains:	5%
e. Services:	All Services Net Pricing
Playground Equipment Installation	
Safety Surfacing Installation	
Sitework Services	
Community Build Supervision	
Design Services	
Maintenance and Repairs	
CPSI Initial Playground Safety Audit	
CPSI Low-Frequency Playground Safety Inspection	
CPSI Maintenance and Inspection Training (Quotations on a case-by-case basis)	

### Volume Discounts:

Volume single purchases of composite play systems at U.S. Communities net pricing shall be eligible for an additional discount of 5% for orders totaling from \$50,000 to \$75,000; 10% from \$75,000 to \$100,000 and 15% for orders exceeding \$100,000.

### Cash With Order Discount

Orders for playground equipment paid for at the time of placement are entitled to a 3% cash-with-order discount.

### Product, Design and Price Comparison for Sample Playground Designs:

See Proposed Solutions, Tab 15

### Installation Fees

See accompanying *GameTime Year One U.S. Communities Discounts and Installation charges*

### Shipping and Delivery – Shipping Program

Shipments shall be f.o.b. destination with freight charges prepaid and listed separately. Actual freight charges shall be added at time of invoicing as determined and supported by the carrier's Freight Bill. Estimated freight charges shall be provided at time of quotation utilizing the accompanying freight rate schedules.

### Price Adjustments

Pricing shall remain in effect until December 31, 2011. Thereafter, GameTime pricing shall be adjusted the first of each year with the printing and distribution of the company's annual product catalogs.



## GameTime

Division of PlayCore-Wisconsin, Inc.  
150 PlayCore Drive, SE  
Fort Payne, AL 35967  
Telephone: (256) 997-5255  
Facsimile: (256) 997-5455  
Contact: Don King  
E-mail: dking@gametime.com

Date: March 5, 2010

## GAMETIME PROPOSAL

Charlotte Mecklenburg Procurement Services  
Government Center, 9<sup>th</sup> Floor  
600 East Fourth Street  
Charlotte, NC 28202

Project: RFP 269-2010-183  
Attention: Karen Ruppe  
Telephone: 704/336-2992  
E-mail: kruppe@charlotte.gov

We are pleased to submit our proposal to furnish GameTime products and services in accordance with the provisions and terms of RFP 269-2010-183 and as described herein. Enclosed are our design proposals, bid forms, price lists, discount schedule, product descriptions, material specifications, company qualifications and other data called for under this solicitation.

This proposal is subject to policies published in the 2010 GameTime Playground Design Guide and the following terms and conditions.

Pricing: shall be net, f.o.b. destination with freight charges prepaid, added and listed separately. Actual freight charges shall be added at time of invoicing as determined and supported by the carrier's Freight Bill. Estimated freight charges shall be provided at time of quotation utilizing the accompanying freight rate schedules.

GameTime offers most favored pricing and special discounts to those local public agencies participating in the U.S. Communities contract. Pricing shall remain in effect until December 31, 2011 and is subject to the applicable discounts stated herein.

GameTime pricing shall be adjusted the first of each year with the printing and distribution of the company's annual product catalogs.

Volume Discounts: volume single purchases of composite play systems at U.S. Communities net pricing shall be eligible for an additional discount of 5% for orders totaling from \$50,000 to \$75,000; 10% from \$75,000 to \$100,000 and 15% for orders exceeding \$100,000.

Orders: All orders shall be in writing on the buying entity's purchase order form or similar documentation. Open buying on the internet (OBI) is not currently available.

Shipment: shall be f.o.b. destination and commence within 3 - 4 weeks after our receipt and acceptance of the customer purchase order, color selections and approval of submittals, if required.

Terms of Sale: payment is due within 30 days from date of invoice for governmental agencies. Payments may be made by VISA, MasterCard or American Express. Orders for playground equipment paid for at the time of placement are entitled to a 3% cash-with-order discount.

Minimum Order: RFP 269-2010-183 purchases, other than replacement parts, require a minimum order of \$500.00.

Date: May 5, 2010

Project: RFP 269-2010-183

Packaging: all goods shall be packaged in accordance with acceptable commercial practices and marked to preclude confusion during unloading and handling.

Receipt of goods: customer shall receive, unload and inspect goods upon arrival, reporting any discrepancies on the Delivery Receipt prior to written acceptance of the shipment.

Installation: if included with purchase, shall be by a Certified GameTime Installer. Customer shall be responsible for scheduling coordination and site preparation. Site should be level and permit installation equipment access. Purchaser shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed materials or conditions that may result in additional labor or material costs.

Exclusions: this proposal excludes all site work and landscaping; removal of existing equipment; storage of goods prior to installation; drainage provisions; and safety surfacing borders unless purchased separately. Customer shall be responsible for providing a clear, level site for installation and for scheduling deliveries and coordinating installation.

Submittals: If required, GameTime shall submit for review and approval by the owner's representative detailed drawings depicting the equipment to be furnished accompanied by specifications describing materials. Once approved, these drawings and specifications shall constitute the final documents for the project and shall take precedence over all other requirements.

GameTime shall provide for each playground two sets of installation, assembly and maintenance instructions in accordance with our standard practices.

All composite playground designs and equipment shall comply with the current version of ASTM F 1487, Standard Consumer Safety Performance Specification for Playground Equipment for Public Use; Handbook for Public Playground Safety Publication 325 by the U.S. Consumer Product Safety Commission; and the Guide to ADA Accessibility Guidelines for Play Areas published by the U.S. Access Board.

GAMETIME

Donald R. King  
Director of Sales Administration



**GAMETIME YEAR ONE U.S. COMMUNITIES DISCOUNTS  
AND INSTALLATION CHARGES**

Product Category	USC Discounts off Commercial Price	Installation Cost as % of Equipment Commercial Price			
		Total Commercial Price of Equipment per Site			
		<\$5,000	<\$10,000	<\$15,000	>\$15,000
<b>Play Equipment</b>	24%	42%	38%	35%	32%
GameTime Freestanding Events	16%	48%	43%	38%	36%
Snug Early Childhood Play Equipment	6%	Installation is not required			
PlayWorx GFRC ThemeScapes	6%	42%	38%	35%	32%
<b>Site Furnishings</b>	6%	45%	45%	40%	38%
<b>Related Products</b>					
Grandstands	6%	42%	38%	35%	32%
Shade Structures	4%	66%	60%	52%	46%
Shelters	4%	\$70.00 per man hour plus materials & equipment			
GTH20 Spray Grounds	3%	N/A	N/A	N/A	164%
GTH20 Water Sides	3%	N/A	56%	52%	48%
Fitness & Sports	9%	64%	53%	43%	38%
Indoor Climbing Walls	10%	60%	38%	35%	32%
NatureROCKS Climbing Boulders	5%	\$70.00 per man hour plus materials & equipment			
Independent Climbing Nets	3%	N/A	50%	43%	38%
Dog Parks	6%	48%	43%	38%	36%
Drinking Fountains	5%	60%; see Note 9 below			
Skate Parks	6%	Design & Installation estimate upon request			

Safety Surfacing	USC Discount	Installation Cost per Square Feet of Safety Surfacing Area			
		<2,000 sf	<4,000 sf	<6,000 sf	>6,000 sf
Engineered Wood Fiber	18%	\$0.56 sf	\$0.54 sf	\$0.52 sf	\$0.50 sf
Shredded Rubber Loose Fill		\$0.66 sf	\$0.64 sf	\$0.62 sf	\$0.60 sf
Recycled Rubber Tile		\$2.70 sf	\$2.40 sf	\$2.15 sf	\$2.05 sf
Synthetic Turf		Installation included in material price			
Poured-In-Place & Bonded Rubber		Installation included in material price			

Services	U.S. Communities Net Pricing
Play Area Design Services	No Charge
Sitework Services	\$70.00 per man hour plus materials & equipment
Community Build Layout & Supervision	\$725.00 per man day plus materials & equipment
Maintenance & Repairs	\$68.00 per man hour plus materials & equipment
CPSI Playground Initial Safety Audit	\$1,580.00 per playground; see Note 8 below
CPSI Low-Frequency Safety Inspection	\$790.00 per playground; see Note 8 below.

## **GAMETIME YEAR ONE U.S. COMMUNITIES DISCOUNTS AND INSTALLATION CHARGES**

### **Notes:**

- 1) All equipment to be installed in accordance with specifications by GameTime factory-certified professional installers.
- 2) Equipment shall be installed within four (4) weeks of product delivery, unless requested by agency to be delayed.
- 3) Customer shall receive, unload and inspect goods upon arrival, noting any discrepancies on the Delivery Receipt prior to written acceptance of the shipment unless other arrangements have been made.
- 4) Customer shall be responsible for providing a clear, level site and for coordinating the scheduling of all deliveries and installation.
- 5) Site should permit installation equipment access. Purchaser shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed materials or conditions that may result in additional costs.
- 6) Equipment installation pricing excludes all site work and landscaping; removal of existing equipment; storage of goods prior to installation; and drainage provisions. Call for an estimate for site services.
- 7) No additional charges for prevailing wages.
- 8) CPSI safety inspections and audits performed by an independent third-party. For multiple inspections, call for volume pricing.

## **EXHIBIT B**

The attached Installation Rate Sheets are incorporated into and made a part of the Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and PlayCore-Wisconsin, Inc. dba GameTime (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.

**GAMETIME YEAR ONE U.S. COMMUNITIES DISCOUNTS  
AND INSTALLATION CHARGES**

Product Category	USC Discounts off Commercial Price	Installation Cost as % of Equipment Commercial Price			
		Total Commercial Price of Equipment per Site			
		<\$5,000	<\$10,000	<\$15,000	>\$15,000
<b>Play Equipment</b>	24%	42%	38%	35%	32%
GameTime Freestanding Events	16%	48%	43%	38%	36%
Snug Early Childhood Play Equipment	6%	Installation is not required			
PlayWorx GFRC ThemeScapes	6%	42%	38%	35%	32%
<b>Site Furnishings</b>	6%	45%	45%	40%	38%
<b>Related Products</b>					
Grandstands	6%	42%	38%	35%	32%
Shade Structures	4%	66%	60%	52%	46%
Shelters	4%	\$70.00 per man hour plus materials & equipment			
GTH20 Spray Grounds	3%	N/A	N/A	N/A	164%
GTH20 Water Sides	3%	N/A	56%	52%	48%
Fitness & Sports	9%	64%	53%	43%	38%
Indoor Climbing Walls	10%	60%	38%	35%	32%
NatureROCKS Climbing Boulders	5%	\$70.00 per man hour plus materials & equipment			
Independent Climbing Nets	3%	N/A	50%	43%	38%
Dog Parks	6%	48%	43%	38%	36%
Drinking Fountains	5%	60%; see Note 9 below			
Skate Parks	6%	Design & Installation estimate upon request			

Safety Surfacing	USC Discount	Installation Cost per Square Feet of Safety Surfacing Area			
		<2,000 sf	<4,000 sf	<6,000 sf	>6,000 sf
Engineered Wood Fiber	18%	\$0.56 sf	\$0.54 sf	\$0.52 sf	\$0.50 sf
Shredded Rubber Loose Fill		\$0.66 sf	\$0.64 sf	\$0.62 sf	\$0.60 sf
Recycled Rubber Tile		\$2.70 sf	\$2.40 sf	\$2.15 sf	\$2.05 sf
Synthetic Turf		Installation included in material price			
Poured-In-Place & Bonded Rubber		Installation included in material price			

Services	U.S. Communities Net Pricing
Play Area Design Services	No Charge
Sitework Services	\$70.00 per man hour plus materials & equipment
Community Build Layout & Supervision	\$725.00 per man day plus materials & equipment
Maintenance & Repairs	\$68.00 per man hour plus materials & equipment
CPSI Playground Initial Safety Audit	\$1,580.00 per playground; see Note 8 below
CPSI Low-Frequency Safety Inspection	\$790.00 per playground; see Note 8 below.

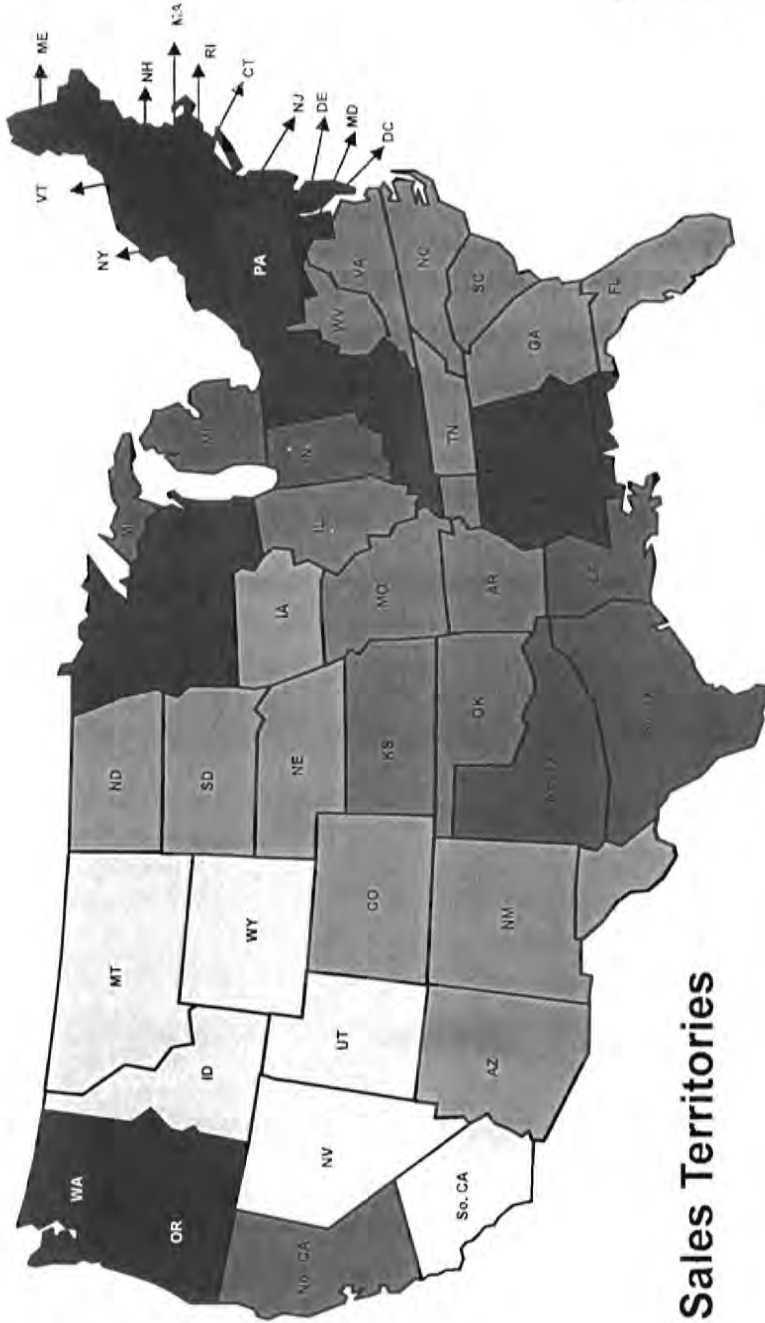
## **GAMETIME YEAR ONE U.S. COMMUNITIES DISCOUNTS AND INSTALLATION CHARGES**

**Notes:**

- 1) All equipment to be installed in accordance with specifications by GameTime factory-certified professional installers.
- 2) Equipment shall be installed within four (4) weeks of product delivery, unless requested by agency to be delayed.
- 3) Customer shall receive, unload and inspect goods upon arrival, noting any discrepancies on the Delivery Receipt prior to written acceptance of the shipment unless other arrangements have been made.
- 4) Customer shall be responsible for providing a clear, level site and for coordinating the scheduling of all deliveries and installation.
- 5) Site should permit installation equipment access. Purchaser shall be responsible for unknown conditions such as buried utilities, tree stumps, bedrock or any concealed materials or conditions that may result in additional costs.
- 6) Equipment installation pricing excludes all site work and landscaping; removal of existing equipment; storage of goods prior to installation; and drainage provisions. Call for an estimate for site services.
- 7) No additional charges for prevailing wages.
- 8) CPSI safety inspections and audits performed by an independent third-party. For multiple inspections, call for volume pricing.

### **Exhibit C**

The attached National Network of Distributors and Certified Installers is incorporated into and made a part of the Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and PlayCore-Wisconsin, Inc. d/ba GameTime (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.



Enriching Childhood Through Play.

150 GameTime Drive  
 Ft Payne, AL 35967  
 (800) 633-2394



## GameTime Domestic Sales Territories

- |  |   |  |  |   |   |  |  |   |   |   |   |   |  |  |  |
|--|---|--|--|---|---|--|--|---|---|---|---|---|--|--|--|
| <b>Bitting Recreation, Inc.</b><br>PO Box 6445<br>Harrisburg, PA 17112-0445<br>Tel: (800) 248-8464<br>Fax: (717) 652-5826<br>Website: <a href="http://www.bittingrec.com">www.bittingrec.com</a> | <b>California Sports and Rec.</b><br>1030 Railroad Avenue, Suite B<br>Novato, CA 94945<br>Tel: (415) 899-9090<br>Fax: (415) 899-9050<br>Website: <a href="http://www.calportsrec.com">www.calportsrec.com</a> | <b>Great Western Park &amp; Playground</b><br>PO Box 97<br>Wellsville, UT 84339<br>Tel: (800) 453-2735<br>Fax: (435) 245-5057<br>Website: <a href="http://www.gwspark.com">www.gwspark.com</a> | <b>IPR, Inc.</b><br>1441 Smith King St. #226<br>Honolulu, HI 96814<br>Tel: (808) 845-7788<br>Fax: (808) 952-5501 | <b>Cunningham Associates, Inc.</b><br>PO Box 249881<br>Charlotte, NC 28224<br>Tel: (800) 438-2780<br>Fax: (704) 525-7356<br>Website: <a href="http://www.cunninghamassoc.com">www.cunninghamassoc.com</a> | <b>Marturano Recreation Co.</b><br>PO Box 449<br>Bridg Town, NJ 08723<br>Tel: (800) 822-0070<br>Fax: (732) 458-1165 | <b>Total Recreation Products</b><br>12032 C. Knigge C. Rec. I<br>Cypress, TX 77429<br>Tel: (832) 237-3100<br>Fax: (832) 237-3895 | <b>SiteLines Park &amp; Playground Products</b><br>626 128th Street, S.W.<br>Suite 104-A<br>Everett, WA 98204<br>Tel: (800) 541-0869<br>Fax: (425) 347-3056<br>Website: <a href="http://www.sitelines.com">www.sitelines.com</a> | <b>California Sports and Rec.</b><br>1030 Railroad Avenue, Suite B<br>Novato, CA 94945<br>Tel: (415) 899-9090<br>Fax: (415) 899-9050<br>Website: <a href="http://www.calportsrec.com">www.calportsrec.com</a> | <b>J.A. Dawson &amp; Co., Inc.</b><br>PO Box 1178<br>Pelham, AL 35124<br>Tel: (800) 221-8869<br>Fax: (205) 665-5012 | <b>Minnesota Wisconsin Playground, Inc.</b><br>PO Box 27326<br>Golden Valley, MN 55427<br>Tel: (800) 622-5425<br>Fax: (763) 546-5050<br>Website: <a href="http://www.mnwplay.com">www.mnwplay.com</a> | <b>Sinclair Recreation</b><br>126 E. Lakewood Blvd<br>Sullie 4D<br>Holland, MI 49424<br>Tel: (800) 444-9954<br>Fax: (616) 392-8634<br>Website: <a href="http://www.sinclair-rec.com">www.sinclair-rec.com</a> | <b>David Williams &amp; Associates, Inc.</b><br>PO Box 3315<br>741 S. Sawburg Avenue<br>Alliance, OH 44601<br>Tel: (800) 762-7536<br>Fax: (330) 821-4505<br>Website: <a href="http://www.davidwilliamsassociates.com">www.davidwilliamsassociates.com</a> | <b>Dominica Recreation Products, Inc.</b><br>PO Box 520700<br>Longwood, FL 32752-0700<br>Tel: (800) 432-0162<br>Fax: (407) 331-4720<br>Website: <a href="http://www.drpic.com">www.drpic.com</a> | <b>Premier Recreation Product, Inc.</b><br>PO Box 65167<br>West Des Moines, IA 50265<br>Tel: (800) 669-1751<br>Fax: (515) 279-2543 | <b>West Recreation, Inc.</b><br>PO Box 487<br>Queentown, MD 21658<br>Tel: (800) 233-0529<br>Fax: (410) 827-8855<br>Website: <a href="http://www.westrecreation.com">www.westrecreation.com</a> |
|--|---|--|--|---|---|--|--|---|---|---|---|---|--|--|--|



Enriching Childhood Through Play.

### Canadian Distributors:

Crozier Agencies                      Central Canada  
Park-N-Play Design                  Alberta  
Suttle Agencies                        Western Canada  
Tessier Recreio-Parc                  Quebec

### International Distributors:

Alomar	Spain
Al Ryadh Gourp	Kuwait
Claridge House	Hong Kong
ELBI, S.P.A.	Italy
Ermis, Ltd	Greece
Fortress Play	Ireland
GameTime Mexico	México
GB Sport & Leisure	United Kingdom
Impactmedia Limitada	Chile
Intercodam Infra	Netherlands, Belgium
LedoPlay	China
Park & Play (S)	Singapore
San-Ei Corp.	Japan
Tenhat Trading	Saudi Arabia
SKK Enterprises	UAE

## Internationals Territories







# Our Installers



Our installers go through classroom and field training to ensure they know how to install our equipment.

Certificates are issued to installers after completion of our course, signifying they are trained to install GameTime equipment.



## Installers who share our vision

It isn't enough to send our installers to a third party certification program. We want to meet them, teach them, and make sure they know how to install *our* products. All playground equipment is different, and we want to ensure that when they learn how to put a play structure together, they are training on one of ours.

That's why at GameTime we offer an intensive training course at our facility. We want to make sure our installers know safety regulations, industry standards, and how they apply when installing our equipment. It is important to us that your installation process goes smoothly, and that everything is done to our exacting specifications.

## Certification Matters

GameTime's exclusive Certified Installer Training course has a two-part curriculum. First, attendees learn about installation in a hands-on lab where they assemble play structures under the watchful eyes of our on-staff professionals. They learn about new products, modifications, and new industry information. They also are instructed on CPSC, ASTM, and industry regulations in relation to our products and proper installation. They learn how to properly locate and drill ground holes, recognize and avoid underground utilities, and use the tools needed to ensure an accurate installation.

The course also includes a lecture series, with focuses on risk management, insurance, and many other topics that will give installers the knowledge and skills to make your playground everything you expect it to be. By completing our training, we can have the confidence that no matter where they are in the US, all of our

playgrounds are being installed correctly, expertly, and to the exacting standards that we maintain throughout all of our processes.

Upon completion of the course our installers sign a contract that we share with our sales force, so that when scheduling an installation our representatives know who to choose to get the job done right. This manufacturer specific training course is unique to GameTime alone, and is acknowledged in the industry as a program that should be a model for all. It's just one more thing that sets GameTime apart, and one more reason you should trust us to be your playground company.

**b****Bitting - DSF Contracting LLC**

7 South Main Street  
Fairchance, PA 15436  
Bus: (724) 564-7645  
Mobile: (724) 880-5568  
E-mail: dsfcontracting@verizon.net

**Bitting - Womer Landscaping, Inc.**

1347 Bunting Street  
Pottsville, PA 17901  
Bus: (570) 544-4068  
Mobile: (570) 640-4771  
Bus Fax: (570) 544-2503  
E-mail: lrw21@inf.net

**c****California Sports & Rec. - AMAC Construction**

5600 Imhoff Dr.  
Suite E  
Concord, CA 94520  
Bus: (925) 356 2619  
Mobile: (925) 567-6285  
Bus Fax: (925) 356-2224  
E-mail: andy@amac2.com

**California Sports & Rec. - Biland Construction Company**

P.O. Box 1095  
Rio Vista, CA 94571-3095  
Bus: (707) 374-5703  
Mobile: (925) 260-0083  
Bus Fax: (707) 374-5718  
E-mail: Bilandco@frontiernet.net

**California Sports & Rec. - Blanchard Construction**

5010 Stirling Street  
Granite Bay, CA 95746  
Bus: (916) 791-7127  
Home: 2011  
Mobile: (707) 483-4943  
Bus Fax: (916) 791-7147  
E-mail: blanchardconstruction@msn.com

**California Sports & Rec. - Certified Playground Services**

1558 East Colonial Parkway  
Roseville, CA 95661  
Bus: (916) 786-0586  
Mobile: (916) 802-6285  
Bus Fax: (916) 786-0586  
E-mail: stevespeegle@surrewest.net

**California Sports & Rec. - Community Playgrounds, Inc.**

1620 Grant Avenue, Suite 5  
Novato, CA 94947  
Bus: (415) 892-1707  
Home: 2011  
Bus Fax: (415) 892-3132  
E-mail: cwear@commplay.us

**California Sports & Rec. - Flair-T Construction**

2760 Lacy Lane,  
Sacramento, CA 95821  
Bus: (916) 483-8281  
Bus Fax: (916) 483-0539  
E-mail: flair-t@pacbell.net

**California Sports & Rec. - G & G Builders**

3589 Nevada Street, Suite B  
Pleasanton, CA 94566  
Bus: (925) 846-9023  
Mobile: (925) 570-7606  
Bus Fax: (925) 846-9152  
E-mail: lebowski1099@yahoo.com

**California Sports & Rec. - Playgrounds Unlimited**

1175 Willow Avenue  
Sunnyvale, CA 94086  
Bus: (408) 244-9848  
Home: 2010  
Mobile: (408) 639-4565  
Bus Fax: (408) 244-9847  
E-mail: mikea@playgroundsunlimite.net

**California Sports & Rec. - Shawn T. Gardner Builders**

2882 Robert Court  
Redding, CA 96002  
Bus: (530) 222-2771  
Bus Fax: (530) 222-3269  
E-mail: krygard@infostations.com

**California Sports & Rec. - Who Built Creative Builders**

80 Alta Dr.  
Petaluma, CA 94954  
P.O. Box 5207  
Petaluma, CA 94955  
Bus: (707) 763-6210  
Home: 2011  
Bus Fax: (707) 658-2513  
E-mail: jana@whobuilt.biz

**California Sports & Rec. -TD Grogan Construction**

15360 W. "G" Street  
Kerman, CA 93630  
Bus: (559) 842-7420  
Bus Fax: (559) 842-7420  
E-mail: mvj324@kermantel.net

EXHIBIT C

**C**

**Cunningham - BaiWil, Inc.**

138 Dogwood Lane  
Mocksville, NC 27028  
Bus: (336) 909-0938  
Mobile: (336) 909-0938  
Bus Fax: (336) 751-5048  
E-mail: billmarrs63@yadtel.com

**Cunningham - CLS Outdoor Services  
Loudenbeck, Chris**

112 Nivens Drive  
Ataka, TN 38004  
Bus: (901) 428-8836  
E-mail: Chris@clsoutdoorservices.com

**Cunningham - Custom Park Services-07**

8019 E. Old Jessup Road  
PO Box 1098  
Jessup, MD 20794  
Bus: (410) 799-7745 or 877-799-7745  
Mobile: (410) 365-0502  
Bus Fax: (410) 579-1284  
E-mail: Custompark@comcast.net

**Cunningham - D & B Construction**

16600 Stage Road  
Lanexa, Virginia 23089  
Bus: (804) 966-7515  
Home: 2011  
Mobile: (804) 307-6799  
Bus Fax: (804) 966-7516  
E-mail: darryl@dbconstruction.us  
E-mail 2: darryl@dbconstruction.us

**Cunningham - Moore Recreational  
Products, Inc.**

PO Box 472747  
Charlotte, NC 28247  
Bus: (704) 571-8741  
Mobile: (704) 905-3665  
Bus Fax: (704) 643-1369  
E-mail: tmoore20@carolina.rr.com

**Cunningham - Ozark Mountain  
Installations, Inc.**

9706 Lawrence 2237  
Monett, MO 65708  
Bus: (417) 235-9475  
Bus Fax: (417) 236-0897

**Cunningham - R K Construction**

9414 Capitol Ave.  
Omaha, NE 68114  
Bus: (402) 697-0180  
Home: 2009  
Mobile: (402) 658-3357  
Bus Fax: (402) 697-4939

**Cunningham - Reese Construction  
Company**

6801 Branton Dr.  
Cary, NC 27519  
Bus: (919) 387-6388  
Mobile: (919) 427-4685  
Bus Fax: (919) 362-1808  
E-mail: clintreese@earthlink.net

**Cunningham - Shamblin Construction,  
Inc.**

334-C Call Road  
Sissonville, WV 25320  
Bus: (304) 984-1948  
Mobile: (423) 437-0337  
Bus Fax: (304) 984-2303  
E-mail: Farmboyeieieio@aol.com

**Cunningham - Triad Property Services,  
Inc.**

4101 Enchanted LN  
Greensboro, NC 27406  
Bus: (336) 378-1541  
Mobile: (336) 337-1930  
Bus Fax: (336) 378-1541  
E-mail: brentattps@triad.rr.com

**d**

**Dawson - Fontaine's Restorative Services**

68 N 4th Street  
Santa Rosa Beach, FL 32459  
Bus: (850) 376-2500  
Home: 2009  
E-mail: mfontaine2001@hotmail.com

**Dawson, J. A.**

P.O. Box 1178  
Pelham, AL 35124  
Bus: (205) 663-5058  
Mobile: (205) 365-7721  
Bus Fax: (205) 663-5012  
E-mail: Stein, Vera

**Dominica - Captain & Associates, Inc.**

33643 E. Lake Joanna Dr.  
Eustis, FL 32736  
Bus: (352) 735-0172  
Mobile: (407) 701-1629  
Bus Fax: (352) 735-0172  
E-mail: capt\_and\_assoc@earthlink.net

**Dominica - Childish Creations**

1625 Executive Dr. South  
Duluth, GA 30096  
Bus: (770) 279-7777  
Bus Fax: (770) 279-9699  
E-mail: davidgreene@kidskids.com

EXHIBIT C

**d**

**Dominica - John Fitzgerald, Inc.**

P.O. Box 655  
Sanford, FL 32772

412 Mattie St.  
Sanford, FL 32773  
Bus: (407) 323-8822  
Mobile: (407) 920-2256  
Bus Fax: (407) 323-0999  
E-mail: fitzgeraldine@directvinternet.com

**Dominica - Outdoor Construction Company**

318 Patterson Road  
Lawrenceville, GA 30044  
Bus: (770) 995-8430  
Mobile: (678) 234-7489  
Bus Fax: (770) 338-9318  
E-mail: occga@aol.com

**g**

**Great West Park&Play - Evans Recreation Installations**

P.O. Box 42607  
Las Vegas, Nevada 89116  
Bus: (702) 271-8170  
Home: 2011  
Mobile: (702) 271-8170  
Bus Fax: (702) 926-9685  
E-mail: doug.e@evansrecreation.com

**Great West Park&Play - JET Construction**

P.O. Box 1724  
Carson City, NV 89702  
Bus: (775) 841-5781  
Mobile: (775) 691-9022  
Bus Fax: (775) 841-5781  
E-mail: ccnvthompsons@att.net

**Great West Park&Play - K.C. Equipment**

270 E. Douglas Ave, STE 102B  
El Cajon, CA 92020  
Bus: (619) 443-9730

**Great West Park&Play - Kleen Play**

1244 Santa Anita Avenue STE. "I"  
South El Monte, CA 91733  
Bus: (626) 448-1246  
Bus Fax: (626) 448-2134  
E-mail: Kleen

**Great West Park&Play - Linnert Builders**

1675 No. Shaffer St.  
Orange, CA 92867  
Bus: (714) 606-4951  
Mobile: (714) 606-4951  
Bus Fax: (714) 974-4393  
E-mail: blinnert@socal.rr.com

**Great West Park&Play - Malibu Pacific Tennis Courts, Inc.**

31133 Via Colinas, #107  
Westlake Village, CA 91362  
Bus: (818) 707-3797  
Mobile: (818) 991-7445  
Bus Fax: (818) 706-1951

**Great West Park&Play - MSI Companies**

4820 Quality CT  
Las Vegas, NV 89103  
Bus: (702) 891-8912  
Bus Fax: (702) 891-0517  
E-mail: bbailes@msicomapnies.net

**Great West Park&Play - Park Specialties**

1917 Rainbow Valley Blvd  
Fallbrook, CA 92028  
Bus: +1 (800) 399-8484  
Bus Fax: +1 (760) 728-1177  
E-mail: parkspec@cts.com

**Great West Park&Play - Premium Construction Company**

2697 Lavery CT, Unit 10  
Newbury Park, CA 91320  
Bus: (805) 484-6000  
Home: 2007  
Mobile: (805) 797-0474  
Bus Fax: (805) 484-6202  
E-mail: Janice@Premiuminstall.com

**Great West Park&Play - PSI**

1747 Colgate Drive  
Thousand Oaks, CA 91360  
Bus: (805) 494-3401  
Bus Fax: (805) 494-3343  
E-mail: gdonahoe@ixnetoom.com

**Great West Park&Play - Quality Time Recreation**

1973 W. North Temple  
Salt Lake City, UT 84116  
Bus: (801) 359-9516  
Bus Fax: (801) 359-9519  
E-mail: qualitytime@qwest.net

**Great West Park&Play - Rasco Construction, Inc.**

6588 West 10900 North  
Highland, Utah 84043  
Bus: (801) 360-1723  
Bus Fax: (801) 768-8354

**Great West Park&Play - Recreation Installation**

2673 F Avenue  
Ogden, Utah 84401  
Bus: (801) 388-6980  
Bus Fax: (801) 393-2745

**g****Great West Park&Play - Recreation Masters -06**

11350 Lorene Street  
Whittier, CA 90601  
Bus: +1 (562) 463-3636  
Bus Fax: +1 (562) 463-5336  
E-mail: abcplaygrounds@hotmail.com

**Great West Park&Play - Richardson Construction, Inc.**

2207 W. Gowan Road  
Las Vegas, NA 89032  
Bus: (702) 647-2200  
Mobile: (702) 324-8912  
Bus Fax: (702) 647-7340  
E-mail: richardson2207@aol.com

**Great West Park&Play - Robert C. O'Neill Construction**

4255 Gander Lane  
Carson City, Nevada 89704  
Bus: (775) 721-7019  
Bus Fax: (775) 849-7639  
E-mail: rcoconst@aol.com

**Great West Park&Play - Zasueta Contracting, Inc.**

PO Box 866  
Spring Valley, CA 91976  
Bus: (619) 589-0609  
Mobile: (619) 843-4047  
Bus Fax: (619) 697-6031  
E-mail: ezplaygrounds@cox.net

**m****Marturano - ACM Construction & Consulting, Inc.**

P.O. Box 179  
Buchanan, NY 10511  
Bus: (914) 739-6858  
Bus Fax: (914) 736-0554  
E-mail: madenc@acmplaygrounds.com

**Marturano - Advanced Contracting Concepts, Inc.**

P.O. Box 424  
Patterson, NY 12563  
Bus: (845) 878-7242  
Home: (845) 878-7242  
E-mail: acci@rcn.com

**Marturano - Buzz Burger Incorporated**

13 Twin Pine Way  
Glen Mills, PA 19342  
Bus: (610) 399-3035  
Home: 2011  
Mobile: (610) 304-9040  
Bus Fax: +1 (610) 399-3375  
E-mail: buzz@buzzburgerinc.com

**Marturano - CMJ Construction, Inc.**

40 fenton way  
Bangor, ME 04401  
Bus: (207) 942-2958  
Mobile: (207) 852-7557  
Bus Fax: (207) 942-5776  
E-mail: Chaddah@aol.com

**Marturano - Dakota Excavating Contractor, Inc.**

200 East Church St.  
Bergenfield, NJ 07621  
Bus: (201) 439-1000  
Mobile: (201) 954-5301  
Bus Fax: (201) 439-0444  
E-mail: opiedak@aol.com

**Marturano - Harris Fence Corporation**

4492 Rt. 130  
Burlington, NJ 08016  
Bus: (609) 387-4050  
Mobile: (609) 517-7613  
Bus Fax: (609) 387-0277  
E-mail: harrisfence@prodigy.net

**Marturano - Improved Property Services, Inc.**

14 Dover Lane  
East Windsor, NJ 08520  
Bus: (609) 443-8386  
Bus Fax: (609) 443-1706  
E-mail: IPS6094438386@aol.com

**Marturano - Lobo Construction Services, Inc.**

426 South Country Road  
Brookhaven, NY 11719  
Bus: +1 (631) 286-6184  
Home: 2011  
Mobile: (516) 807-8462  
Bus Fax: (631) 286-6194  
E-mail: loboservices@yahoo.com

**Marturano - Makrancy's Quality Landscapes & Flowers, Inc. Cipollone, Gerald**

947 Kuser road  
Trenton, NJ 08619  
Bus: (609) 587-0477  
Home: 2011  
Bus Fax: (609) 587-3963  
E-mail: LSMAKLAND@att.net



**m****Marturano - Mark & Brothers Playground Co., Inc.**

615 East 168 Street  
Bronx, New York 10456  
Bus: (718) 378-4800  
Bus Fax: (718) 378-4801  
E-mail: mbpinc@gmail.com

**Marturano - P. Corsetti, Inc.**

700 Waverly Avenue  
Mamaroneck, NY 10543  
Bus: (914) 698-5024  
Mobile: (914) 403-4346  
Bus Fax: (914) 698-6746  
E-mail: acorsetti@prodigy.net

**Marturano - Park Constructors Corporation**

P.O. Box 5004  
Limerick, PA 19468  
Bus: (610) 970-8846  
Home: 2011  
Mobile: (610) 310-5926  
Bus Fax: (610) 970-4719  
E-mail: parkconstructors@aol.com

**Marturano - Richard Picerno Builders LLC**

500 Hoiles Drive  
Kenilworth, NJ 07033  
Bus: (908) 241-4331  
Home: 2011  
Bus Fax: (908) 241-7854  
E-mail: TGiordano@sureplayinternational.com

**Marturano - Scott Construction of Rochester, Inc.**

1299 S. Plymouth Ave.  
Rochester, NY 14611

P.O. Box 31797  
Rochester, NY 14603  
Bus: (585) 235-8660  
Mobile: (585) 370-6331  
Bus Fax: (585) 232-4423

**Marturano - Silagy Landscaping, Inc.**

614 Old Post Road  
Edison, NJ 08817  
Bus: (732) 287-5544  
Mobile: (732) 921-0780  
Bus Fax: (732) 287-8978

**Marturano - Tec-Con Contractors, Inc.**

9 Dodd Street  
East Orange, NJ 07017  
Bus: (973) 674-9191  
Home: 2011  
Bus Fax: (973) 674-2834  
E-mail: Tec\_Con@comcast.net

**Marturano - Titan Development, Inc.**

8534 Seaman Rd  
Gasport, NY 14067  
Bus: (716) 772-5510  
Mobile: (716) 913-5957  
Bus Fax: (716) 772-2414

**Marturano - Vanas Construction Co., Inc.**

249 Leonia Ave.  
Bogota, NJ 07603  
Bus: (201) 883-1944  
Home: 2011  
Bus Fax: (201) 883-1594  
E-mail: bob.vanas@att.net

**Marturano - Whirl Construction**

187 Main Street,  
P.O. Box 110  
Port Monmouth, NJ 07758  
Bus: (732) 495-3715  
Mobile: (732) 496-5705  
Bus Fax: (732) 495-6133  
E-mail: info@whirlconstruction.net

**Minnesota&Wisc. - C.K.&C. Installation, Inc.**

10150 264th Avenue  
Zimmerman, MN 55398  
Bus: (763) 856-4466  
Mobile: (612) 747-5486  
Bus Fax: (763) 856-0197  
E-mail: ztron@sherbtl.net

**Minnesota&Wisc. - Southern Coating Systems**

8960 205 St. West #432  
Lakeville, MN 55044  
Bus: (952) 469-3439  
Bus Fax: (952) 469-3430

**p****Premier Recreation - Carlson Consulting and Contracting**

1150 Prospect Blvd.  
Waterloo, Iowa 50701  
Bus: (319) 234-8965  
Bus Fax: (319) 234-8965  
E-mail: landrn1@msn.com

**Premier Recreation - Millenium, Inc. Jones, Dave**

320 E. Indiana  
Rapid City, SD 57701  
Bus: (605) 721-8647  
E-mail: Milleniumdave@rushmore.com

EXHIBIT C

**P**

**Premier Recreation - RK Construction**

9414 Capitol Ave.  
Omaha, NE 68114  
Bus: (402) 697-0180  
Mobile: (402) 658-3357  
Bus Fax: (402) 697-4939

**r**

**RCI - D C Install, LLC.**

503 Niagara  
E. Alton, Illinois 62024  
Bus: (618) 531-0848  
Bus Fax: (618) 258-9007  
E-mail: Donchatham@charter.net

**RCI - Elanar Construction Company**

P.O. Box 2446  
Glenview, IL 60025  
Bus: (847) 657-0404  
Home: 2009  
Mobile: (773) 908-7629  
Bus Fax: (847) 657-0303  
E-mail: rossiburn@hotmail.com  
E-mail ? : ross@elanar.com

**RCI - Fence Builders of Illinois, Inc.**

1129 E. Treeline Dr.  
Lockport, IL 60441  
Bus: +1 815/836-8064  
Mobile: +1 815/790-1687  
Bus Fax: +1 815/588-0737

**RCI - Green-UP Landscape**

13520 S. Budler Road  
Plainfield, IL 60544  
Bus: (815) 372-3000  
Mobile: (815) 693-1833  
Bus Fax: (815) 372-3005  
E-mail: greenupbrs@aol.com

**RCI - Kay Jay Construction, Inc.**

P.O. box 431  
Tinley Park, Il. 60477  
Bus: (815) 469-9093  
Home: 2011  
Mobile: (708) 473-2608  
Bus Fax: (815) 469-9075  
E-mail: denkath75@ameritech.net

**RCI - Kenneth Company, The**

751 N. Bolingbrook Dr. #12  
Bolingbrook, IL 60440  
Bus: (630) 679-2750  
Mobile: (630) 514-3632  
Bus Fax: (630) 679-1070  
E-mail: kcoffice@aol.com

**RCI - M/M Peters Construction, Inc.**

178 S. Western Avenue  
Aurora, IL 60506  
Bus: (630) 742-4729  
Home: 2010  
Bus Fax: (630) 896-2969  
E-mail: Raech525@yahoo.com

**RCI - Monkebar Builders, L.L.C.**

1236 E. Empire  
Bloomington, IL 61701  
Bus: (309) 829-1111  
Home: 2007  
Bus Fax: (309) 829-5555

**RCI - Play-N-Scape, Inc.**

190 Briarwod Drive  
Crystal Lake, IL 60014  
Bus: (815) 693-2769  
Home: 2011  
Mobile: (815) 459-6758  
Bus Fax: (815) 459-5790  
E-mail: playnscape@yahoo.com

**S**

**Sinclair Recreation - Dan Shaw Construction**

3315 Adirondack Dr.  
Fort Wayne, Indiana 46816  
Bus: (260) 447-8364  
Mobile: (260) 402-0203  
Bus Fax: (260) 441-2501  
E-mail: dshaw124@comcast.net

**Sinclair Recreation - Michigan Recreational Construction, Inc. Sheffer, Craig A.**

P.O. Box 2127  
Brighton, MI 48116  
Bus: (517) 545-7122  
Bus Fax: (517) 545-7144  
E-mail: craig@buildingfun.com

**Sinclair Recreation - P.S. Contracting, LLC**

6022 147th Avenue  
Holland, MI 49423  
Bus: (616) 546-2511  
Mobile: (616) 218-3511  
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E-mail: pscontracting@sbcglobal.net

**Sinclair Recreation - Play Builders LLC**

128 E. Lakewood Blvd  
Suite 40 B  
Holland, MI 49424  
Bus: (616) 218-1053  
Home: 2011  
Mobile: (616) 218-1053  
Bus Fax: (616) 994-0345

EXHIBIT C

**S**

**Sinclair Recreation - Rent A Son**

7901 Love Joy Road  
Byron, MI 48418  
Bus: (517) 223-2232  
Bus Fax: (517) 223-2232  
E-mail: Wuert3@aol.com

**Sinclair Recreation - Wooden Works, The**

16608 Greensboro Dr.  
Westfield, IN 46074  
Bus: (317) 867-0034  
Mobile: (317) 402-6883  
Bus Fax: (317) 867-0034  
E-mail: playgroundsindy@yahoo.com

**Sitelines - Chinook Properties, Inc.**

33724 Hood Canal Dr. N.E.  
Kingston, WA 98346  
Bus: 360/638-2457  
Mobile: +1 360/239-2169  
Bus Fax: +1 360/638-2458  
E-mail: chinookproperties@centurytel.net

**Sitelines - G.R. Morgan Construction**

10536 S.W. 25th Avenue  
Portland, OR 97219  
Bus: (503) 452-4268  
Mobile: (503) 860-1776  
Bus Fax: (503) 245-4872

**Sitelines - L.W. Sundstrom, Inc.**

18063 Renton Maple Valley Road SE  
Maple Valley, WA 98038  
Bus: (425) 413-8158  
Home: 2011  
Mobile: (206) 730-8901  
Bus Fax: (425) 413-2533  
E-mail: len.lws@comcast.net

**Sitelines - Picture Perfect Playgrounds  
Stoddard, Curtis**

P.O. box 807  
Ashton, ID 83420  
Bus: (208) 652-3284  
Mobile: (208) 521-0161  
Bus Fax: (208) 652-3285  
E-mail: Curtis@pictureperfectplaygrounds.com

**Sitelines - Precision Commercial  
Contractors, Inc.**

5112 S.E. 49th Avenue  
Portland, OR 97206  
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E-mail: precisioncc@hotmail.com

**Sitelines - Prosser & Sons**

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Spokane, WA 99205-7509  
Bus: (509) 326-4907  
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E-mail: gmprosser@juno.com

**Sitelines - R + R Construction, Inc.**

P.O. Box 10  
Carbonado, WA 98323  
Bus: (360) 829-2300  
Home: 2011  
Mobile: (253) 350-7449  
Bus Fax: (360) 829-2700  
E-mail: wendy@rrconinc.com

**Sitelines - Rolyn Construction**

P.O. Box 4157  
Spanaway, WA 98387  
Bus: (253) 847-5595  
Mobile: (253) 229-4767  
Bus Fax: (253) 843-9416  
E-mail: Rolyn45@aol.com

**Sitelines - White River Fence Co.**

202 Schmid Street  
Enumdaw, WA 98022  
Bus: (252) 261-7465  
Home: 2011  
Mobile: (252) 261-7465  
Bus Fax: (360) 802-0692  
E-mail: zebo@eskimo.com

**Southwest Park - Eagleton Construction,  
Inc.**

P.O. Box 1810  
Fort Worth, TX 76101  
Home: +1 2006  
Mobile: (817) 319-1074  
Bus Fax: +1 817/882-8968  
E-mail: REagleton@sbcgloabal.net

**Southwest Park - Ohman Enterprises LLC**

206 Bellaire Drive  
Hot Springs, AR 71901  
Bus: (501) 617-8530  
Bus Fax: (501) 627-0747  
E-mail: ohmanenterprises@yahoo.com

**Southwest Park - Parks For Play**

1250 Salt Creek Road  
Springtown, TX 76082  
Bus: (817) 629-8195  
Home: 2010  
Bus Fax: (817) 220-1024  
E-mail: jcandmdw@netscape.com



**S****Southwest Park - R.Q.C., Inc.**

P.O. Box 690  
Welliston, OK 74881  
Bus: (405) 356-2628  
Home: 2011  
Mobile: (405) 831-5701  
Bus Fax: (405) 356-2589  
E-mail: contracting@rqcinc.com

**Southwest Park - RGH Landscape, Inc.**

P.O. Box 51376  
Amarillo, TX 79159  
Bus: (806) 358-4222  
Home: 2008  
Bus Fax: (806) 358-4222  
E-mail: rghall1@cox.net

**SouthWest Park - Simmons Builders  
General Contractor, Inc.**

3804 Simmons Creek Lane  
Flower Mound, TX 75022-5495  
Bus: (972) 355-8580  
Bus Fax: (972) 355-2902  
E-mail 2: simmonsbuilders@comcast.net

**Southwest Park&Playground - Walk In  
The Park Construction**

P.O. Box 153886  
Irving, Texas 75075  
Bus: (972) 953-0598  
Bus Fax: (214) 493-1150  
E-mail: scottjwalkinthepark@verizon.net

**t****Total Recreation - Cohoe Construction**

725 Patterson Avenue  
San Antonio, TX 78209  
Bus: (210) 822-3011  
Home: 2011  
Mobile: (210) 573-8936  
Bus Fax: (210) 822-3011  
E-mail: gc20699@aol.com

**Total Recreation - Barcon Construction**

143 EL Cerrito Circle  
San Antonio, TX 78232  
Bus: (210) 867-2278  
E-mail: bart.pasini@yahoo.com

**Total Recreation - Highlander  
Construction, Inc.**

2369 Berrus Boulevard  
San Antonio, TX 78228  
Bus: (210) 241-5242  
Bus Fax: (210) 431-3000  
E-mail: MyHighlander2007@aol.com

**Total Recreation - R.H. Construction**

26316 Cloverland Rd  
Lacombe, LA 70445  
Bus: (985) 640-0575  
Home: 2011  
Mobile: (504) 508-0929  
Bus Fax: (985) 882-4702  
E-mail: RhCGC@Bellsouth.net

**Total Recreation - Wade Contractors, Inc.**

230024 Yupon  
Porter, TX 77365  
PO Box 250  
Porter, TX 77365  
Bus: (281) 354-1934  
Mobile: (713) 805-8176  
Bus Fax: (281) 354-1875  
E-mail: Wade Contractors, Inc.

**Total Recreation - Walk In The Park  
Construction**

P.O. Box 153886  
Irving, Texas 75075  
Bus: (972) 953-0598  
Bus Fax: (214) 493-1150  
E-mail: scottjwalkinthepark@verizon.net

**Triple M Recreation - D.A. Lewis  
Construction, Inc.**

405 Maple St., Suite A-103  
Ramona, Ca 92065  
Bus: (760) 788-0100  
Mobile: (760) 703-3706  
Bus Fax: (760) 788-8718  
E-mail: doug@dalewisconstruction.com

**Triple M Recreation - G & G Builders**

3589 Nevada Street, Suite B  
Pleasanton, CA 94566  
Bus: (925) 846-9023  
Home: 2007  
Mobile: (925) 570-7606  
Bus Fax: (925) 846-9152  
E-mail: lebowski1099@yahoo.com

**Triple M Recreation - Greenhouse, Inc.,  
The**

1950 Cooper Loop  
Las Cruces, NM 88005  
Bus: (505) 523-1491 ext. 18  
Mobile: (505) 649-0521  
Bus Fax: (505) 526-7819  
E-mail: cindy@thegreenhouseinc.biz

**Triple M Recreation - Hansen & Prezzano  
Builders LLC**

PO Box 359  
Peralta, NM 87042  
Bus: (505) 865-3900  
Mobile: (505) 228-1130  
Bus Fax: (505) 865-3922  
E-mail: HPrezzano@netscape.net

EXHIBIT C

**t**

**Triple M Recreation - Premier Construction Corporation**

P.O. Box 773  
Vail, AZ 85641  
Bus: (520) 429-5245  
Home: 2011  
Bus Fax: (520) 529-1301  
E-mail: alex@premiercorp.us

**Triple M Recreation - Progressive Playgrounds, Inc.**

12784 N. 3rd St.  
Paskes, CO 80134  
Bus: (303) 805-8992  
Bus Fax: (303) 805-8991  
E-mail: mkhickman@msn.com

**w**

**West - Custom Park Services**

8019 E. Old Jessup Road  
PO Box 1098  
Jessup, MD 20794  
Bus: (410) 799-7745 or 877-799-7745  
Mobile: (410) 365-0502  
Bus Fax: (410) 579-1284  
E-mail: Custompark@comcast.net

**West - Grass roots, Inc.**

501 W. Central Avenue  
Davidsonville, MD 21035  
Bus: (301) 858-0766  
Bus Fax: (301) 858-1034  
E-mail: getgrassroots@aol.com

**West - Jones & Sons Contracting**

11409 Boltomley Road  
Thurmont, MD 21788  
Bus: (301) 898-3743  
Bus Fax: (301) 898-3743  
E-mail: lannajones@msn.com

**West - Play Structure Plus**

6 West Fairview Avenue  
Middletown, DE 19709  
Bus: (302) 528-8791  
Bus Fax: (302) 376-3010  
E-mail: mark@playspi.com

**Williams, David - C & W Construction**

2101 Western Ave.  
Alliance, OH 44601  
Bus: (330) 823-5256  
Mobile: (330) 495-8590

**Williams, David - G.T.I.**

P.O. Box 418  
Harrison, Ohio 45030  
Bus: (812) 576-1301  
Mobile: (513) 309-9423  
Bus Fax: (812) 576-1301

**Williams, David - Playground Equipment Services, LLC**

3475 West Fork Road  
Cincinnati, Ohio 45211  
Bus: (513) 886-4868  
Bus Fax: (513) 661-5346  
E-mail: PESDAN@cinci.rr.com

**Williams, David - Schunk Excavating & Trucking, Inc.**

P.O. Box 56  
Miami town, OH 45041  
Bus: (513) 353-4760  
Bus Fax: (513) 353-4760  
E-mail: toddschunk@fhtm.us

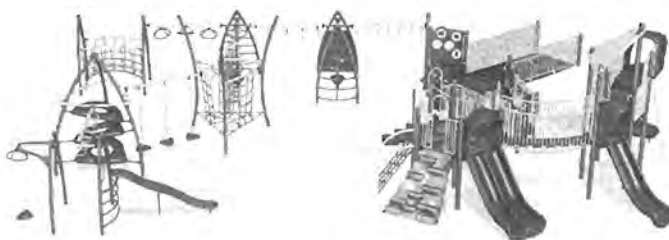
# Why GameTime?

The Leader in Park & Playground Equipment

## Product Innovation



- Exclusive "Kid Magnets™"
- Giant "Molded Monsters"
- Premier Play Systems



## Leading Technology

- Computerized Factory Drilling
- Direct-bolt Connections
- Electrostatic Powder Coating
- Zinc Rich Primer Applied To Welds



## Quality & Compliance



• ISO 9001 Certified



• Globally Compliant



• ADA Compliant



## Customer Service

- On-site Computerized Design
- Knowledgeable Consultants
- Certified Installers
- Solid Warranties



## Committed to Children

- Age Appropriate Products
- Child Development Research
- Adding True Play Value



## The Leader in Play

For over 75 years GameTime has proven its dedication to children by continually leading the playground industry in quality, innovation and service. Being a leader doesn't just mean being committed to play, it means being committed to moving play forward.



1-800-235-2440  
www.gametime.com



Exhibit D

U.S. Communities Administrative Agreement

## **Exhibit E**

### **Freight Rate Schedules**

The attached Freight Rate Schedule is incorporated into and made a part of the Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and PlayCore-Wisconsin, Inc. dba GameTime (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.

## Exhibit F

The attached Product Warranties are incorporated into and made a part of the Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and PlayCore-Wisconsin, Inc. dba GameTime (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.

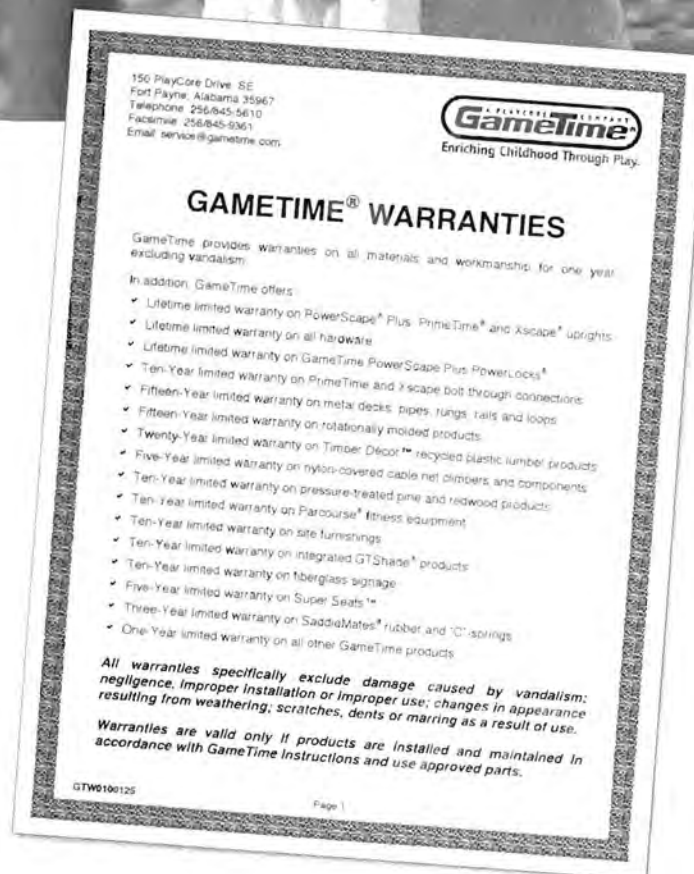


# The Industry's BEST Warranty

GameTime offers you peace of mind with the best, most all encompassing warranties in the industry.

We want to assure you that we are part of your community playground long after the sale is made. Our quality is legendary, and we stand behind our products with one of the best warranties in the business and a level of customer service that assures you that your needs will be met. For complete Warranty information, consult your GameTime sales representative.

- Lifetime limited warranty on PowerScape®, PrimeTime®, and Xscape® uprights.
- Lifetime limited warranty on all hardware.
- Lifetime limited warranty on PowerScape PowerLocks®.
- 15 Year limited warranty on pipes, rungs, rails, metal decks and loops.
- 15 Year warranty on rotationally molded KidTime and GameTime products.
- 10 Year limited warranty on PrimeTime bolt-through connection.
- 10 Year limited warranty on Parcourse® fitness equipment.
- 5 Year limited warranty on SuperSeats™.
- 3 Year limited warranty on rubber or C type springs used on SaddleMates®.
- 1 Year limited warranty on all other GameTime products.





150 PlayCore Drive, SE  
Fort Payne, Alabama 35967  
Telephone: 256/845-5610  
Facsimile: 256/845-9361  
Email: service@gametime.com



Enriching Childhood Through Play.

## GAMETIME<sup>®</sup> WARRANTIES

GameTime provides warranties on all materials and workmanship for one year, excluding vandalism.

In addition, GameTime offers:

- ✓ Lifetime limited warranty on PowerScape<sup>®</sup> Plus, PrimeTime<sup>®</sup> and Xscape<sup>®</sup> uprights.
- ✓ Lifetime limited warranty on all hardware.
- ✓ Lifetime limited warranty on GameTime PowerScape Plus PowerLocks<sup>®</sup>.
- ✓ Ten-Year limited warranty on PrimeTime and Xscape bolt-through connections.
- ✓ Fifteen-Year limited warranty on metal decks, pipes, rungs, rails and loops.
- ✓ Fifteen-Year limited warranty on rotationally molded products.
- ✓ Twenty-Year limited warranty on Timber Décor<sup>™</sup> recycled plastic lumber products.
- ✓ Five-Year limited warranty on nylon-covered cable net climbers and components.
- ✓ Ten-Year limited warranty on pressure-treated pine and redwood products.
- ✓ Ten-Year limited warranty on Parcourse<sup>®</sup> fitness equipment.
- ✓ Ten-Year limited warranty on site furnishings.
- ✓ Ten-Year limited warranty on integrated GTShade<sup>™</sup> products.
- ✓ Ten-Year limited warranty on fiberglass signage.
- ✓ Five-Year limited warranty on Super Seats<sup>™</sup>.
- ✓ Three-Year limited warranty on SaddleMates<sup>®</sup> rubber and "C"-springs.
- ✓ One-Year limited warranty on all other GameTime products.

***All warranties specifically exclude damage caused by vandalism; negligence, improper installation or improper use; changes in appearance resulting from weathering; scratches, dents or marring as a result of use.***

***Warranties are valid only if products are installed and maintained in accordance with GameTime instructions and use approved parts.***



## **LIMITED WARRANTY ON POWERSCAPE® PLUS, PRIMETIME®, AND XSCAPE®**

GameTime provides a lifetime limited warranty on PowerScope Plus PowerLocks®, a fifteen-year warranty on metal decks, pipes, rails, loops, and rungs; a lifetime limited warranty on upright posts; a ten-year limited warranty on PrimeTime and Xscape bolt-through connections; ten-year limited warranty on EDPM rubber components; and a one-year limited warranty on powder coated parts. These warranties cover damage due to failure or corrosion of metal parts or rubber breakdown that cause the product to become structurally unfit for its intended use. The lifetime warranty refers to the life of the product as defined below and covers the product under normal use and proper maintenance; see exclusions.

### **LIFETIME LIMITED WARRANTY ON HARDWARE**

GameTime provides a lifetime limited warranty against structural failure due to breaking or shearing which causes the product to become structurally unfit for its intended use; a lifetime limited warranty on stainless steel hardware against rust; and a one-year limited warranty on non-stainless steel hardware against rust; see exclusions. All testing of GameTime's hardware is performed under the guidelines of ASTM B117. The lifetime warranty refers to the life of the product as defined below and covers the product under normal use and proper maintenance. The cost of replacement due to scratching or cutting of certain hardware plating is not included in this warranty.

### **FIFTEEN-YEAR LIMITED WARRANTY ON ROTOMOLDED AND THERMO-FORMED POLYETHYLENE PRODUCTS**

GameTime provides a fifteen-year limited warranty on rotomolded and thermo-formed polyethylene products and ten-year limited warranty on polyethylene handholds for structural integrity against damage due to breaking or splitting under normal use that causes the product to become structurally unfit for its intended use; see exclusions. In the event of a claim under this warranty, GameTime will replace the rotomolded or thermo-formed polyethylene product at no cost to the customer.

### **TWENTY-YEAR LIMITED WARRANTY ON TIMBER DÉCOR™ PRODUCTS**

GameTime provides a twenty-year limited warranty on recycled plastic lumber products in normal applications against rotting, splintering, decay or structural damage directly from termites or fungal decay that cause the product to become structurally unfit for its intended use; see exclusions.

### **LIMITED WARRANTY ON NET CLIMBERS AND COMPONENTS**

GameTime provides a five-year limited warranty on nylon-covered cable net climbers and components against structural failure caused by cable breakage; a five-year limited warranty on nylon-covered cable wear and deterioration resulting from defects in materials and workmanship; and a one-year limited warranty on nylon rope products. These warranties cover damage due to failure that cause the product to become structurally unfit for the intended use; see exclusions.

### **LIMITED WARRANTY ON INTEGRATED GTSHADE® PRODUCTS**

GameTime provides a ten-year limited warranty on fabric canopies against tears, runs, cracking, mildew and color fading except for red, which has a three-year color warranty. Canopies have a limited warranty against structure failure due to wind of up to 90 miles per hour (mph) and structural failure due to snow and ice loading exceeding five pounds per square foot. Fabric canopies are to be removed if winds are expected to exceed 90 mph or when snow or ice is expected. Fabric warranty does not cover damage resulting from chemical contact.

All metal upright posts and support structure framing have a ten-year limited warranty against becoming structurally unfit for the use intended and a one-year limited warranty against rusting and workmanship of painted surfaces. Warranty is limited to winds of up to 90 mph when fabric canopies are installed (wind resistance improves 10 to 20 mph without canopies).

### **LIMITED WARRANTY ON SITE FURNISHINGS**

GameTime provides a ten-year limited warranty on site furnishings against structural failure and a one-year limited warranty on powder coating. These warranties cover damage due to failure or corrosion of metal parts that cause the product to become structurally unfit for the intended use; see exclusions.

### **LIMITED WARRANTY ON FIBERGLASS SIGNAGE AND HDPE PANELS**

GameTime provides a ten-year limited warranty on fiberglass sign panels against delaminating or fading and a five-year warranty on high density polyethylene (HDPE) panels against degradation and discoloration.

### **TEN-YEAR LIMITED WARRANTY ON REDWOOD AND PRESSURE-TREATED WOOD PRODUCTS**

GameTime provides a ten-year limited warranty on redwood and pressure-treated wood products against damage by decay or termites causing the wood to become structurally unfit for its intended use; see exclusions.

### **FIVE YEAR LIMITED WARRANTY ON GAMETIME SUPER SEAT™**

GameTime provides a five-year limited warranty on Model No. 949 SuperSeat and Model No. 999 Super Seat-2 against structural failure that causes the seat to become unfit for its intended use; see exclusions. The factory installed "S"-Hook and Seat Hanger assemblies are covered under a one-year limited warranty against rust, corrosion or premature wear.

### **THREE-YEAR LIMITED WARRANTY ON RUBBER AND "C" SPRINGS FOR SADDLEMATES®**

GameTime provides a three-year limited warranty on rubber and "C"-springs for SaddleMates against damage due to de-lamination of the rubber spring and breakage of the "C"-spring that cause the SaddleMate to become structurally unfit for its intended use; see exclusions.

**For the purposes of this warranty, lifetime encompasses no specific term of years, but rather that Seller warrants to its original customer for as long as the original customer owns the Product and uses the Product for its intended purpose that the Product and all parts will be free from defects in material and manufacturing workmanship.**

**GameTime excludes from these warranties the cost to remove parts and reinstall replacements; replacement due to cosmetic defects or coating deterioration caused by climatic conditions; and wood replacement resulting from twisting, warping, checking, shrinking, swelling or other natural physical properties of wood.**

**To the extent permitted by law, these warranties are expressly in lieu of any other implied or expressed warranties or representation by any person, including any implied warranty of merchantability or fitness. These warranties provide valuable rights to you. No Sales Representative can modify or amend the terms of this warranty.**

**Since warranty limitations and exclusions may vary from state to state, you should check any specific warranty rights in your state.**

**Claim Procedure:** To make a warranty claim, send your written statement of claim, along with the original purchase invoice or invoice number to:

GameTime  
**Customer Service**  
P.O. Box 680121  
Fort Payne, AL 35968  
Fax: 256-845-9361  
Email: [service@gametime.com](mailto:service@gametime.com)

**Or Contact your local Representative at**

USA 1-800-235-2440  
International 01-256-845-5610

Within 60 days of notice of claim under warranty, GameTime will make arrangements to replace the damaged product. GameTime will cover freight costs within the continental United States. GameTime is not responsible for freight costs associated with products located outside the continental United States. GameTime reserves the right to inspect all product identified as damaged.

*Date of Purchase:* \_\_\_\_\_

*Purchaser:* \_\_\_\_\_

*GameTime Invoice Number:* \_\_\_\_\_

\_\_\_\_\_  
*Authorized GameTime Signature*

\_\_\_\_\_  
*Title*

**See GameTime on the web at [www.gametime.com](http://www.gametime.com)**

To obtain a "GENERAL CERTIFICATE of CONFORMITY" as required by the 'CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008" follow the link below and enter your seven-digit customer order number.

<http://cpsia.playcore.com>





1675 Locust Street  
Red Bud, IL 62278  
Phone: 618-282-8200  
Fax: 618-282-8202

## **WARRANTY & TERMS**

**WARRANTY: 5 Year Limited Warranty on Thermoplastic coated elements.** Ultra Play guarantees all items for one full year to be free of defects in workmanship or materials when installed and maintained properly. We agree to repair or replace, any items determined to be defective. Items specifically not covered by this warranty include vandalism, man made or natural disasters, lack of maintenance, normal weathering or wear and tear due to public abuse.



## Warranty

GameTime provides a ten-year limited warranty on all fabric canopies against tears, runs, cracking and mildew.

GameTime provides a ten-year limited warranty on all fabric colors against fading except for red, which carries a three-year warranty.

GameTime provides a 90 MPH (miles per hour) limited warranty on the fabric canopy against wind. The fabric canopy is to be removed if winds are expected to exceed 90 miles per hour. Failure to remove fabric during high wind seasons will void the fabric warranty against tears.

GameTime provides a 10 to 20 pound per square foot limited warranty on the fabric canopy against snow and ice. The fabric is to be removed during winter months when snow and ice is expected. Failure to remove fabric during snow and ice season will void the fabric warranty against tears.

GameTime provides a ten-year limited warranty on all metal upright posts and support structure framing against failure due to structural integrity.

GameTime provides a one-year limited warranty against rusting and workmanship of painted surfaces.

GameTime provides a 90, 110 or 140 MPH (miles per hour) limited warranty on all metal upright posts and support structure framing. These calculations are with fabric canopy installed. Removing the fabric canopy will assist the metal structure to withstand higher winds by 10 to 20 MPH (miles per hour).

***Above warranties are valid from the date of shipment.***

***All GameTime warranties will be void if damage to or failure to the shade fabric is caused by contact with chemicals, misuse, vandalism, any act of God, including but not limited to, ice, snow or wind in excess of the applicable building code parameters.***

***All GameTime warranties are invalid if the fabric is installed on structures other than GTShade, if changes or field modifications are made without written authorization from GameTime or if the product isn't installed or maintained in strict compliance with the manufacturer's specifications.***

***GameTime warranties do not cover the cost of removals, replacements or repairs.***

***All warranty claims must be filed in writing within the warranty period.***

To the extent permitted by law, these warranties are expressly in lieu of any other implied or expressed warranties or representation by any person, including any implied warranty of merchantability or fitness. These warranties provide valuable rights to you. No Sales Representative can modify or amend the terms of this warranty.

To make a warranty claim, send your written statement of claim, along with the original purchase invoice or invoice number to:

GameTime  
Customer Service  
P. O. Box 680121  
Fort Payne, AL 35968

Or Contact Your Local Representative at:  
USA 1-800-235-2440  
International 01-256-845-5610

Within 60 days of notice of claim under warranty, GameTime will make arrangements to replace the damaged product. GameTime will cover freight costs within the Continental United States. GameTime is not responsible for freight cost associated with products located outside the Continental United States. GameTime reserves the right to inspect all products identified as damaged.

Since warranty limitations and exclusions may vary from state to state, you should check any specific rights in your state.

GameTime  
P. O. Box 680121  
Fort Payne, AL 35968  
Fax: 256-997-9653  
Email: [service@gametime.com](mailto:service@gametime.com)  
See GameTime on the web at [www.gametime.com](http://www.gametime.com)



# GTNets featuring



## DX MANUFACTURER'S WARRANTIES

Dynamo Industries warrants its products to be free from defect in materials or workmanship for a period of (1) one year during normal use and installation and in accordance with our published specifications. Additional limited warranties cover the Products against defects caused by deterioration affecting the structural integrity of the equipment during the following periods starting from the date of installation:

- 100 year limited warranty on aluminum and stainless steel posts, with the exclusion of cosmetic defects, and providing that proper maintenance was performed on rotating parts according to Manufacturer's instruction.
- 100 year limited warranty on moulded aluminum parts, with the exclusion of cosmetic defects.
- 15 year limited warranty on tubular steel components, with the exclusion of cosmetic defects.
- 15 year limited warranty on cables breakage, with the exclusion of cosmetic defects.\*
- 10 year limited warranty on nylon bearings and ring junction pieces, with the exclusion of cosmetic defects.
- 5 year limited warranty on PE finished decks, with the exclusion of cosmetic defects.
- 5 year limited warranty on premature wear of cables, with the exclusion of cosmetic defects.

The warranty stated above is valid only if the structures are erected in conformity with the installation instructions and procedures furnished by Dynamo Industries using approved parts; have been maintained and inspected in accordance with Dynamo Industries' instructions; have been subjected to normal use for the purpose for which the goods were designed; have not been subjected to vandalism, misuse, neglect or accident; have not been subjected to addition or substitution of parts; and have not been modified, altered, or repaired by persons other than Dynamo Industries or its designees in a any respect which, in the judgment of Dynamo Industries, affects the condition or operation of the structures.

This warranty does not cover cosmetic items (such as scratches, dents, marring, fading, discoloring, weathering), paint, or decorations, normal wear and tear, or damage due to checking and warping. Cable wear does not cover nylon when structure is installed in a site where sand is used as the protective surfacing.

These warranties cover either replacement or repair, at the Manufacturer's discretion, of any Products according to the above descriptions. Transportation and installation-on-site costs are not covered by these warranties, except where specific arrangements are made with written consent from the Manufacturer.

To make claim under the terms of the Warranty, the Buyer's written statement of claim, along with a copy of the original invoice, maintenance records, and supporting photographs, must be sent to Dynamo Industries, 2725 Lockwood Lane, Ottawa, ON K4C 1B6.

\* 15 year cable defect warranty voided to 5 year when installed in sand.

## **EVERLAST NatureROCKS™ LIMITED WARRANTY**

Everlast Climbing Industries, Inc. (ECI) warrants to the original purchaser that the structure of NatureROCKS purchased from ECI will be free from defects in materials and workmanship at the time of delivery and for a period of five (5) years thereafter. With respect to the painted surface of NatureROCKS, ECI warrants to the original purchaser that the painted surface will be free of defects in material and workmanship at the time of delivery and for a period of one (1) year thereafter. This warranty does not cover minor, routine surface cracking which is a normal part of the GFRC curing process. Should NatureROCKS purchased from ECI fail to conform to this warranty during the warranty period, ECI will, at its option, repair or replace the faulty unit(s) at no additional charge. This limited warranty does not include service to repair damage to NatureROCKS purchased from ECI resulting from a cause other than defect or malfunction, including neglect, accident, vandalism, improper installation, unreasonable use or servicing or modification by anyone other than ECI.

EXCEPT AS SET FORTH ABOVE, ALL PRODUCTS PURCHASED FROM ECI ARE SOLD "AS IS." ECI MAKES NO WARRANTIES EXPRESSED OR IMPLIED HEREUNDER AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

Warranty service may be obtained by contacting Everlast Climbing Industries, Inc. in writing at the address shown below within five years of original purchase and providing proof of purchase date. You, the original purchaser, agree to pay the cost for ECI to ascertain that damages have occurred. For further information, contact:

**Everlast Climbing Industries, Inc.,  
1335 Mendota Heights Road, Mendota Heights, MN 55120  
Phone: (651) 665-9131 Toll Free: (800) 476-7366**

All warranties on NatureROCKS purchased from ECI are limited to one or five years from the date of purchase, as outlined above.

Any modifications or changes to ECI's NatureROCKS, without ECI's express written approval, will void this warranty.

If this product does not conform with the warranties given as stated above, your remedy is to have the unit repaired or replaced as provided above. In no event will ECI be liable for any loss or damage, including damages of any kind arising out of the use of or inability to use this product, for incidental or consequential damages, or for any claim by anyone other than you, the original purchaser.

Some states do not allow limitations on warranties and do not allow the exclusion or limitation of incidental or consequential damages, so any such limitation or exclusion may not apply to you. This warranty gives you specific legal rights which may vary from state to state.

\* Keep this document for your records and proof of warranty.





## Product Warranty Terms

The fountains manufactured by Rain Drop™ Products are warranted for five years from date of shipment against any defects in material or workmanship; excluding only normal wear and tear and improper operation or installation.

The fiberglass reinforced plastic (FRP) and/or structural tubing furnished with the fountains has a 25-year unconditional warranty against rust and corrosion from the date of shipment.

The liability of Rain Drop Products under this warranty is limited to the replacement or repair of defective material to the owner's designated location of such materials as they are covered by this warranty provided written notice of such defect is delivered to Rain Drop Products, Ashland, Ohio within the warranty period and within 15 days after such defect was discovered. Rain Drop Products shall not be liable for the shipping cost of return of such claimed defective materials to Rain Drop Products or for shipping cost of replacement materials. Whether to replace or repair the feature is ultimately the decision of Rain Drop Products, LLC.

This warranty is in lieu of all other warranties expressed or implied.





2810 Sydney Road Plant City, FL 33566  
Office (813) 305-1415 Fax (813) 305-1419

Date: Wednesday, April 28, 2010

Project:

Contractor:

Project Shipped Date:

Project Completion Date:

Product Supplied:

Manufacturer: GT Grandstands, inc.  
2810 Sydney Road  
Plant City, FL 33566

## WARRANTY STATEMENT

GT Grandstands warrants to the Owner that its permanent grandstands shall be free from defects in material and workmanship under normal use for a period of five (5) year provided they are installed per GT Grandstands installation instructions and that component parts supplied by GT Grandstands are used. GT Grandstands' obligation under this warranty shall be limited to repair and exchange of any such item, which may prove defective under normal use (vandalism and premeditated damage excluded) during such period. Warranty period begins at final acceptance by owner. **GT Grandstands will release the warranty documents to the buyer only after the Buyer has paid GT Grandstands in full the final contracted amount.**

Gregory L. Buckner (General Manager)



## GT Impax Engineered Wood Fiber System Warranty

Effective June 1, 2008

GameTime warrants the GT Impax Engineered Wood Fiber Surfacing System installation to the original purchaser for a period of twenty five (25) years from date of installation. This limited warranty applies only to GT Impax Engineered Wood Fiber Surfacing Systems that have been approved for installation. For the purpose of this warranty, a system is comprised of a correctly prepared sub base, drainage system, geotextile, wear mats, and Engineered Wood Fiber.

### Performance:

In the event the Materials and/or System do not conform or perform as expected, the Limited Warranty shall be limited to replacement of the defective Materials and/or System in question, and shall not include installation or consequential damages or refund. This Limited Warranty does not cover normal wear.

### Conditions:

This Limited Warranty is conditional upon the System being properly installed and maintained by the purchaser in accordance with written instructions provided by GameTime.

### What Is Covered?

1. GameTime warrants, to the original purchaser, that the GT Impax Engineered Wood Fiber surfacing system will meet ASTM F1292-04 at the specified critical height (8 ft. for an 8 in. depth of GT Impax Engineered Wood Fiber, 12 ft. for a 12 in. depth) for a period of twenty five (25) years from the date of installation, subject to the conditions and exclusions shown below.
2. GameTime warrants for a period of twenty five (25) years, to the original purchaser, that the GameTime geotextile fabric of the installation will be free from defects upon delivery, subject to the conditions and exclusions shown below.
3. GameTime warrants for a period of twenty five (25) years, to the original purchaser, that the GameTime Terra Flow drain system of the installation will be free from defects upon delivery, subject to the conditions and exclusions shown below.
4. GameTime warrants, to the original purchaser, that the GT Impax Engineered Wood Fiber Surfacing will be free from defects upon delivery, subject to the conditions and exclusions shown below.

***If the GT Impax Engineered Wood Fiber surfacing installation system is defective within the applicable warranty period, GameTime will, subject to the conditions set forth below, replace defective installation components at no charge within a reasonable period of time. Components used for replacement under this warranty are warranted for the remainder of the original warranty period. The replacement of defective components shall constitute the sole and exclusive remedy in the event of a breach of warranty.***



## GT Impax Engineered Wood Fiber Warranty (Continued)

### EXCLUSIONS

Incorrect installation, including insufficient drainage, failure to install all material delivered, failure to maintain the surface depth thereof, failure to use GT Impax wear mats in high use areas (swings, slides etc.), use of System components and/or materials other than GameTime, abnormal use, lack of or improper maintenance, acts of vandalism shall void this limited warranty and GT Impax shall have no responsibility with respect to damage resulting there from. In addition, changed impact attenuation characteristics created by sand or other materials tracked into the System are not covered by this Warranty as is acts of God, or any other cause beyond the control of GameTime will not be covered by this limited warranty.

**NO REPRESENTATIVE OF THE SELLER HAS AUTHORITY TO MAKE ANY REPRESENTATIONS OR PROMISES EXCEPT AS STATED HEREIN.**

**THERE ARE NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE THAT EXTEND BEYOND THE WARRANTIES CONTAINED IN THIS DOCUMENT. GAMETIME SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES TO THE STRUCTURE OR ITS CONTENTS ARISING UNDER ANY THEORY OF LAW WHATSOEVER.**

Some states do not allow limitations on how long an implied warranty lasts or the exclusion or limitations of incidental or consequential damages, so the above limitation or exclusions may not apply to you. This warranty gives you specific legal rights and you may also have other rights that vary from state to state.

Warrantor: GameTime  
P.O. Box 680121, Fort Payne, AL 35968  
800-235-2440

Order number:

Name of project:

Customer:

Location:

Date of installation:

Representative:

Date:



## FIFTEEN YEAR LIMITED (PERFORMANCE) WARRANTY

Effective June 1, 2008

GameTime warrants the GT Impax Engineered Wood Fiber Surfacing installation to the original purchaser for a period of fifteen (15) years from date of installation. This limited warranty applies only to GT Impax Engineered Wood Fiber Surfacing that has been approved for installation.

### Performance:

In the event the Materials do not conform or perform as expected, the Limited Warranty shall be limited to replacement of the defective Materials in question, and shall not include installation or consequential damages or refund. This Limited Warranty does not cover normal wear.

### Conditions:

This Limited Warranty is conditional upon the Surfacing being properly installed and maintained by the purchaser in accordance with written instructions provided by GameTime.

### What Is Covered?

1. GameTime warrants, to the original purchaser, that the GT Impax Engineered Wood Fiber surfacing system will meet ASTM F1292-04 at the specified critical height (8 ft. for an 8 in. depth of GT Impax Engineered Wood Fiber, 12 ft. for a 12 in. depth) for a period of fifteen (15) years from the date of installation, subject to the conditions and exclusions shown below.
2. GameTime warrants, to the original purchaser, that the GT Impax Engineered Wood Fiber Surfacing will be free from defects upon delivery, subject to the conditions and exclusions shown below.

***If the GT Impax Engineered Wood Fiber surfacing is defective within the applicable warranty period, GameTime will, subject to the conditions set forth below, replace defective installation components at no charge within a reasonable period of time. Components used for replacement under this warranty are warranted for the remainder of the original warranty period. The replacement of defective components shall constitute the sole and exclusive remedy in the event of a breach of warranty.***

### EXCLUSIONS

Incorrect installation, including insufficient drainage, failure to install all material delivered, failure to maintain the surface depth thereof, failure to use GT Impax wear mats in high use areas (swings, slides etc.), abnormal use, lack of or improper maintenance, acts of vandalism shall void this limited warranty and GT Impax shall have no responsibility with respect to damage resulting therefrom. In addition, changed impact attenuation characteristics created by sand or other materials tracked into the System are not covered by this Warranty as is acts of God, or any other cause beyond the control of GameTime will not be covered by this limited warranty.



## FIFTEEN YEAR LIMITED (PERFORMANCE) WARRANTY

NO REPRESENTATIVE OF THE SELLER HAS AUTHORITY TO MAKE ANY REPRESENTATIONS OR PROMISES EXCEPT AS STATED HEREIN.

THERE ARE NO WARRANTIES EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE THAT EXTEND BEYOND THE WARRANTIES CONTAINED IN THIS DOCUMENT. GAMETIME SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES TO THE STRUCTURE OR ITS CONTENTS ARISING UNDER ANY THEORY OF LAW WHATSOEVER.

Some states do not allow limitations on how long an implied warranty lasts or the exclusion or limitations of incidental or consequential damages, so the above limitation or exclusions may not apply to you. This warranty gives you specific legal rights and you may also have other rights that vary from state to state.

Warrantor: GameTime

P.O. Box 680121, Fort Payne, AL 35968  
800-235-2440

Order Number:

Name of Project:

Customer:

Location:

Date of Installation:

Representative:

Date:





## GT Impax Shredded Rubber Warranty

GT Impax Loose Shredded Rubber Surfacing is manufactured from recycled automobile and truck tires and is guaranteed to meet or exceed the ASTM Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment Playground Surfacing Guidelines used by U.S. Consumer Products Safety Commission.

GameTime warrants GT Impax Loose Shredded Rubber Surfacing against total color loss for eight years from the purchase date and in turn warrants the impact attenuation performance of this product for the lifetime of ownership (not to exceed fifty years), subject to the conditions and exclusions listed below.

All product warranties are conditioned upon GT Impax Loose Shredded Rubber Surfacing being properly installed and maintained by the end-user in accordance with the installation and maintenance guidelines available from GameTime.

GameTime's entire liability and the purchaser's sole remedy, in the unlikely event that GT Impax Loose Shredded Rubber Surfacing does not conform to this guarantee, shall be limited to the replacement of defective material and shall not include the removal costs or installation costs or consequential damages or refund.

No other guarantee or warranty is expressed, written or implied except stated herein. Vandalism, physical loss or any abnormal use shall void this warranty, and GameTime shall have no responsibility with respect to damage resulting there from. Additionally, this warranty shall be void if foreign materials that affect impact attenuation are deposited onto or into these products. Under no conditions shall GameTime be liable for any damages whatsoever arising from the use of or inability to use the aforementioned products, even if GameTime has been advised of the possibility of such loss.

Warrantor: GameTime  
P.O. Box 680121, Fort Payne, AL 35968  
800-235-2440

Order number:

Name of project:

Customer:

Location:

Date of installation:

Representative:

Date:



## GT Impax Tile Warranty

Subject to the following terms and conditions, GameTime (SELLER) warrants to the Buyer that the GameTime recycled rubber tile surfacing (Tile) sold to the Buyer will be free from manufacturing defects at the time of their delivery to the job site.

If, upon inspection by the Seller, the Tile evidences manufacturing defects, Seller's liability and Buyer's remedies are limited, at Seller's option, to the repair or replacement of the defective Tile at the F.O.B. point in the original contract of sale.

Seller further warrants that the Tile will not prematurely deteriorate to the point of failure because of weathering for a period of five (5) years from the date of sale if properly installed, maintained and used for the purpose for which the Seller intended.

Buyer shall give Seller notice of a claim under this warranty within thirty (30) days of discovering the premature deterioration of the Tile.

If, upon inspection by the Seller, the Tile shows premature deterioration because of weathering within the five (5) year period stated herein, Seller's liability and Buyer's remedies are limited at Seller's option to the providing of repair material for the original Tile or credit to be applied toward the purchase of the new Tile, the value of these remedies being determined by the Seller based upon the number of remaining months of the unexpired warranty used to pro-rate at the current price for the Tile. The maximum pro-rated value allowed by Seller for repair or credit shall not exceed the original Tile purchase price.

NO REPRESENTATIVE OF THE SELLER HAS AUTHORITY TO MAKE ANY REPRESENTATIONS OR PROMISES EXCEPT AS STATED HEREIN.

THERE ARE NO WARRANTIES EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH EXTEND BEYOND THE WARRANTIES CONTAINED IN THIS DOCUMENT. GAMETIME SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES TO THE STRUCTURE OR ITS CONTENTS ARISING UNDER ANY THEORY OF LAW WHATSOEVER.

Warrantor: GameTime  
P.O. Box 680121, Fort Payne, AL 35968  
800-235-2440

Order number:

Name of project:

Customer:

Location:

Date of installation:

Representative:

Date:





## **Poured Bonded Rubber Warranty**

### **Playground Equipment**

GameTime warrants the GT Impax recycled poured bonded rubber surface installed and maintained in accordance to GameTime specifications, under this contract agreement for a period of three (3) years commencing from the date of substantial completion. This limited warranty shall provide for 100% of the cost for necessary repairs caused by the failure of the GT Impax Poured Bonded Rubber due to workmanship and materials only, and pertains only to the surfacing material agreed to under this contract.

This limited warranty includes GameTime's obligation to only repair and/or replace any defective materials or workmanship in the surface area or surface areas that have failed during the first year of the three-year warranty period. A failed area or failed areas include edge raveling, delaminating, peeling, color loss or loss of integrity as a result of the GT Impax recycled poured bonded rubber degradation. Due to maintenance requirements, edge raveling, delaminating, peeling or loss of integrity in the second and third year of the warranty is limited to material replacements only. Labor cost for resealing and/or repairing the poured bonded rubber pad will be at the expense of the end user. Material replacement due to color lost carries a one-year warranty.

GameTime is under no obligation or responsibility to repair and/or replace the GT Impax recycled poured bonded rubber surface if damaged during the curing process (Unless specified in contract), damage by vandalism (including stains, cuts, burns, gouges, etc.), product misuse, abuse or alteration, improper slab or base or sub-base design or construction, improper drainage, improper or lack of specified required maintenance, any foreign residue that may be deposited on the surface, normal wear and tear (including slight color variations, and color fading), damage from sharp objects (high heels, spikes, etc.), problems caused by moisture, alkali, hydrostatic pressure, cracking, shifting, or lifting of the substrate, or acts of God.

All warranty claims shall be made in writing to GameTime within thirty (30) days after the Owner has knowledge thereof, but in no event later than thirty (30) days after expiration of the warranty period. The written notification from the Owner shall include the following: the date of the first notice of the failure, details of the failure, photos of the failed area and a request for a warranty claim meeting with GameTime at the installation site (if applicable). GameTime shall not be responsible for warranty claims for any notices received from the Owner after thirty (30) days of Owner's first knowledge of the failure.

GameTime shall determine the validity of all claims after sufficient evidence has been gathered. GameTime shall then replace, repair or make a refund for any claims validated by it. Any refund, credit or allowance provided to the Owner on a warranty claim is exercisable only if said allowance is used to accommodate replacement with a GT Impax recycled poured bonded rubber surface.

Any dispute as to whether and to what extent there is a GT Impax recycled poured bonded rubber surfacing failure and a subsequent valid warranty claim within the meaning of this warranty shall be initially dealt with by joint investigation and discussion between GameTime and owner in order to achieve a mutually agreeable solution. If such a solution cannot be reached within thirty (30) days, then either the Owner or GameTime shall submit the matter to an arbitrator who is a member of the American Arbitration Association and who shall make a determination in accordance with the rules and regulation of said American Arbitration Association. The decision of said arbitrator shall be binding on both parties.



This limited warranty is exclusive of the underlying material (e.g. existing surface, existing or new asphalt, concrete, base, sub-base or sub-grade). If the underlying material fails for any reason whatsoever (including hydrostatic pressure, cracking, shifting, heaving), then GameTime warranty shall be rendered invalid. If the underlying material is concrete, a "curing agent" is NOT allowed, as it will probably cause delamination of the GT Impax recycled poured bonded rubber. Additionally, there is no warranty against surface cracking along expansion joints and underlying cracks, or separating from an adjacent border, curb or walkway. This limited warranty does not include discoloration as a result of ultraviolet rays, unapproved cleaning materials or vandalism. **WARNING:** Surface temperatures can prove dangerous under warm weather conditions. Shoes and/or socks must be worn during warm weather conditions.

Owner agrees that it will not, under any circumstances, make alterations to the GT Impax recycled poured bonded rubber surface without the written authorization of GameTime. Any unauthorized alteration by the Owner shall result in the immediate termination of all warranties for the GT Impax recycled poured bonded rubber surfacing and shall also give rise to the duty of the Owner to hold harmless, defend and indemnify GameTime from any claim, suit or cause of action, personal injury, death, or property damage arising out of or related to said alteration.

This limited warranty is expressly made in lieu of any other warranties and is exclusive to the original Owner. Owner acknowledges that the limited warranty will be voided if the Owner fails to follow the GameTime Maintenance Guidelines provided by GameTime. Owner agrees that in no event shall GameTime have any liability to Owner for loss of use or loss of profits or any form of consequential damages. **NOTE:** The following chemicals can cause potential damage to the GT Impax recycled poured bonded rubber and should be avoided: disinfectants, concentrated bleach, gasoline, diesel, hydraulic and lubricating oils, weak acids and organic solvents.

If the contract price is not paid in a timely manner as per the terms and conditions of the agreed contract, the limited warranty is automatically voided. Any damages to the surface during the curing period will be repaired or paid for at the Owner's expense. This limited warranty does not lessen or eliminate any other contractual obligation of Owner to GameTime.

Warrantor: GameTime  
P.O. Box 680121, Fort Payne, AL 35968  
800-235-2440

Order number:

Name of project:

Customer:

Location:

Date of installation:

Representative:

Date:



## GT Impax Poured In Place (PIP) Warranty

### Playground Equipment

GameTime warrants the GT Impax recycled poured rubber surface (referred to as PIP) installed and maintained in accordance to GameTime specifications, under this contract agreement for a period of five (5) years commencing from the date of substantial completion. This limited warranty shall provide for 100% of the cost for necessary repairs caused by the failure of the GT Impax PIP due to workmanship and materials only, and pertains only to the surfacing material agreed to under this contract.

### Water Play Equipment

GameTime warrants the GT Impax recycled poured rubber surface (referred to as PIP) installed and maintained in accordance to GameTime specifications, under this contract agreement for a period of three (3) years commencing from the date of substantial completion. This limited warranty shall provide for 100% of the cost for necessary repairs caused by the failure of the GT Impax PIP due to workmanship and materials only, and pertains only to the surfacing material agreed to under this contract.

**Water Play Equipment Only: If aliphatic binder is not used, poured rubber surfacing (PIP) will carry a maximum one-year (1) warranty.**

This limited warranty includes GameTime's obligation to only repair and/or replace any defective materials or workmanship in the surface area or surface areas that have failed during the warranty period. A failed area or failed areas include edge raveling, bubbling, delamination, peeling, and loss of integrity as a result of the GT Impax recycled poured rubber degradation. GameTime is under no obligation or responsibility to repair and/or replace the GT Impax recycled poured rubber "PIP" surface if damaged during the curing process (Unless specified in contract), damage by vandalism (including stains, cuts, burns, gouges, etc.), product misuse, abuse or alteration, improper slab or base or sub-base design or construction, improper drainage, improper or lack of specified required maintenance, any foreign residue that may be deposited on the surface, normal wear and tear (including slight color variations, and color fading), damage from sharp objects (high heels, spikes, etc.), problems caused by moisture, alkali, hydrostatic pressure, cracking, shifting, or lifting of the substrate, or acts of God.

All warranty claims shall be made in writing to GameTime within thirty (30) days after the Owner has knowledge thereof, but in no event later than thirty (30) days after expiration of the warranty period. The written notification from the Owner shall include the following: the date of the first notice of the failure, details of the failure, photos of the failed area and a request for a warranty claim meeting with GameTime at the installation site (if applicable). GameTime shall not be responsible for warranty claims for any notices received from the Owner after thirty (30) days of Owner's first knowledge of the failure.

GameTime shall determine the validity of all claims after sufficient evidence has been gathered. GameTime shall then replace, repair or make a refund for any claims validated by it. Any refund, credit or allowance provided to the Owner on a warranty claim is exercisable only if said allowance is used to accommodate replacement with a GT Impax recycled poured rubber surface.



Any dispute as to whether and to what extent there is a GT Impax recycled poured rubber surfacing failure and a subsequent valid warranty claim within the meaning of this warranty shall be initially dealt with by joint investigation and discussion between GameTime and owner in order to achieve a mutually agreeable solution. If such a solution cannot be reached within thirty (30) days, then either the Owner of GameTime shall submit the matter to an arbitrator who is a member of the American Arbitration Association and who shall make a determination in accordance with the rules and regulation of said American Arbitration Association. The decision of said arbitrator shall be binding on both parties.

This limited warranty is exclusive of the underlying material (e.g. existing surface, existing or new asphalt, concrete, base, sub-base or sub-grade). If the underlying material fails for any reason whatsoever (including hydrostatic pressure, cracking, shifting heaving), then GameTime warranty shall be rendered invalid. If the underlying material is concrete, a "curing agent" is NOT allowed, as it will probably cause delamination of the GT Impax recycled poured rubber. Additionally, there is no warranty against surface cracking along expansion joints and underlying cracks, or separating from an adjacent border, curb or walkway. This limited warranty does not include discoloration as a result of ultraviolet rays, unapproved cleaning materials or vandalism. WARNING: Surface temperatures can prove dangerous under warm weather conditions. Shoes and/or socks must be worn during warm weather conditions.

Owner agrees that it will not, under any circumstances, make alterations to the GT Impax recycled poured rubber surface without the written authorization of GameTime. Any unauthorized alteration by the Owner shall result in the immediate termination of all warranties for the GT Impax recycled poured rubber surfacing and shall also give rise to the duty of the Owner to hold harmless, defend and indemnify GameTime from any claim, suit or cause of action, personal injury, death, or property damage arising out of or related to said alteration.

This limited warranty is expressly made in lieu of any other warranties and is exclusive to the original Owner. Owner acknowledges that the limited warranty will be voided if the Owner fails to follow the GameTime Maintenance Guidelines provided by GameTime. Owner agrees that in no event shall GameTime have any liability to Owner for loss of use or loss of profits or any form of consequential damages. NOTE: The following chemicals can cause potential damage to the GT Impax recycled poured rubber and should be avoided: disinfectants, concentrated bleach, gasoline, diesel, hydraulic and lubricating oils, weak acids and organic solvents.

If the contract price is not paid in a timely manner as per the terms and conditions of the agreed contract, the limited warranty is automatically voided. Any damages to the surface during the curing period will be repaired or paid for at the Owner's expense. This limited warranty does not lessen or eliminate any other contractual obligation of Owner to GameTime.

Warrantor: GameTime  
P.O. Box 680121, Fort Payne, AL 35968  
800-235-2440

Order number

Name of project:

Customer:

Location:

Date of installation:

Representative:

Date:





## GT Impax Synthetic Turf

### 5 YEAR LIMITED WARRANTY AGAINST FAILURE DUE TO EXPOSURE TO SUNLIGHT (PE)

(PE Monofilament. XP, LSR)

Gametime warrants that for FIVE (5) years from the date of GT Impax synthetic turf installation, the turf, when installed and maintained as recommended by the yarn & turf manufacturer, will retain at least 50% of its pile fiber. If any area or portion of the turf substantially changes, as distinguished from a change in texture, or if pile heights decrease 50% or more within five years after its initial installation, Gametime will have all such areas or portions replaced with new turf of equivalent quality, excluding installation costs. Gametime also warrants that at the time of the initial turf installation, the GT Impax synthetic turf will be free of manufacturing defects. Slight color changes will occur over the lifetime of this turf / carpet and is not considered an issue or basis for claim. All labor cost involved with the removal of the affected turf / carpet and reinstallation of the replacement carpet will be the responsibility of the purchaser.

#### **Subject to the following limitations:**

General provisions of this limited warranty apply only to the wear of the turf with regard to ultraviolet degradation, and do not apply to damage incurred during installation, improper underlay, pile crushing, willful or negligent abuses, or damage by machinery or equipment, nor does it apply when the turf is not professionally installed by an approved installer. This limited warranty does not apply to installations on stairways or other uneven surfaces, nor does it apply to turf which has not been properly maintained.

The expressed limited warranty excludes all implied warranties, and said manufacturer shall in no event be liable for a breach of warranty in any amount exceeding the mill invoice price of the turf.

If dissatisfied, the owner must submit notice of all claims under this warranty to Gametime within five (5) years from the date of turf installation.

#### **Limitations on Coverage**

This warranty does not apply (1) if the product is used for any application other than sports fields, courts, greens, or landscaping & play areas, (2) to any damage caused during or on account of improper installation or repairs, (3) to the extent that any defect or damage is caused by:

- a. Burns, cuts, accidents, vandalism, abuse, negligence, or neglect
- b. Improper design or failure of the sub-base of the sports field, green, court, or landscape
- c. Wear or abrasion caused by inadequate sub-base
- d. Wear or abrasion under swing sets, slides, and other high friction play equipment
- e. Wear due to lack of infill/no infill
- f. Movement of product due to lack of infill
- g. Use of infill products of an incorrect grade
- h. Failure to maintain infill products at the correct level (per FIFA accredited test institutes)
- i. Use of inappropriate footwear or sports equipment
- j. The playing surface being used other than for the purpose for which it was designed and installed



- k. Use of chemicals, herbicides, pesticides
- l. Use of improper cleaning methods
- m. Any harmful chemical reaction to the product caused by infill materials
- n. Acts of God or other conditions beyond the reasonable control of Gametime Industries
- o. Post fibrillation after or during installation for purposes other than to get infill materials in place
- p. Failure to properly maintain, protect or repair the products or turf
- q. Packing, matting, or roll crush marks are inherent characteristics of turf / carpet manufactured using polypropylene/olefin and nylon fibers.
- r. Damage that occurs during the shipping/transportation process. All shipping claims must be filed against the truck line in question.
- s. Damage caused by reflection (melting) or other flammable materials

All GT Impax synthetic turf is subject to normal wear and tear. Normal wear and tear is not a manufacturing defect and is not covered by this warranty.

**Remedy**

If a product fails to perform as warranted during the warranty period, Gametime will provide replacement product, F.O.B. Mill, for the product determined by Gametime or Gametime representative not to comply with the stated warranty, allowing the purchase price for the replacement product prorated for the number of months remaining in the unexpired warranty period. Purchaser shall be responsible for paying the portion of the purchase price for the replacement product not allowed by Gametime. Gametime shall not be responsible for removal of the defective turf or installation of the new.

**Limitations on Liability**

In no event shall Gametime be liable, whether on contract or in tort or under any other legal theory, for lost profits or revenues, loss of use or similar economic loss, or for indirect special, incidental, consequential, punitive or similar damages arising out of or in connection with the use, condition, possession, performance, maintenance, non-delivery or late delivery of the products, even if Gametime has been advised of the possibility of such damages.

Gametime shall not be responsible for any costs or expenses incurred by Purchaser or others with respect to any tests, inspections, or consultations conducted by Purchaser or others. Claims must be submitted within 30 days after discovery of the alleged defect. Purchaser must promptly inspect all products upon delivery. Anything herein to the contrary notwithstanding, to the extent that any defects, shortages, or non-conformities in the products are discoverable by inspection upon delivery of the products, all obligations of Gametime to purchaser with respect to such defects, shortages, and non-conformities shall be deemed satisfied, and all products shall be deemed to be free of such defects, shortages, and non-conformities, unless Purchaser notifies Gametime of such defects, shortages, or non-conformities in writing within 30 days after the date of delivery.

**Assignment**

Purchaser may not transfer, convey, or otherwise assign all or any of its rights under this warranty without prior written consent of Gametime. Any such transfer or assignment without prior written consent shall be null and void and of no force or effect.

Warrantor: GameTime

P.O. Box 680121, Fort Payne, AL 35968  
800-235-2440

### **Exhibit G**

Company's Response to RFP # 269-2010-183, dated May 5, 2010 is not attached but is incorporated by reference and made a part of this Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and PlayCore-Wisconsin, Inc. dba GameTime (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.

## Exhibit H

RFP # 269-2010-183, dated March 19, 2010 together with all addenda, amendments, exhibits, and attachments issued by the County (collectively, the "ITB") is not attached but is incorporated herein by reference and made a part of this Agreement to provide Playground Equipment, Surfacing, Site Furnishings, and Related Products and Services (the "Agreement") between Mecklenburg County, (the "County") and PlayCore-Wisconsin, Inc. dba GameTime (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the RFP.



Attachment B

Letter dated February 4, 2014 from PlayCore Wisconsin, Inc., dba Gametime to the City of Los Angeles, Department of Recreation and Parks authorizing the City to piggyback on Mecklenburg County's Contract

150 PlayCore Drive, S.E.  
Fort Payne, Alabama 35967  
Direct telephone: 423/648-5891  
Facsimile: 423/648-5903  
Email: [dking@gametime.com](mailto:dking@gametime.com)  
Website: [www.gametime.com/](http://www.gametime.com/)



A PLAYCORE company

February 4, 2014

Mr. Jim Newsom  
City of Los Angeles  
Department of Recreation and Parks  
221 N. Figueroa St.  
Los Angeles, CA 90012

AUTHORIZATION TO UTILIZE CONTRACT 110179

PlayCore Wisconsin, Inc., d/b/a GameTime, is pleased to authorize the City of Los Angeles Department of Recreation and Parks, as a Participating Public Agency, to utilize Contract No. 110179 between GameTime and Mecklenburg County, North Carolina for the purchase of playground equipment, surfacing, site furnishings and related products and services.

GameTime agrees to enter into agreement with the City of Los Angeles Department of Recreation and Parks in accordance with the terms and conditions of Contract No. 110179.

GAMETIME DIVISION

A handwritten signature in black ink, appearing to read "D. King". The signature is stylized and fluid, with a long horizontal stroke extending to the right.

Donald R. King  
Director of Sales Administration

REPORT OF GENERAL MANAGER

NO. 14-049

DATE April 2, 2014

C.D. ALL

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: RECREATION AND PARKS EQUIPMENT CONTRACT-USE OF HOUSTON-GALVESTON AREA COUNCIL SELECTION PROCESS FOR RECREATION AND PARKS EQUIPMENT, SERVICE AND INSTALLATION WITH LANDSCAPE STRUCTURES, INC.

R. Adams	<u>                    </u>	V. Israel	<u>                    </u>
*R. Barajas	<u><i>arf</i></u>	K. Regan	<u>                    </u>
H. Fujita	<u>                    </u>	N. Williams	<u>                    </u>

*[Signature]*  
General Manager

Approved                                           Disapproved                                           Withdrawn                     

RECOMMENDATIONS:

That the Board:

- 1        Approve the proposed contract, substantially in the form on file in the Board Office, between the City of Los Angeles (City) and Landscape Structures, Inc., a Minnesota corporation, to provide and install recreation and parks equipment on an occasional and as-needed basis with a contract term expiring on October 31, 2014;
  
- 2        Find that the Houston-Galveston Area Council (H-GAC), acts as the agent for participating governmental agencies for the purchase and installation of recreation & parks equipment offered by Landscape Structures, Inc., and City is a participating agency;
  
- 3        Find that Landscape Structures, Inc., by written communication dated February 3, 2014, attached hereto and incorporated herein by reference as Attachment B, authorized City to utilize the HGAC contract terms and conditions for the purchase and installation of recreation and parks equipment;
  
- 4        Find as the contract awarding authority, in accordance with Charter Section 371(e)(2), the professional, scientific, expert, technical or other special services to be provided by

REPORT OF GENERAL MANAGER

PG. 2                      NO. 14-049

- 5 Find in accordance with Charter Section 371(e)(8), that the City may piggyback on the H-GAC Contract with Landscape Structures, Inc., because contracts for cooperative arrangements with other governmental agencies for the utilization of the purchasing contracts and professional, scientific, expert or technical services contracts of those agencies and any implementing agreements are an exception to the City's competitive bidding requirements;
- 6 Find as the contract awarding authority, in accordance with Charter Section 371(e)(10), that the services to be provided by Landscape Structures, Inc., are for the performance of professional, scientific, expert or technical services and the use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by common law;
- 7 Find as the contract awarding authority, in accordance with Charter Section 1022, that the Department of Recreation and Parks (Department) does not have, available in its employ, personnel with the necessary expertise to undertake the specialized professional tasks sought and the work can be performed more economically or feasibly by an independent contractor;
- 8 Authorize the General Manager, at his sole discretion, to extend the term of the Agreement, if H-GAC exercises its option to renew its contract with Landscape Structures, Inc., for additional two (2) years;
- 9 Direct the Board Secretary to transmit forthwith the proposed Contract to the Mayor for approval and to the City Attorney for review and approval as to form; and,
- 10 Authorize the Board President and Secretary to execute the proposed Contract upon receipt of the necessary approvals.

SUMMARY:

The Department has an ongoing need for the purchase and installation of recreation and parks equipment. The ability to purchase and install recreation and parks equipment is critical to meeting the Department's needs to build new and retrofit and repair existing park property.

The Landscape Structures, Inc., contract will provide the Department with a variety of turnkey designs, manufacturing and installation options for playground equipment, poured in place surfaces, and site furnishing. The contract will allow the Department the ability to select a wide variety of standard manufactured and customized recreation and parks equipment. If desired, the Department may use this contract to install, construct, build new and/or to retrofit, repair and maintain the Department's existing recreation and parks equipment.

REPORT OF GENERAL MANAGER

PG. 3                      NO. 14-049

Department staff is recommending that the Board authorize the Department to piggyback on H-GAC's competitively bid contract with Landscape Structures, Inc. Landscape Structures, Inc., has issued a letter dated February 3, 2014 (attached hereto and incorporated herein by reference as Attachment B) to the City which authorizes use of the contract with H-GAC. Under the H-GAC contract agreement, Article 6 "End User Agreement" expressly allows for other entities to enter into their own contract with Landscape Structures, Inc. utilizing the terms and conditions of H-GAC contract (Attachment A). The Board Office will issue a separate contract number and the Agreement will be executed between the Landscape Structures, Inc. and the City through the Board. Landscapes Structures, Inc.'s current contract with H-GAC will expire on October 31, 2014. However, H-GAC has the option to extend this contract, which if exercised would extend the term of their Contract two (2) years to October 31, 2016. In the event that H-GAC exercises its option, Department staff recommends that the Department's General Manager be given the sole discretion to extend the term of the City's Agreement for two (2) additional years.

FISCAL IMPACT STATEMENT:

This contract will enable the Department to carry out various construction and maintenance projects that involve the construction, maintenance and/or retrofit of various recreation and parks equipment on an occasional and as-needed basis in order to enhance the recreational experience of the public. There will be no direct fiscal impact to the Department's General Fund as funding will be identified on a per project basis.

This Report was prepared by Jim Newsom, Management Analyst II, reviewed by Cid Macaraeg, Senior Management Analyst II, Planning, Construction and Maintenance Branch.

Attachment A

Contract executed on November 1, 2012, between Houston-Galveston Area Council (H-GAC) and Landscape Structures, Inc.

A CONTRACT BETWEEN  
HOUSTON-GALVESTON AREA COUNCIL  
Houston, Texas  
AND  
LANDSCAPE STRUCTURES INC.  
Delano, Minnesota

This Contract is made and entered into by the Houston-Galveston Area Council of Governments, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, Landscape Structures Inc. hereinafter referred to as the CONTRACTOR, having its principal place of business at 601 7<sup>th</sup> Street South, Delano, Minnesota 55328.

**ARTICLE 1: SCOPE OF SERVICES**

The parties have entered into a Parks & Recreation Equipment Contract to become effective as of November 1, 2012, and to continue through October 31, 2014 (the "Contract"), subject to extension upon mutual agreement of the CONTRACTOR and H-GAC. H-GAC enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as END USER, for the purchase of Parks & Recreation Equipment offered by the CONTRACTOR. The CONTRACTOR agrees to sell Parks & Recreation Equipment through the H-GAC Contract to END USERS.

**ARTICLE 2: THE COMPLETE AGREEMENT**

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Bid Specifications No: PR11-12, including any relevant suffixes
4. CONTRACTOR's Response to Bid No: PR11-12, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 3: LEGAL AUTHORITY**

CONTRACTOR and H-GAC warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 4: APPLICABLE LAWS**

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

**ARTICLE 5: INDEPENDENT CONTRACTOR**

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of H-GAC or CONTRACTOR. No provision of this Contract or act of H-GAC in performance of this Contract shall be construed as making CONTRACTOR the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of CONTRACTOR are subject to the exclusive control and supervision of CONTRACTOR. CONTRACTOR is solely responsible for employee payrolls and claims arising therefrom.

**ARTICLE 6: END USER AGREEMENTS**

H-GAC acknowledges that the END USER may choose to enter into an End User Agreement with the CONTRACTOR through this Contract and that the term of said Agreement may exceed the term of the H-GAC Contract. However this acknowledgement is not to be construed as H-GAC's endorsement or approval of the End User Agreement terms and conditions. CONTRACTOR agrees not to offer to, agree to or accept from END USER any terms or conditions that conflict with or contravene those in CONTRACTOR's H-GAC contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between CONTRACTOR and any END USER which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that CONTRACTOR will no longer be able to enter into any new End User Agreements with END USERS pursuant to this Contract. Applicable H-GAC order processing charges will be due and payable to H-GAC on any End User Agreements surviving termination of this Contract between H-GAC and CONTRACTOR.

**ARTICLE 7: SUBCONTRACTS & ASSIGNMENTS**

**CONTRACTOR** agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to **H-GAC**. **H-GAC** reserves the right to accept or reject any such change. **CONTRACTOR** shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. **H-GAC** shall be liable solely to **CONTRACTOR** and not to any of its Subcontractors or Assignees.

**ARTICLE 8: EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

**CONTRACTOR** shall maintain during the course of its work, complete and accurate records of items that are chargeable to **END USER** under this Contract. **H-GAC**, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of **CONTRACTOR**. Failure to provide access to records may be cause for termination of this Contract. **CONTRACTOR** shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. **CONTRACTOR** further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that **H-GAC'S** duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

**ARTICLE 9: REPORTING REQUIREMENTS**

**CONTRACTOR** agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Bid Specifications. If **CONTRACTOR** fails to submit to **H-GAC** in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

**ARTICLE 10: MOST FAVORED CUSTOMER CLAUSE**

If **CONTRACTOR**, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to **H-GAC** on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to **H-GAC**, **CONTRACTOR** shall notify **H-GAC** within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein **CONTRACTOR** shall provide the same prices, warranties, benefits, or terms to **H-GAC** and its **END USER**. **H-GAC** shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If **CONTRACTOR** is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, **CONTRACTOR** shall within ten (10) business days notify **H-GAC** in writing, setting forth the detailed reasons **CONTRACTOR** believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. **H-GAC**, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between **H-GAC** and **CONTRACTOR** shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to **H-GAC**.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure.

*EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example; a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

**ARTICLE 11: SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 12: DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of **H-GAC** or his designee, who shall reduce his decision to writing and provide notice thereof to **CONTRACTOR**. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, **CONTRACTOR** requests a rehearing from the Executive Director of **H-GAC**. In connection with any rehearing under this Article, **CONTRACTOR** shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. **CONTRACTOR** may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, **CONTRACTOR** shall proceed diligently with the performance of this Contract and in accordance with **H-GAC'S** final decision.



**ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY**

Except as specified in any separate writing between the CONTRACTOR and an END USER, CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

**ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC**

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

**ARTICLE 15: TERMINATION FOR CAUSE**

H-GAC may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that H-GAC shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then H-GAC may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

**ARTICLE 16: TERMINATION FOR CONVENIENCE**

Either H-GAC or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from END USER for services actually performed; to the extent said services are satisfactory to END USER. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation is received by CONTRACTOR.

**ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by H-GAC, the State of Texas, and the acts and regulations of any funding entity. CONTRACTOR agrees to notify H-GAC of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

**ARTICLE 18: GOVERNING LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between END USER and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of purchase. CONTRACTOR shall immediately notify H-GAC of such disputes.

**ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE**

CONTRACTOR agrees to sell its products to END USERS based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable H-GAC order processing charge. On notification from an END USER that an order has been placed with CONTRACTOR, H-GAC will invoice CONTRACTOR for the applicable order processing charge. Upon delivery of any product/service by CONTRACTOR and acceptance by END USER, CONTRACTOR shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay H-GAC the full amount of the applicable order processing charge, whether or not CONTRACTOR has received an invoice from H-GAC. For sales made by CONTRACTOR based on this contract, including sales to entities without Interlocal Contracts, CONTRACTOR shall pay the applicable order processing charges to H-GAC. Further, CONTRACTOR agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Contract. H-GAC reserves the right to take appropriate actions including, but not limited to, contract termination if CONTRACTOR fails to promptly remit H-GAC's order processing charge. In no event shall H-GAC have any liability to CONTRACTOR for any goods or services an END USER procures from CONTRACTOR.

**ARTICLE 20: LIQUIDATED DAMAGES**

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

**ARTICLE 21: PERFORMANCE BONDS FOR INDIVIDUAL ORDERS**

Except as described below for fire apparatus, CONTRACTOR agrees to provide a Performance Bond at the request of END USER within ten (10) days of receipt of END USER's purchase order.

It shall be standard procedure for every order received for fire apparatus that a Performance Bond in the amount of the order be provided to the END USER. Failure of CONTRACTOR to provide such performance bond within ten (10) days of receipt of END USER's order may constitute a total breach of contract and shall be cause for cancellation of the order at END USER's sole discretion. END USER may choose to delete the requirement for a Performance Bond at END USER's sole discretion. If the bond requirement is waived, END USER shall be entitled to a price reduction commensurate with the cost that would have been incurred by CONTRACTOR for the bond.

**ARTICLE 22: CHANGE OF CONTRACTOR STATUS**

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

**ARTICLE 23: LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD [IF APPLICABLE]**

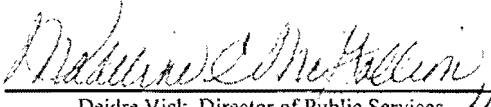
CONTRACTOR will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed for Houston-Galveston Area Council, Houston, Texas:

  
\_\_\_\_\_  
Jack Vick, Executive Director

Attest for Houston-Galveston Area Council, Houston, Texas:

  
\_\_\_\_\_  
Deidre Vick, Director of Public Services *for Vick*  
Date: 10/03, 2012

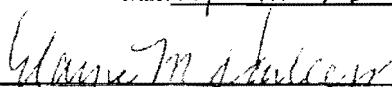
Signed for Landscape Structures Inc. Delano, Minnesota:

  
\_\_\_\_\_

Printed Name & Title: Fred Caslavka, CFO

Date: September 20, 2012

Attest for Landscape Structures Inc. Delano, Minnesota:

  
\_\_\_\_\_

Printed Name & Title: Elaine Harkess, Contract Administrator

Date: 9/20, 2012

**Attachment A**  
**Landscape Structures Inc.**  
**Parks & Recreation Equipment**  
**Contract No.: PR11-12**

Applicable items are the catalogs and associated price books described in the table below, as well any options priced in Offeror's response.

<b>HGAC CODE</b>	<b>MFR</b>	<b>CATALOG</b>	<b>DISCOUNT OFF LIST</b>
PR29	Landscape Structures, Inc.	2012 Landscape Structures Park & Playground Equipment Catalog	6.00%
PR52	PlaySense (Landscape Structures, Inc.)	2012 PlaySense Catalog	6.00%
PR65	Skatewave (Landscape Structures, Inc.)	2012 Skatewave Catalog	6.00%



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Houston-Galveston Area Council

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January 9, 2014

Elaine Harkess  
Contract Administrator  
Landscape Structures, Inc.  
601 7<sup>th</sup> Street South  
Delano, MN 55328

Dear Mrs. Harkess:

RE: Contract Changes on Contract PR11-12 for Parks & Recreation Equipment

H-GAC has reviewed your request for contract changes in the above referenced contract. We have determined that the changes are reasonable and conform to the provisions of the contract. Therefore, the request is approved.

Sincerely,

A handwritten signature in black ink, appearing to read 'Deidre Vick', is written over the typed name.

Deidre Vick  
Public Services Director



December 9, 2013

Houston-Galveston Area Council of Governments  
Attn: Ronnie Barnes, Purchasing Program Coordinator  
3555 Timmons Lane, Suite 120  
Houston, TX 77027

RE: Parks & Recreation Equipment Contract PR11-12 – Request for Price Increase

Dear Mr. Barnes:

In accordance with paragraph 45 PRICE CHANGES; Landscape Structures Inc. respectfully submits the enclosed manufacturer's price lists as the basis for a price increase effective January 1, 2014. Price lists submitted are Landscape Structures' *2014 Price List Playground Equipment (effective January 1, 2014)*, *2014 Price List PlaySense (effective January 1, 2014)* and *2014 Price List Skatewave (effective January 1, 2014)*.

Price increase under the HGAC contract will be effective upon approval. Prices will remain firm until December 31, 2014.

Also included is the 2013 versus 2014 price comparison spreadsheet (Landscape Structures, PlaySense and Skatewave are on separate tabs).

Price lists dated January 1, 2014 supersede all previous catalogs/product offerings.

If you have any questions, please feel free to contact me at 800-358-8598 or email at [elaineharkess@playlsi.com](mailto:elaineharkess@playlsi.com).

Respectfully,

Elaine Harkess  
Contract Administrator

Enclosures

INVITATION CONDITIONS PRICING		Invitation No:	PR11-12
Offeror Name:		Landscape Structures Inc.	
*** Offerer should reference this Invitation's Section-B, subsection 5.6 ***			
(1) Bid each option item on a single, separate line.			
(2) Insert additional lines as necessary. A single, continuous Form-E shall be used.			
(3) No handwritten entries			
HGAC LINE ITEM PRODUCT CODE ASSOCIATED WITH OPTION (e.g. "PR75")	OPTION DESCRIPTION	OFFERED PRICE	
PR25	Quantity Discount on Landscape Structures Playground Equipment for a single order over \$80,000	-2%	
PR45	Quantity Discount on Landscape Structures PlaySense Playground Equipment for a single order over \$80,000	-2%	
PR57	Quantity Discount on Landscape Structures Skatewave Skatepark Equipment for a single order over \$80,000	-2%	
PR25, PR45, PR57	Installation of Landscape Structures Inc. and PlaySense Playground Equipment and Skatewave Skatepark Equipment	per LSI current Installation Chart	
PR25, PR45, PR57	Freight for Landscape Structures Inc. and PlaySense Playground Equipment and Skatewave Skatepark Equipment; Freight is "F.O.B. Destination, Freight Prepaid and Added"	per LSI current Freight Chart	
PR25, PR45	Poured-in-Place Rubber Safety Surfacing (for a single order total of PIP Surfacing up to \$80,000)	Not to exceed Cost plus 25%	
PR25, PR45	Poured-in-Place Rubber Safety Surfacing (for a single order total of PIP Surfacing over \$80,000)	Not to exceed Cost plus 23%	
PR25, PR45	Engineered Wood Fiber Safety Surfacing (for a single order total of Eng. Wood Fiber Surfacing up to \$80,000)	Not to exceed Cost plus 25%	
PR25, PR45	Engineered Wood Fiber Safety Surfacing (for a single order total of Eng. Wood Fiber Surfacing over \$80,000)	Not to exceed Cost plus 23%	
PR25, PR45	Rubber Safety Surfacing Tiles (for a single order total of Rubber Tile up to \$80,000)	Not to exceed Cost plus 25%	
PR25, PR45	Rubber Safety Surfacing Tiles (for a single order total of Rubber Tile over \$80,000)	Not to exceed Cost plus 23%	
PR25, PR45, PR57	Miscellaneous Related Products and Services necessary to provide turnkey project solutions, including, but not limited to, shelters, water play, site work and site furnishings (for a single order total of Miscellaneous Product up to \$80,000)	Not to exceed Cost plus 25%	
PR25, PR45, PR57	Miscellaneous Related Products and Services necessary to provide turnkey project solutions, including, but not limited to, shelters, water play, site work and site furnishings (for a single order total of Miscellaneous Product over \$80,000)	Not to exceed Cost plus 23%	
PR25, PR45, PR57	Landscape Structures Inc. Custom Products	quoted on per project basis	
PR25, PR45	Landscape Structures Inc. PebbleFlex® safety surfacing	quoted on per project basis	
PR25, PR45	Landscape Structures Inc. AquaFlex® Waterplay Surfacing	quoted on per project basis	
PR25, PR45, PR57	Landscape Structures Inc. Replacement Parts	quoted on per project basis	
PR25, PR45, PR57	Safety audits	Not to exceed Cost plus 25%	
PR25, PR45, PR57	Structural calculations	Not to exceed Cost plus 25%	
PR25, PR45, PR57	Landscape Structures Inc. Maintenance Binder (Model # 127400A)	\$69.00	
PR25, PR45, PR57	Landscape Structures Inc. Maintenance Kit (Model # 107048A)	\$125.00	
PR25, PR45, PR57	Bonding Fee (Payment and Performance Bonds when required by customer)	3% of total PO amount	



## 2014 Installation Rates\*

**Rates apply to Landscape Structures and PlaySense Playground Equipment and Skatewave Skatepark Equipment**

State	Installation Rate*	State	Installation Rate*
Alabama	38%	Montana	41%
Alaska	52%	Nebraska	41%
Arizona	52%	Nevada	41%
Arkansas	38%	New Hampshire	44%
California	47%	New Jersey	46%
Colorado	44%	New Mexico	49%
Connecticut	55%	New York	52%
Delaware	44%	North Carolina	39%
Florida	44%	North Dakota	38%
Georgia	44%	Ohio	44%
Hawaii	49%	Oklahoma	39%
Idaho	38%	Oregon	41%
Illinois	49%	Pennsylvania	44%
Indiana	44%	Rhode Island	46%
Iowa	41%	South Carolina	38%
Kansas	38%	South Dakota	38%
Kentucky	44%	Tennessee	44%
Louisiana	38%	Texas	49%
Maine	46%	Utah	39%
Maryland	55%	Vermont	41%
Massachusetts	52%	Virginia	55%
Michigan	41%	Washington	46%
Minnesota	49%	West Virginia	45%
Mississippi	40%	Wisconsin	38%
Missouri	41%	Wyoming	39%

**\*Rates are a maximum allowable percentage under the contract.**

1. Minimum Installation Fee is \$5,000.00

2. To calculate Installation Fee:

Multiply Total List Price of Equipment x State Installation Rate = Cost of Installation

3. Prices listed above are for installation only and do not include off loading of equipment at time of delivery, storage, security, or any applicable taxes, bonds, or permits.

4. Standard Terms and Conditions for Installation apply

Attachment B

Letter dated February 3, 2014 from Landscape Structures, Inc., to the City of Los Angeles, Department of Recreation and Parks authorizing the City to piggyback on the H-GAC Contract.





February 3, 2014

City of Los Angeles  
111 East First Street  
Los Angeles, CA 90012

RE: HGAC Contract No. PR11-12 For the Supply of Parks & Recreation Equipment

To Whom It May Concern:

Landscape Structures Inc. authorizes the City of Los Angeles to utilize the HGAC contract terms and conditions for park and playground purchases, installation and related products and services.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Fred Caslavka'.

Fred Caslavka  
CFO

REPORT OF GENERAL MANAGER

NO. 14-050

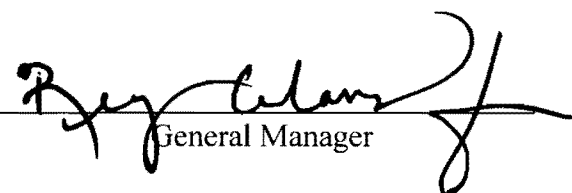
DATE April 2, 2014

C.D. ALL

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ALTERNATIVE ENERGY EQUIPMENT CONTRACT – USE OF HOUSTON-GALVESTON AREA COUNCIL SELECTION PROCESS FOR THE PURCHASE OF ALTERNATIVE ENERGY EQUIPMENT AND INSTALLATION SERVICES WITH SOLARWORLD AMERICAS LLC

R. Adams	_____	V. Israel	_____
*R. Barajas	<u>20</u>	K. Regan	_____
H. Fujita	_____	N. Williams	_____

  
 \_\_\_\_\_  
 General Manager

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

RECOMMENDATIONS:

That the Board:

1. Approve the proposed contract, substantially in the form on file in the Board Office, between the City of Los Angeles (City) and SolarWorld Americas LLC, to provide alternative energy equipment (solar and wind) and installation services on an occasional and as-needed basis with a contract term expiring on January 31, 2015;
2. Find that the Houston-Galveston Area Council (H-GAC), acts as the agent for participating governmental agencies for alternative energy equipment (solar and wind) and installation services offered by SolarWorld Americas LLC and City is a participating agency;
3. Find that SolarWorld Americas LLC by written communication dated March 10, 2014, attached hereto and incorporated herein by reference as Attachment B, authorized City to utilize the HGAC contract terms and conditions for alternative energy equipment (solar and wind) and installation;
4. Find that SolarWorld Americas LLC, is experienced in providing energy equipment (solar and wind) and installation, and it is in the Department of Recreation and Parks' (Department) best interest to secure these services with SolarWorld Americas LLC;

## REPORT OF GENERAL MANAGER

PG. 2                      NO. 14-050

5. Find as the contract awarding authority, in accordance with Charter Section 371(e)(2), that the alternative energy equipment (solar and wind) and installation services to be provided by SolarWorld Americas LLC, are for the performance of professional, scientific, expert, technical or other special services are of a temporary and occasional character for which competitive bidding is not practicable or advantageous;
6. Find in accordance with Charter Section 371(e)(8), that the City may piggyback on the Houston-Galveston Area Council (H-GAC) Contract with SolarWorld Americas LLC, because contracts for cooperative arrangements with other governmental agencies for the utilization of the purchasing contracts and professional, scientific, expert or technical services contracts of those agencies and any implementing agreements are an exception to the City's competitive bidding requirements;
7. Find as the contract awarding authority, in accordance with Charter Section 371(e)(10), that the alternative energy equipment (solar and wind) and installation services to be provided by SolarWorld Americas LLC, are for the performance of professional, scientific, expert or technical services and the use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by common law;
8. Find as the contract awarding authority, in accordance with Charter Section 1022, that the Department of Recreation and Parks (Department) does not have, available in its employ, personnel with the necessary expertise to undertake and accomplish the aforementioned specialized supplies and professional services sought in a timely manner and the work can be performed more economically or feasibly by an independent contractor;
9. Direct the Board Secretary to transmit forthwith the proposed Contract to the Mayor for approval and to the City Attorney for review and approval as to form; and,
10. Authorize the Board President and Secretary to execute the proposed Contract upon receipt of the necessary approvals.

### SUMMARY:

On June 5, 2013, the Board approved the participation in the Los Angeles Department of Water and Power's (DWP) Feed-in Tariff (FiT) set pricing program as well as approved a conceptual plans for a solar array project to be located at Ken Malloy Harbor Regional Park (Board Report No. 13-129). This project proposed installing a 100-Kilowatt solar array farm. Based on the estimated power generated from this solar array, and the set price payback by DWP's FiT set pricing program, staff estimates generating an estimated \$36,000.00 annually.

## REPORT OF GENERAL MANAGER

PG. 3                      NO. 14-050

The Department is now ready to construct this solar array project. Staff has performed thorough marketing/pricing research for the highest quality solar and wind equipment/installation at the most competitive pricing. Based on the quality of equipment, historical experience in solar installation and the most competitive pricing, staff is recommending piggybacking on H-GAC contract with SolarWorld Americas LLC on this solar array project. SolarWorld Americas LLC, currently has a competitively bid contract through the H-GAC. Los Angeles City Charter Section 371(e)(8) allows an exception to the City's competitive bidding requirements where contractors for cooperative agreements with other governmental agencies for the utilization of the purchasing contracts and professional, scientific, expert or technical services contracts of those agencies and any implementing agreements.

It is expected that the Department will be exploring solar array projects throughout its park system and therefore is requesting to piggyback onto H-GAC's contract with SolarWorld Americas LLC, for the full term of their contract, expiring on January 31, 2015.

Department staff is recommending that the Board authorize the Department to piggyback on H-GAC's competitively bid contract with SolarWorld Americas LLC. SolarWorld Americas LLC has issued a letter dated March 10, 2014 (attached hereto and incorporated herein by reference as Attachment B) to the City which authorizes use of the contract with H-GAC. Under the H-GAC contract agreement, Article 6 "End User Agreement," the H-GAC allows for other entities to enter into their own contract with SolarWorld Americas LLC, utilizing the same terms and conditions of H-GAC's contract (Attachment A). The Board Office will issue a separate contract number and the Agreement will be executed between the SolarWorld Americas LLC, and the City through the Board. The SolarWorld LLC contract with H-GAC will expire on January 31, 2015.

The contractor is recommended to the Board for a contract term coinciding with HGAC's on-going contract expiring on January 31, 2015, in an amount not-to-exceed One Million Dollars (\$1,000,000.00). The contract amount is an estimate and the Department does not guarantee that the contract maximum amount will be reached. The purchase and installation services that the Department is requesting shall be on an as-needed basis; the Department, in entering into an agreement, guarantees no minimum amount of business or compensation. Contracts awarded shall be subject to funding availability.

### FISCAL IMPACT STATEMENT:

This contract will enable the Department to carry out various alternative energy equipment (solar and wind) and installation services on an occasional and as-needed basis in order to enhance the recreational experience of the public. There will be no direct fiscal impact to the Department's General Fund as funding will be identified on a per project basis.

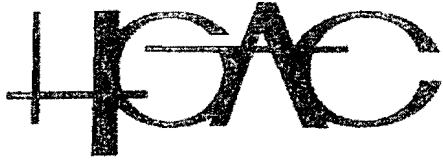
REPORT OF GENERAL MANAGER

PG. 4            NO. 14-050

This Report was prepared by Jim Newsom, Management Analyst II, reviewed by Cid Macaraeg, Senior Management Analyst II, Planning, Construction and Maintenance Branch.

Attachment A

Contract Executed on January 28, 2013, between Houston-Galveston Area Council (H-GAC) and SolarWorld Americas LLC.



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HOUSTON-GALVESTON AREA COUNCIL

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02/08/2013

Kevin Kilkelly, President  
Solar World Americas LLC  
4650 Adhor Lane  
Camarillo, CA 93012

Dear Mr. Kilkelly:

**RE: CONTRACT NO. AE02-13 for supply of Alternative Energy Equipment (Solar And Wind)**

Enclosed is the completely executed contract for AE02-13 for your files. Please be advised that your vendor number is #1173 and also serves as your password for the HGACBuy website. Visit our website at: [www.hgacbuy.org](http://www.hgacbuy.org) to schedule your vendor orientation. Should you require further information concerning this contract please call me at 713-499-6662.

Sincerely,

Angela George  
Contract Specialist  
Cooperative Purchasing Program  
H-GAC

Enclosures

Mailing Address  
PO Box 22777  
Houston, Texas 77227-2777  
Phone 713-627-3200

Physical Address  
3555 Timmons Lane, Suite 120  
Houston, Texas 77027  
Phone 713-627-3200

A CONTRACT BETWEEN  
HOUSTON-GALVESTON AREA COUNCIL  
Houston, Texas  
AND  
SOLARWORLD AMERICAS LLC  
Camarillo, California

This Contract is made and entered into by the Houston-Galveston Area Council of Governments, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, AND, SolarWorld Americas LLC hereinafter referred to as the CONTRACTOR, having its principal place of business at 4650 Adohr Lane, Camarillo, California 93012.

**ARTICLE 1:** **SCOPE OF SERVICES**

The parties have entered into an Alternative Energy Equipment (Solar And Wind) Contract to become effective as of February 1, 2013, and to continue through January 31, 2015 (the "Contract"), subject to extension upon mutual agreement of the CONTRACTOR and H-GAC. H-GAC enters into the Contract as Agent for participating governmental agencies, each hereinafter referred to as END USER, for the purchase of Alternative Energy Equipment (Solar And Wind) offered by the CONTRACTOR. The CONTRACTOR agrees to sell Alternative Energy Equipment (Solar And Wind) through the H-GAC Contract to END USERS.

**ARTICLE 2:** **THE COMPLETE AGREEMENT**

The Contract shall consist of the documents identified below in order of precedence:

1. The text of this Contract form, including but not limited to, Attachment A
2. General Terms and Conditions
3. Proposal Specifications No: AE02-13, including any relevant suffixes
4. CONTRACTOR's Response to Proposal No: AE02-13, including but not limited to, prices and options offered

All of which are either attached hereto or incorporated by reference and hereby made a part of this Contract, and shall constitute the complete agreement between the parties hereto. This Contract supersedes any and all oral or written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Contract cannot be modified without the written consent of both parties.

**ARTICLE 3:** **LEGAL AUTHORITY**

CONTRACTOR and H-GAC warrant and represent to each other that they have adequate legal counsel and authority to enter into this Contract. The governing bodies, where applicable, have authorized the signatory officials to enter into this Contract and bind the parties to the terms of this Contract and any subsequent amendments thereto.

**ARTICLE 4:** **APPLICABLE LAWS**

The parties agree to conduct all activities under this Contract in accordance with all applicable rules, regulations, directives, issuances, ordinances, and laws in effect or promulgated during the term of this Contract.

**ARTICLE 5:** **INDEPENDENT CONTRACTOR**

The execution of this Contract and the rendering of services prescribed by this Contract do not change the independent status of H-GAC or CONTRACTOR. No provision of this Contract or act of H-GAC in performance of this Contract shall be construed as making CONTRACTOR the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of CONTRACTOR are subject to the exclusive control and supervision of CONTRACTOR. CONTRACTOR is solely responsible for employee payrolls and claims arising therefrom.

**ARTICLE 6:** **END USER AGREEMENTS**

H-GAC acknowledges that the END USER may choose to enter into an End User Agreement with the CONTRACTOR through this Contract and that the term of said Agreement may exceed the term of the H-GAC Contract. However this acknowledgement is not to be construed as H-GAC's endorsement or approval of the End User Agreement terms and conditions. CONTRACTOR agrees not to offer to, agree to or accept from END USER any terms or conditions that conflict with or contravene those in CONTRACTOR's H-GAC contract. Further, termination of this Contract for any reason shall not result in the termination of the underlying End User Agreements entered into between CONTRACTOR and any END USER which shall, in each instance, continue pursuant to their stated terms and duration. The only effect of termination of this Contract is that CONTRACTOR will no longer be able to enter into any new End User Agreements with END USERS pursuant to this Contract. Applicable H-GAC order processing charges will be due and payable to H-GAC on any End User Agreements surviving termination of this Contract between H-GAC and CONTRACTOR.



**ARTICLE 7:****SUBCONTRACTS & ASSIGNMENTS**

CONTRACTOR agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Contract or any right, title, obligation or interest it may have therein to any third party without prior written notice to H-GAC. H-GAC reserves the right to accept or reject any such change. CONTRACTOR shall continue to remain responsible for all performance under this Contract regardless of any subcontract or assignment. H-GAC shall be liable solely to CONTRACTOR and not to any of its Subcontractors or Assignees.

**ARTICLE 8:****EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

CONTRACTOR shall maintain during the course of its work, complete and accurate records of items that are chargeable to END USER under this Contract. H-GAC, through its staff or its designated public accounting firm, the State of Texas, or the United States Government shall have the right at any reasonable time to inspect copy and audit those records on or off the premises of CONTRACTOR. Failure to provide access to records may be cause for termination of this Contract. CONTRACTOR shall maintain all records pertinent to this Contract for a period of not less than five (5) calendar years from the date of acceptance of the final contract closeout and until any outstanding litigation, audit or claim has been resolved. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. CONTRACTOR further agrees to include in all subcontracts under this Contract, a provision to the effect that the subcontractor agrees that H-GAC'S duly authorized representatives, shall, until the expiration of five (5) calendar years after final payment under the subcontract or until all audit findings have been resolved, have access to, and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving any transaction relating to the subcontract.

**ARTICLE 9:****REPORTING REQUIREMENTS**

CONTRACTOR agrees to submit reports or other documentation in accordance with the General Terms and Conditions of the Proposal Specifications. If CONTRACTOR fails to submit to H-GAC in a timely and satisfactory manner any such report or documentation, or otherwise fails to satisfactorily render performance hereunder, such failure may be considered cause for termination of this Contract.

**ARTICLE 10:****MOST FAVORED CUSTOMER CLAUSE**

If CONTRACTOR, at any time during this Contract, routinely enters into agreements with other governmental customers within the State of Texas, and offers the same or substantially the same products/services offered to H-GAC on a basis that provides prices, warranties, benefits, and or terms more favorable than those provided to H-GAC, CONTRACTOR shall notify H-GAC within ten (10) business days thereafter of that offering and this Contract shall be deemed to be automatically amended effective retroactively to the effective date of the most favorable contract, wherein CONTRACTOR shall provide the same prices, warranties, benefits, or terms to H-GAC and its END USER. H-GAC shall have the right and option at any time to decline to accept any such change, in which case the amendment shall be deemed null and void. If CONTRACTOR is of the opinion that any apparently more favorable price, warranty, benefit, or term charged and/or offered a customer during the term of this Contract is not in fact most favored treatment, CONTRACTOR shall within ten (10) business days notify H-GAC in writing, setting forth the detailed reasons CONTRACTOR believes aforesaid offer which has been deemed to be a most favored treatment, is not in fact most favored treatment. H-GAC, after due consideration of such written explanation, may decline to accept such explanation and thereupon this Contract between H-GAC and CONTRACTOR shall be automatically amended, effective retroactively, to the effective date of the most favored agreement, to provide the same prices, warranties, benefits, or terms to H-GAC.

The Parties accept the following definition of routine: A prescribed, detailed course of action to be followed regularly; a standard procedure. *EXCEPTION: This clause shall not be applicable to prices and price adjustments offered by a bidder, proposer or contractor, which are not within bidder's/ proposer's control [example: a manufacturer's bid concession], or to any prices offered to the Federal Government and its agencies.*

**ARTICLE 11:****SEVERABILITY**

All parties agree that should any provision of this Contract be determined to be invalid or unenforceable, such determination shall not affect any other term of this Contract, which shall continue in full force and effect.

**ARTICLE 12:****DISPUTES**

Any and all disputes concerning questions of fact or of law arising under this Contract, which are not disposed of by agreement, shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to CONTRACTOR. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such notice, CONTRACTOR requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, CONTRACTOR shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. CONTRACTOR may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Contract and in accordance with H-GAC'S final decision.

**ARTICLE 13: LIMITATION OF CONTRACTOR'S LIABILITY**

Except as specified in any separate writing between the CONTRACTOR and an END USER, CONTRACTOR's total liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, but excluding its obligation to indemnify H-GAC described in Article 14, is limited to the price of the particular products/services sold hereunder, and CONTRACTOR agrees either to refund the purchase price or to repair or replace product(s) that are not as warranted. In no event will CONTRACTOR be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. CONTRACTOR understands and agrees that it shall be liable to repay and shall repay upon demand to END USER any amounts determined by H-GAC, its independent auditors, or any agency of State or Federal government to have been paid in violation of the terms of this Contract.

**ARTICLE 14: LIMIT OF H-GAC'S LIABILITY AND INDEMNIFICATION OF H-GAC**

H-GAC's liability under this Contract, whether for breach of contract, warranty, negligence, strict liability, in tort or otherwise, is limited to its order processing charge. In no event will H-GAC be liable for any loss of use, loss of time, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such use may be disclaimed by law. Contractor agrees, to the extent permitted by law, to defend and hold harmless H-GAC, its board members, officers, agents, officials, employees, and indemnities from any and all claims, costs, expenses (including reasonable attorney fees), actions, causes of action, judgments, and liens arising as a result of CONTRACTOR's negligent act or omission under this Contract. CONTRACTOR shall notify H-GAC of the threat of lawsuit or of any actual suit filed against CONTRACTOR relating to this Contract.

**ARTICLE 15: TERMINATION FOR CAUSE**

H-GAC may terminate this Contract for cause based upon the failure of CONTRACTOR to comply with the terms and/or conditions of the Contract; provided that H-GAC shall give CONTRACTOR written notice specifying CONTRACTOR'S failure. If within thirty (30) days after receipt of such notice, CONTRACTOR shall not have either corrected such failure, or thereafter proceeded diligently to complete such correction, then H-GAC may, at its option, place CONTRACTOR in default and the Contract shall terminate on the date specified in such notice. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation was received by CONTRACTOR.

**ARTICLE 16: TERMINATION FOR CONVENIENCE**

Either H-GAC or CONTRACTOR may cancel or terminate this Contract at any time by giving thirty (30) days written notice to the other. CONTRACTOR may be entitled to payment from END USER for services actually performed; to the extent said services are satisfactory to END USER. CONTRACTOR shall pay to H-GAC any order processing charges due from CONTRACTOR on that portion of the Contract actually performed by CONTRACTOR and for which compensation is received by CONTRACTOR.

**ARTICLE 17: CIVIL AND CRIMINAL PROVISIONS AND SANCTIONS**

CONTRACTOR agrees that it will perform under this Contract in conformance with safeguards against fraud and abuse as set forth by H-GAC, the State of Texas, and the acts and regulations of any funding entity. CONTRACTOR agrees to notify H-GAC of any suspected fraud, abuse or other criminal activity related to this Contract through filing of a written report promptly after it becomes aware of such activity.

**ARTICLE 18: GOVERNING LAW & VENUE**

This Contract shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with this Contract shall lie exclusively in Harris County, Texas. Disputes between END USER and CONTRACTOR are to be resolved in accord with the law and venue rules of the state of purchase. CONTRACTOR shall immediately notify H-GAC of such disputes.

**ARTICLE 19: PAYMENT OF H-GAC ORDER PROCESSING CHARGE**

CONTRACTOR agrees to sell its products to END USERS based on the pricing and other terms of this Contract, including, but not limited to, the payment of the applicable H-GAC order processing charge. On notification from an END USER that an order has been placed with CONTRACTOR, H-GAC will invoice CONTRACTOR for the applicable order processing charge. Upon delivery of any product/service by CONTRACTOR and acceptance by END USER, CONTRACTOR shall, within thirty (30) calendar days or ten (10) business days after receipt of payment, whichever is less, pay H-GAC the full amount of the applicable order processing charge, whether or not CONTRACTOR has received an invoice from H-GAC. For sales made by CONTRACTOR based on this contract, including sales to entities without Interlocal Contracts, CONTRACTOR shall pay the applicable order processing charges to H-GAC. Further, CONTRACTOR agrees to encourage entities who are not members of H-GAC's Cooperative Purchasing Program to execute an H-GAC Interlocal Contract. H-GAC reserves the right to take appropriate actions including, but not limited to, contract termination if CONTRACTOR fails to promptly remit H-GAC's order processing charge. In no event shall H-GAC have any liability to CONTRACTOR for any goods or services an END USER procures from CONTRACTOR.

**ARTICLE 20: LIQUIDATED DAMAGES**

Any liquidated damages terms will be determined between CONTRACTOR and END USER at the time END USER's purchase order is placed.

**ARTICLE 21: PERFORMANCE BONDS FOR INDIVIDUAL ORDERS**

Except as described below for fire apparatus, CONTRACTOR agrees to provide a Performance Bond at the request of END USER within ten (10) days of receipt of END USER's purchase order.

It shall be standard procedure for every order received for fire apparatus that a Performance Bond in the amount of the order be provided to the END USER. Failure of CONTRACTOR to provide such performance bond within ten (10) days of receipt of END USER's order may constitute a total breach of contract and shall be cause for cancellation of the order at END USER's sole discretion. END USER may choose to delete the requirement for a Performance Bond at END USER's sole discretion. If the bond requirement is waived, END USER shall be entitled to a price reduction commensurate with the cost that would have been incurred by CONTRACTOR for the bond.

**ARTICLE 22: CHANGE OF CONTRACTOR STATUS**

CONTRACTOR shall immediately notify H-GAC, in writing, of ANY change in ownership, control, dealership/franchisee status, Motor Vehicle license status, or name, and shall also advise whether or not this Contract shall be affected in any way by such change. H-GAC shall have the right to determine whether or not such change is acceptable, and to determine what action shall be warranted, up to and including cancellation of Contract.

**ARTICLE 23: LICENSING REQUIRED BY TEXAS MOTOR VEHICLE BOARD [IF APPLICABLE]**

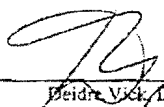
CONTRACTOR will for the duration of this Contract maintain current licenses that are required by the Texas Motor Vehicle Commission Code. If at any time during this Contract period, any CONTRACTOR'S license is not renewed, or is denied or revoked, CONTRACTOR shall be deemed to be in default of this Contract unless the Motor Vehicle Board issues a stay or waiver. Contractor shall promptly provide copies of all current applicable Texas Motor Vehicle Board documentation to H-GAC upon request.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

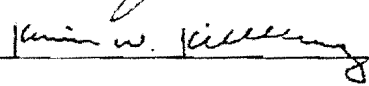
Signed for Houston-Galveston  
Area Council, Houston, Texas:

  
\_\_\_\_\_  
J. Steele, Executive Director

Attest for Houston-Galveston  
Area Council, Houston, Texas:

  
\_\_\_\_\_  
Deidra Vick, Director of Public Services  
Date: January 28, 2013

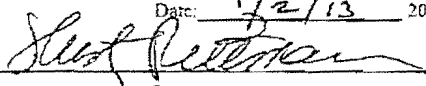
Signed for SolarWorld Americas LLC  
Camarillo, California:

  
\_\_\_\_\_  
Kevin W. Kireeny, President

Printed Name & Title:

KEVIN W. KIREENY, PRESIDENT

Attest for SolarWorld Americas LLC  
Camarillo, California:

Date: 1/2/13 2013  
  
\_\_\_\_\_  
Rusty Pittman, Head of Marketing

Printed Name & Title:

Rusty Pittman, Head of Marketing

Date: 1/2/13 2013

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### Appendix A – Certifications

### Appendix B – Major Equipment Specification Sheets

### Appendix C – Case Studies

### Appendix D – Certificate of Liability Insurance

## **A. Required H-GAC Forms**

Complete H-GAC forms are provided in Tab A.

## **B. Experience and Capabilities**

### **1. Company History**

SolarWorld Americas LLC is a wholly owned operating company of SolarWorld AG. SolarWorld AG is a publically traded, German headquartered company. It trades on the Frankfurt DAX exchange under the ticker symbol SWV. SolarWorld (and its predecessor owners ARCO, Siemens, and Shell) have been continuously producing solar modules since 1977.

The SolarWorld Group is among the top trio of the solar power industry worldwide. Its family of companies dedicates itself exclusively to the business of solar energy. Plus, it combines all stages of the photovoltaic value chain, from the raw material silicon to turn-key solar power plants, so that it can uphold high quality and environmental standards at every stage. SolarWorld operates factories in the United States and Germany as well as sales offices in all of the world's solar markets.

SolarWorld has been in the U.S. since the early days of the PV industry under well-known and respected company names including:

- ARCO Solar (Atlantic Richfield Oil) 1977—1989
- Siemens Solar (Siemens) 1990—2001
- Shell Solar (Royal Dutch/Shell Oil) 2001-2006

With about 3,500 employees, the SolarWorld group is one of the world's largest solar energy businesses – and the largest U.S. solar manufacturer for more than 35 years. In its innovation, performance and environmental track record, the company is an industry leader.

At its U.S. headquarters location in Hillsboro, Oregon, the company operates the equivalent of four production plants on a 97-acre campus, maintaining 500 megawatts worth of photovoltaic production capacity. Production from that site supplies demand not only in the United States but also in Canada and Latin America. The company's location in Camarillo, California, houses its commercial hub, providing sales, marketing and EPC services for all three markets in the Americas.

SolarWorld's system design and engineering capabilities are unparalleled in the industry and date back to the earliest days of the solar industry. A system designed, engineered and constructed by SolarWorld offers a unique opportunity to have one the leading manufacturers of PV technology have single point responsibility for not only system quality and performance, but as the manufacturer of the modules themselves, we provide the ultimate warranty for the heart of the system, the solar modules.

**a. SolarWorld Management**

Mr. Kevin Kilkelly is the President for SolarWorld Americas LLC (SWA), a wholly own subsidiary of SolarWorld AG (SWAG) the group's holding company.

Mr. Raju Yenamandra is the Vice President of Sales and Marketing for SWA and oversees the operations of the SolarWorld Power Projects Team (SWPP). Both Mr. Kilkelly and Mr. Yenamandra have the authority to make binding decisions on behalf of both SWA and SWPP.

Julie Ungerleider is Head of Systems and Engineering for SWPP. Ms. Ungerleider manages the execution and implementation of the company's utility scale projects.

**Contract Negotiation Point of Contact:**

**Carol Smith**

Manager, Contracts

Tel: (805) 388-6279

Cell: (805) 444-7425

Fax: (805) 388-6395

E-mail: carol.smith@solarworld-usa.com

**Alternative Point of Contact:**

**Tara McKinnon**

Sr. Sales Analyst

Tel: (805) 388 -6233

Cell: (805) 377-3524

Fax: (805) 388 6395

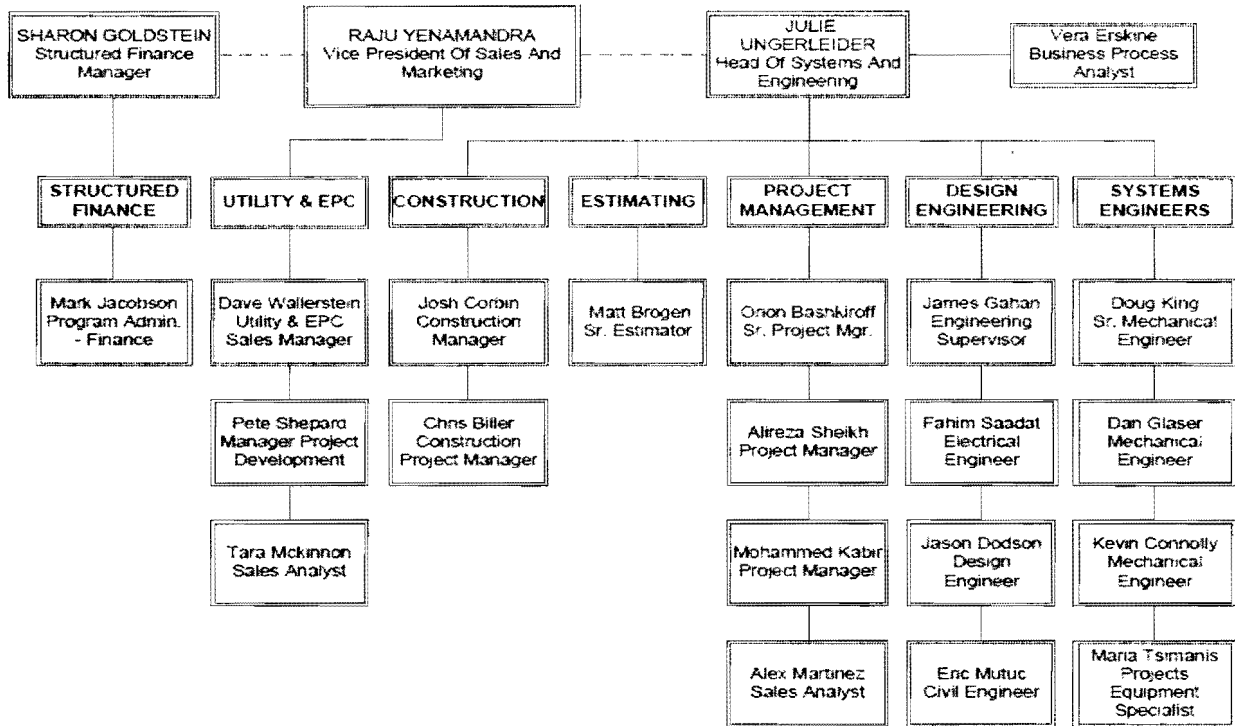
E-mail: tara.mckinnon@solarworld-usa.com

## **b. Project Team Key Personnel, Roles and Responsibilities**

- Kevin Kilkelly: President for SWA
- Raju Yenamandra: VP Sales & Marketing, responsible for contract negotiations
- Julie Ungerleider: Head of Systems & Engineering, responsible for utility scale project execution
- Dave Wallerstein: Utility and EP/EPC Sales Manager
- Pete Shepard: Manager, Project Development
- Doug King: SWA, Systems Integration Engineer, BSME, in charge of product development, value engineering, system integration, and quality management
- Dan Glaser: SWA, Project Engineer, BSME, engineering support
- Kevin Connolly: SWA Project Engineer, BSME, engineering support
- James Gahan: SWA Design Engineer Supervisor E.I.T., detail electrical engineering support
- Fahim Saadat: SWA Electrical Engineer
- Jason Dodson: SWA Design Engineer
- Eric Mutuc: SWA Civil Engineer
- Orion Bashkiroff: Senior Project Manager
- Mohammed Kabir: Project Manager
- Alireza Sheikh: Project Manager
- Matthew Brogan: Senior Estimator, CPE
- Alex Martinez: Sales Analyst
- Tara McKinnon: Sales Analyst
- Josh Corbin: SWA, Construction Manager and field management
- Chris Biller: Project Construction Manager
- Brad Chittick: Head of Operations, Purchasing, and Supply Chain
- Vera Erskine: Manager of Quality for SWA

**c. Project Organization Chart**

Our project team will be formed as shown below. Changes may be made depending on project constraints, parameters, and final contractual scope of work.



The primary engineering and design work will be performed by SolarWorld’s core project team with additional support provided by outside subcontractors as needed through well-defined scope-of-work sub-contracts. The design process will incorporate periodic design reviews, both internal and with local sub-contractors, to identify any potential problems and to ensure that interdisciplinary coordination is achieved.

The Project Team will generate the description of the requirements for the selection of all sub- contractors prior to requesting competitive sub-contracting bids. SolarWorld will ensure that all prospective sub-contractors are aware of any special conditions and terms including safety, site conditions, unique contract requirements, and procedural requirements for the work to be performed. Bidding sub-contractors may be required to



submit in addition to their bids contractor's specific documents such as, but not limited to, safety plan, staffing schedule, quality plan, etc.

Our sub-contractor selection criteria will be in alignment with key metrics to SolarWorld and the customer. Evaluation criteria shall include, but not limited to safety, social and environmental responsibility, quality, efficiency, and experience.

SolarWorld's Project Team shall be responsible for review of the sub-contractor bid packages. All selected sub-contractors shall meet any customer criteria. Performance and reporting requirements will be embedded in all sub-contract agreements.

Please see Tab A for a description of our Small Business Subcontracting Participation Plan.

## **2. Service Organization**

Upon completion of the project an Operations and Maintenance manual will be provided to the customer. The manual will include the procedure to request repairs or service calls.

SolarWorld has a dedicated Operations and Maintenance service line that is monitored twenty-four hours a day, seven days a week. Calls into the O & M service line will be responded to within twenty-four hours and if on-site service is required a local service technician will be dispatched to the site within forty-eight hours.

The Operations and Maintenance department utilizes a network of nationwide preferred subcontractors and installers to respond to local on-site needs. The number of qualified service personally varies based on the specific subcontractor.

Parts inventory will depend on the size of the project. Generally local subcontractors will maintain inventory of parts. For larger projects an inventory of spare parts may be kept onsite. At the close out of the project any training needed to familiarize the customer with the operations and maintenance of the system will be provided.

Please see Appendix B for small scale service requests and the process to initiate a warranty claim.

### 3. History of Local Government Business

SolarWorld has extensive experience supplying modules as components in solar generating systems used widely by various government agencies including municipal, state and federal agencies.

Our primary market strategy for the last thirty years has been to utilize wholesale distributors for the supply of our products to a greater number of independent contractors. Our contractor base is primarily responsible for the system installation and therefore we are simply not aware of all projects being implemented using our modules. For this reason it is difficult to estimate the percentage of our production that is used in government applications. Across local, municipal, state and federal sectors we would estimate that as much as 30-40 % of our annual production is used in these sectors.

The following table provides examples of our products usage over three decades of installations. More recently SolarWorld has re-engaged as an EPC provider of high value solar generating systems. SolarWorld being the module producer, support structure manufacturer, as well as the system engineer and constructor is redefining the term vertical integration.

Year	Project	Country	Power Output	Unit
2012	LADWP City of Adelanto (Engineering & Procurement)	California	11.58	MWp
2011	JCI City of Tulare (Engineering & Procurement)	California	1.15	MWp
2011	System3 City of Bakersfield (Engineering & Procurement)	California	1.15	MWp
2010	JCI Guam Naval Base	Guam	0.25	MWp
2010	Ziegelscheune	Germany	8.5	MWp
2010	Vestenbergsgreath	Germany	4.8	MWp
2009	Mengkofen	Germany	20.7	MWp
2008	Extremadura	Spain	30	MWp
2008	Kuffing	Germany	2	MWp
2008	Saxonia	Germany	1.8	MWp
2008	Tschechien Böhmerwald	Czech Republic	1.5	MWp
2008	Tschechien Dubnany	Czech Republic	1	MWp
2008	Vatican	Vatican State	221	kWp
2007	Hurlach	Germany	4.3	MWp
2007	Mallorca	Spain	8.7	MWp
2007	Oberhörbach	Germany	1.9	MWp
2006	El Dorado Turnkey System	California	1.08	MWp
2006	Cucamonga Turnkey System	California	247	kWp

SolarWorld Power Projects

HGACBuy

Proposal Number: 12148

Date: October 4, 2012

SOLARWORLD



2006	Greding I	Germany	1.2	MWp
2006	Malgersdorf	Germany	2.4	MWp
2006	Salching	Germany	1.38	MWp
2006	Semitropic Turnkey System	California	979	kWp
2005	Aidenbach	Germany	1.76	MWp
2005	Ballstadt	Germany	1.81	MWp
2005	Hofkirchen	Germany	2.37	MWp
2005	Penzing	Germany	3.63	MWp
2005	Waldpolenz	Germany	20	MWp
2004	Kaufbeuren	Germany	2	MWp
2004	Desert Water Turnkey System	California	335	kWp
2004	Leipzinger Land Turnkey System	Germany	5	MWp
2004	Hoslwang Turnkey System	Germany	1.84	MWp
2004	Tesco Lotus Building Turnkey System	Thailand	461	kWp
2003	SSESI Warehouse Turnkey System	California	245	kWp
2003	United Parcel Service Turnkey System	California	120	kWp
2003	Danmere Shutters Design and Materials	California	183	kWp
2003	EMSD Government Bldg. Turnkey System	Hong Kong	359	kWp
2003	CSU Northridge Design and Materials	California	225	kWp
2003	Loyola Marymount Univ. Module Supply	California	750	kWp
2003	Fala Marketing Module Supply	New York	1.2	MWp
2002	Neutrogena Module Supply	California	470	kWp
2002	Toyota Module Supply	California	550	kWp
2002	AESE Engineering Design and Materials	California	80	kWp
2002	Delta Tau Computers Design and Materials	California	183	kWp
2001	Floriade Exhibition Hall Turnkey System	Netherlands	2.3	MWp
1998	Munich Trade Fair Turnkey System 1998	Germany 2,100	2.1	MWp
1997	Sacramento Airport Module Supply	California	129	kWp
1997	Yuma Proving Grounds Module Supply	Arizona	450	kWp
1995	Monterey Hills School Module Supply	California	100	kWp
1994	Ft. Davis Module Supply	Texas	127	kWp
1994	HEDGE Substation Module Supply	California	254	kWp
1993	SMUD Grid Support Module Supply	California	250	kWp
1993	SMUD Residential Com. Turnkey System	California	440	kWp
1992-93	Kerman Substation Turnkey System	California	650	kWp
1990-92	1,000 Roof Program Component Supply	Germany	1.4	MWp
1990-91	Phalk 500 Laminate Supply	Germany	560	kWp
1989-90	PVUSA-US1 Turnkey System	California	210	kWp
1986	Austin PV-300 Turnkey System	Texas	300	kWp
1985	John Long Solar One Turnkey System	Arizona	190	kWp
1983-85	Rancho Seco Panel supply	California	2.08	MWp
1983-85	Carriso Plains Build, own, operate	California	6.1	MWp
1982	Hesperia (Lugo) Build, own, operate	California	1.1	MWp

## 4. References

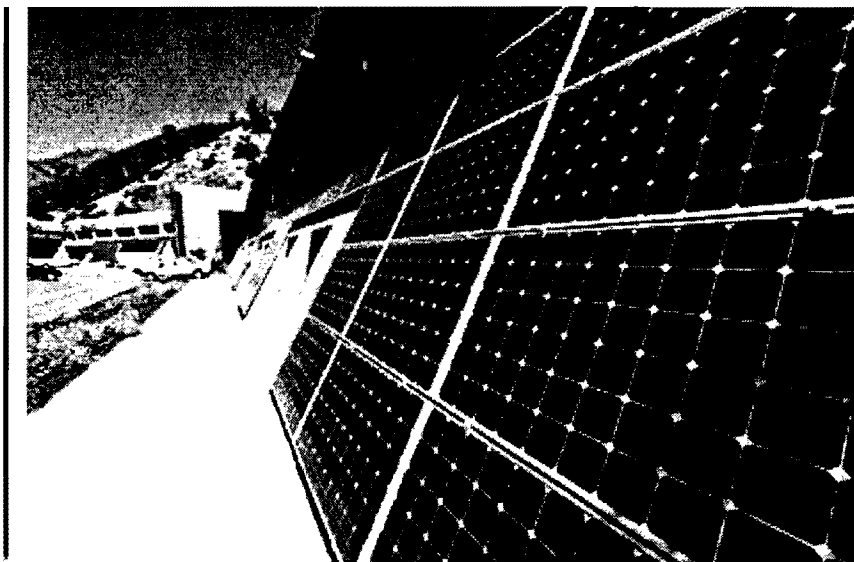
### Cincinnati Zoo

Cincinnati, OH  
1.6 MW  
Roof mount installation  
Completed in 2010  
Installed by Melink Corp.  
Contact: Jeremy Chapman  
Phone: 513-965-7349  
Email:  
[jchapman@melinkcorp.com](mailto:jchapman@melinkcorp.com)



### El Portal Administrative Complex

Yosemite National Park, CA  
672 kW  
Roof mount, facade, and carport  
Completed in 2011  
Installed by Suntek  
Contact: Phil DelNegro  
Phone: 949-348-9276  
Email:



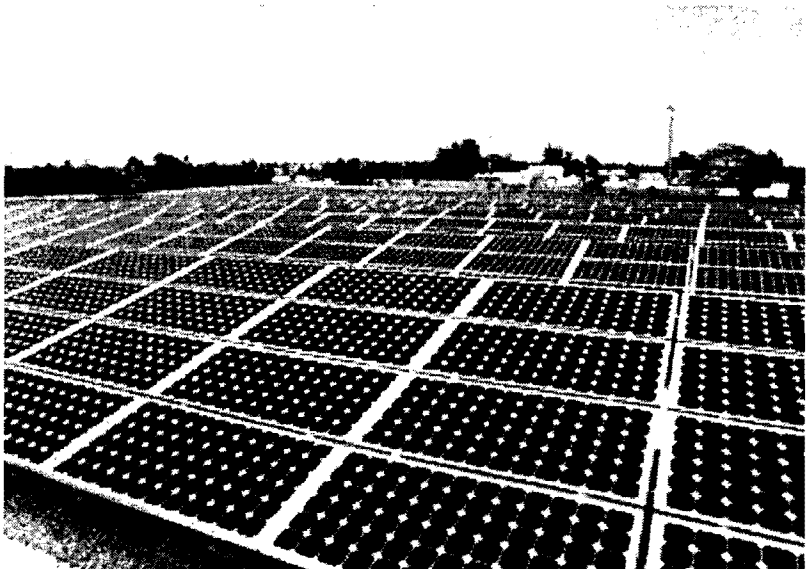
## SPAWAR

San Diego, CA  
1.3 MW  
Roof mount installation  
Completed in 2011  
Installed by Stronghold  
Engineering  
Contact: Denny McGahey  
Phone: 951-684-9303, ext. 240  
Email: [dm@teamsei.com](mailto:dm@teamsei.com)



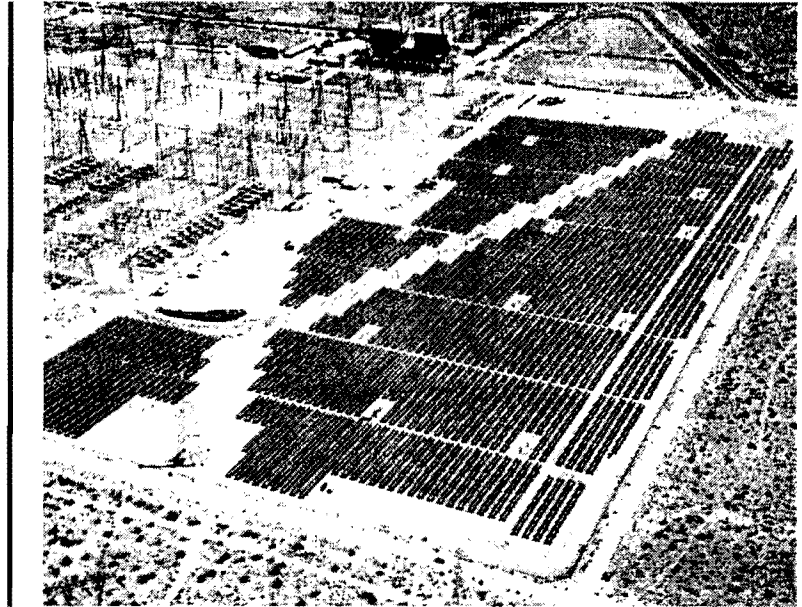
## Apra Harbor Naval Base

Guam  
298.2 kW  
Ground mount installation  
Completed in 2010  
Installed by Johnson Controls  
Contact: David J. Riley  
Phone: 916-294-8849  
Email: [david.j.riley@jci.com](mailto:david.j.riley@jci.com)



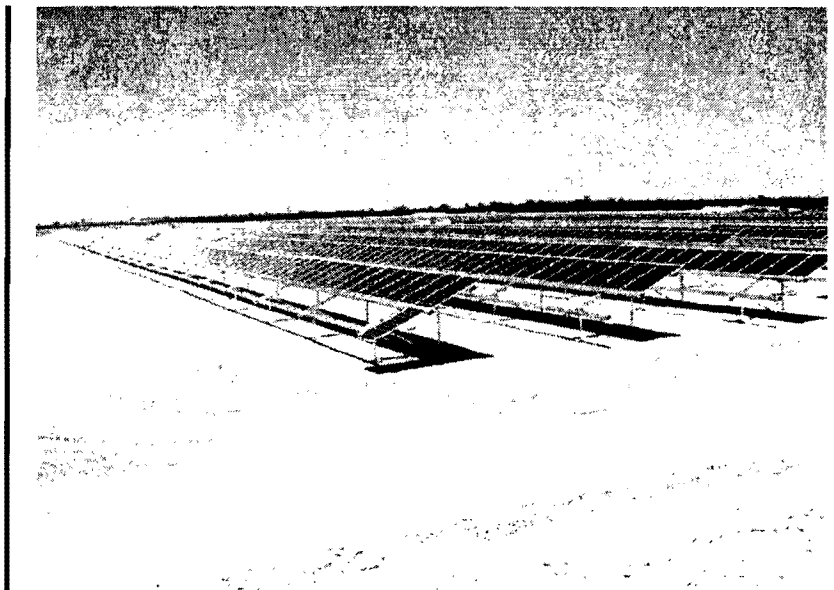
## LADWP Adelanto

Adelanto, CA  
11.6 MW  
Ground mount installation  
Completed in 2012  
Installed by SolarWorld  
Contact: Thomas Honles  
Phone: 213-367-7736  
Email: [thomas.honles@ladwp.com](mailto:thomas.honles@ladwp.com)



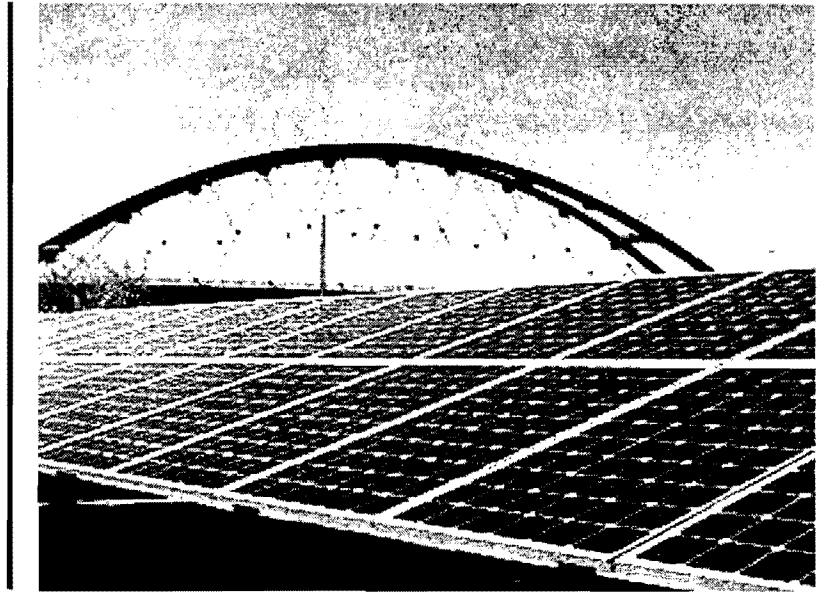
## City of Tulare Waste Water Treatment Plant

Tulare, CA  
1.15 MW  
Ground mount installation  
Completed in 2011  
Installed by Johnson Controls  
Contact: David J. Riley  
Phone: 916-294-8849  
Email: [david.j.riley@jci.com](mailto:david.j.riley@jci.com)



## Denver Federal Center

Lakewood, CO  
6.7 MW  
Roof mount, ground mount, and  
carport  
Completed in 2011  
Installed by E Light & Wind Solar  
Contact: Charlie Rienhardt  
Phone: 303-204-7009



## 5. Certifications

SolarWorld Sunmodule brand PV modules meet the most stringent international standards for quality, safety and performance, including UL 1703 and international IEC 61215. Our factories are certified to ISO 9001 quality standards, and we meet all Buy American Act requirements. Copies of the following certifications have been provided in Appendix A.

- SolarWorld Manufacturer's Certificate
- UL Certificate of Compliance
- IEC 61215 Sunmodule Plus
- IEC 61701 Solar Panel Salt Mist Corrosion Certificate
- IEC 61730 Sunmodule Plus
- ISO 9001-14001
- Intertek Authorization to Mark Certificate

## 6. Overall Description of SolarWorld Strengths

For over 35 years, SolarWorld has been at the forefront of the solar industry in the development of PV technology, products and systems design. We continually push the limits of innovation by having total control over all stages of the photovoltaic value chain, from the silicon raw material to turn-key solar power plants, so that we can uphold the highest quality and environmental standards at every stage of the process. We create American jobs, buy products from American companies and advance American technology – all as we help others operate more efficiently and cost effectively, to move our country closer to achieving clean energy independence. In conjunction with our in-market manufacturing, SolarWorld is committed to managing our resources wisely so that we can lower costs and maximize the return on investment to our customers.

SolarWorld is uniquely qualified for the supply of PV modules as well as to provide professional services for the design, supply and installation of photovoltaic (PV) systems. Our demonstrated expertise in solar technology, production, system design, integration and installation has positioned SolarWorld as one of the most competent PV companies, advancing the business objectives of our customers and business partners. We are not a newcomer to the PV business. SolarWorld's manufacturing experience dates back more than 35 years and our systems experience dates back nearly 30 years. For each project we will assemble a project team, including a unique mix of experience, professional capabilities and local presence.

SolarWorld's strength as a leading global PV manufacturer and systems integrator are demonstrated by our:

- **Experience** – SolarWorld possesses an impressive portfolio of system designs and installations, ranging from remote applications to residential system designs to large utility scale systems.
- **Technology** – SolarWorld produces world-class silicon modules with proven long-term reliability and performance.
- **Manufacturing capacity** – With over 500 MW of crystalline solar manufacturing capacity in place, SolarWorld is the nation's largest manufacturer. SolarWorld is positioned to meet the installation and schedule timeframes for this and all other projects in our sales pipeline.



- **Product longevity and warranties** – SolarWorld’s confidence in our modules’ performance and reliability is reflected in our industry leading 25-year linear power output warranty.
- **Financial strength** – SolarWorld has the ability and longevity to support our extended warranties and “back what we claim.” We are one of the largest PV manufacturers and system providers in the world, with the financial wherewithal to meet our commitments and obligations, now and in the future. 2011 world-wide revenue exceeded \$1.4 billion.

In summary, choosing SolarWorld as your turnkey system designer and integrator means more than assuring yourself of a top performing system. It means that you will be given a clear and understandable explanation of what your system can actually be counted upon to deliver, without overly aggressive assumptions or dubious claims. We warrant our systems for a quarter century, so we make sure we deliver what we promise.

## C. Products

### 1. List of Key Products

SolarWorld has extensive experience operating at numerous levels of the value chain. Our Scope of Work on projects has varied from simply high quality supplier of modules to supplying installation contractors with “engineered kits” to full turnkey installations. Below is a list of key products and services:

- Sunmodule Solar Panels
- Sunfix Plus – pitched roof mounting system
- Sunfix Ground Mount
- Suntrac Single-Axis Tracker
- Sunsolutions - Turnkey Solar Solutions
- Financing Solutions
- SolarWorld provides inverters from industry leading manufacturers such as SMA, Advanced Energy, SatCon and Schneider Electric.

## **2. Product Specifications**

Datasheets have been provided in Appendix B.

## **3. Overall Description of Product Strengths**

### **a. Performance Guarantee and Warranty**

Not all modules are created equal. SolarWorld products are powered for performance and guaranteed for success. From crystals, wafers, and cells to PV panels and complete solar systems, SolarWorld products have consistently proven to produce more energy per rated kilowatt than other major brands.

Because SolarWorld produces the highest quality, we can guarantee the best performance. That's why SolarWorld was the first solar company to offer a 25-year linear performance guarantee. According to our guarantee, the actual power of a new module cannot deviate from the specified rated power by more than 3% during the first year; and afterward, the power will not decrease by more than 0.7% of the rate power per year. So at year 10, the Sunmodule's capacity is guaranteed to be at least 90% of the nameplate as opposed to the industry standard of 80%. This is added value that can help you get your project financed. As further expression of SolarWorld's industry-leading quality, we offer a 10 year product workmanship warranty. Please see Appendix B for complete warranty description.

Additionally, SolarWorld's unique plus-sorting method ensures that our customers receive the watts they pay for. With plus-sorting, SolarWorld delivers only modules that have greater than or equal to the nameplate-rate power. By delivering actual power, plus-sorting ensures that systems operate at top efficiency which results in maximum energy yield year after year.

### **b. Case Studies**

To support our claim case studies have been provided in Appendix C. The attached case studies demonstrate our reliable performance and leadership in energy yield and real world performance vs. lab measured efficiency.

### **c. Third-Party Pan File Validation**

#### 3rd Party Pan Files - "Performance You Can Trust"

Two leading innovators of advanced PV modules and system evaluation services, PV Evolution Labs and Black & Veatch, offer the industry's first third-party PAN file generation and validation services. PAN files are a critical step in producing accurate models of a PV project's performance and value. Independent third-party PAN file validation services allows for more accurate system valuation thereby providing data that greatly increases product bankability and allows for buying decisions based on truly comprehensive performance projections.

- Sound Business Partners & Verifiable Data
  - Tested According to IEC 61853 by PV Evolution Labs
  - PAN file modified by Black & Veatch according to sound, scientific & statistical methods
- Transparency
  - IEC 61853
  - Consistent methodology for all products to follow
- Reduced Risk and Financial Exposure
  - Investors
  - EPC – Energy Performance Guarantees

### **D. Promotion of Products and Services**

Renewable energy has become highly competitive in residential, commercial and public sector markets seeking energy security, energy solution development and solar power system implementation.

SolarWorld has over 600 registered installers, 150 Authorized Installers all of which have been audited, interviewed and approved by SolarWorld. This installer network provides coverage within every major market in the United States. SolarWorld also has a large Distribution Network which provides SolarWorld product and services to over a 1000 solar installers across the United States. Once awarded an H-GAC contract SolarWorld will launch

training and marketing campaign to promote the H-GAC contract to our network of Installers and Distributors to promote the benefits and benefits of a firm-fixed price pre-negotiated contract and the ease of procurement through a firm fixed pre-negotiated contract vehicle.

SolarWorld will be managing the contract directly and assigning registered installers as partners to the contract depending on the project size, requirements, etc., and/or working with a Registered or Authorized Installer as an Agent, where SolarWorld will manage the project as a Prime with the Agent acting as a subcontractor.

SolarWorld SunSolutions are customized to meet a customer's specific scope and needs. Our sales proposals are developed and customized based upon each potential installation. Developing a solar system solution begins with a detailed site assessment and evaluation first and foremost, followed by a balance of financial return, system efficiency and aesthetics. There are key factors to help determine a solar system solution as discussed in section D.1. Once these factors have been assessed, SolarWorld will utilize this information to design and engineer a proposed solution based upon all of these factors. The design and solution will take in consideration:

- Solar array optimized to take full advantage of the parameters
- Module Mounting – Roof, Ground, Tilt Angle, Orientation
- Number of Modules required
- Proposed system size – DC Watts (total number of modules multiplied by the modules standard test conditions (STC) Watts), and;
- Additional specifications

## A. Pricing

### 1. Sunolutions Systems Pricing

Systems are priced per watt due to site variables and location. The key factors to help determine a solar system solution and size includes but is not limited to:

- Solar Resource – how much sun?
- Site demand – current energy consumption and rates
- Area limitations – roof or ground area
- Loading requirements – wind, snow and seismic data
- Design standards
- Wiring requirements
- Financial feasibility and return on investment (savings)
- Environmental issues and benefits
- Customer specifications and requirements

#### a. H-GAC Zones Standards and Adders

##### Base System Price

Base System Installation: Standard flush-mounted photovoltaic system installation on a roof no greater than 40 feet in height above grade with a roof slope of no more than 30 degrees from horizon. The roof area shall be accessible by ladder, scissor lift, or other acceptable means. Installation assumes that the roof can support the additional weight of the photovoltaic system without additional bracing or structural reinforcement.

Standard roofing materials are standing seam metal and composition shingle.

Interconnection of the system to the grid shall be done through load or line side connection to the facility's existing electrical distribution system. Electrical distribution utility voltage shall be 480V or less, single or three phase (delta or wye), have adequate capacity to accommodate the solar photovoltaic system, and shall be easily accessible by conduit chase. The inverter(s) shall not be located more than 150 meters from the

point of interconnection and shall have adequate clearance per NEC requirements. DC combiner boxes shall be located no more than 150 meters from the inverter(s). The DC solar photovoltaic system voltage shall not exceed 600V. DC voltage drop shall not exceed two percent. AC voltage drop shall not exceed one and a half percent. System monitoring includes basic inverter level monitoring with a web-based online portal. Standard monitoring connection assumes an existing Ethernet connection within 150 meters of the inverter location easily accessible by conduit chase. Commissioning and testing of the inverters, monitoring, electrical wiring and other system components along with basic training of government facility personnel on the operation of the photovoltaic system has been included.

#### Racking Adders

**Ballasted:** Installation of photovoltaic modules and roof ballasted racking system on a roof with a slope no more than five degrees from horizontal. Installation assumes that the roof has adequate capacity to accommodate the weight of the photovoltaic system. Attachments to the roof shall only be used for seismic bracing and shall be flashed and sealed by a roofing contractor approved to maintain the existing roofing material warranty. Racking tilt will be 15 degrees or less.

**Flat Roof Tilted:** Installation of photovoltaic modules and roof penetrating tilted racking system on a roof with a slope no more than five degrees from horizontal. Standard installation assumes that the roof has adequate capacity to accommodate the weight of the photovoltaic system and roof purlins are spaced at a maximum of 8 feet in any direction. Attachments to the roof shall be flashed and sealed by a roofing contractor approved to maintain the existing roofing material warranty.

**Low Roof Weight:** Installation of photovoltaic modules and a low roof weight racking system on a roof with a slope no more than five degrees from horizontal. A low roof weight system is defined as a system with less than four pounds per square foot dead load over the footprint of the array. Any attachments to the roof shall be flashed and sealed by a roofing contractor approved to maintain the existing roofing material warranty. The module tilt angle shall be below 10 degrees.

Ground Mount Installation: Installation of modules using a fixed-tilt ground mounted racking system. Installation assumes the following: a level site cleared of above ground obstructions and vegetation; no above or below ground hazardous materials present; and site is easily accessible by standard construction equipment. The ground mounted racking system shall be anchored to the ground using driven hot-dipped galvanized steel piles, cast-in place reinforced concrete foundations, or appropriately sized earth screws. The foundation type will be determined based on an existing geotechnical report, soil conditions, and size of the system. Hard digging due to caliche, ledge, rock, concrete, or any other unknown obstructions will add additional cost and change the construction schedule. Any grading, clearing, and grubbing shall be completed by others before foundation installation. All backfill is assumed to be native soils. All excavation spoils shall be deposited and/or spread on-site. The contractor shall not be responsible for any damage to unmarked underground utilities caused by trenching or excavation. Additional services that can be provided at additional cost include civil design, fencing, permanent roads, geotechnical report, BMPs, SWPPP, grading permit, and NPDES permit.

#### Other Adders

Premium Black Modules: Modules supplied will have black back sheets and black anodized frames.

Inverter Extended Warranty: Extension of the manufacturer's inverter warranty for an additional five year term for up to twenty years. Inverters come with a ten year standard manufacturer's warranty. Apply the adder once for a fifteen year warranty and twice for a twenty year warranty.

Heavy Duty Racking: Adder for sites and mounting conditions that expose modules to loading pressures greater than 33.3 pounds per square foot as calculated per ASCE 7-05.

High Roof Access: Adder for photovoltaic installations on building heights greater than 40 feet above grade and/or with a roof pitch of more than 30 degrees from the horizon.

## **2. Sunsolutions Commercial Pricing w/Adders**

Date: February 13, 2013

Part Number	Product Name/ Product Description	Unit of Issue	H-GAC Price
EC0727	SunSolutions Up to 25kW	Watt	\$ 4.98
EC0728	SunSolutions 25kW to 100kW	Watt	\$ 4.30
EC0729	SunSolutions 100kW to 250 kW	Watt	\$ 3.47
EC0730	SunSolutions 250kW to 1MW	Watt	\$ 2.96
<b>Racking Additions</b>			
<b>Ballasted</b>			
EC0742	Up to 25kW	Watt	\$ 0.69
EC0743	25kW to 100kW	Watt	\$ 0.59
EC0744	100kW to 250 kW	Watt	\$ 0.48
EC0745	250kW to 1MW	Watt	\$ 0.42
<b>High Tilt Ballasted</b>			
EC0747	Up to 25kW	Watt	\$ 0.80
EC0748	25kW to 100kW	Watt	\$ 0.69
EC0749	100kW to 250 kW	Watt	\$ 0.59
EC0750	250kW to 1MW	Watt	\$ 0.53
<b>Flat Roof Tilted</b>			
EC0752	Up to 25kW	Watt	\$ 0.53
EC0753	25kW to 100kW	Watt	\$ 0.53
EC0754	100kW to 250 kW	Watt	\$ 0.53
EC0755	250kW to 1MW	Watt	\$ 0.53
<b>Low Roof Weight</b>			
EC0757	Up to 25kW	Watt	\$ 1.33
EC0758	25kW to 100kW	Watt	\$ 1.33
EC0759	100kW to 250 kW	Watt	\$ 1.33
EC0760	250kW to 1MW	Watt	\$ 1.33
<b>Ground Mount</b>			
EC0762	Up to 25kW	Watt	\$ 0.80
EC0763	25kW to 100kW	Watt	\$ 0.69
EC0764	100kW to 250 kW	Watt	\$ 0.59
EC0765	250kW to 1MW	Watt	\$ 0.48





<b>Other Additions</b>			
<b>Premium Black Modules</b>			
EC0767	Up to 25kW	Watt	\$ 0.10
EC0768	25kW to 100kW	Watt	\$ 0.10
EC0769	100kW to 250 kW	Watt	\$ 0.10
EC0770	250kW to 1MW	Watt	\$ 0.10
EC0772	Up to 25kW	Watt	\$ 0.11
EC0773	25kW to 100kW	Watt	\$ 0.11
EC0774	100kW to 250 kW	Watt	\$ 0.11
EC0775	250kW to 1MW	Watt	\$ 0.11
EC0777	Up to 25kW	Watt	\$ 0.16
EC0778	25kW to 100kW	Watt	\$ 0.16
EC0779	100kW to 250 kW	Watt	\$ 0.16
EC0780	250kW to 1MW	Watt	\$ 0.16
EC0782	Up to 25kW	Watt	\$ 0.16
EC0783	25kW to 100kW	Watt	\$ 0.16
EC0784	100kW to 250 kW	Watt	\$ 0.16
EC0785	250kW to 1MW	Watt	\$ 0.16

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Attachment B

Letter dated March 10, 2014 from SolarWorld Americas LLC to the City of Los Angeles, Department of Recreation and Parks authorizing the City of Los Angeles to piggyback on the H-GAC Contract.



March 10, 2014

Gino Ogtong  
City of Los Angeles  
Department of Recreation and Parks  
221 North Figueroa St. #100  
Los Angeles, CA 90012

Subj: HGAC Agreement No. AE02-13 for the Supply of Alternative Energy Equipment

Dear Mr. Ogtong:

SolarWorld Americas LLC authorizes the City of Los Angeles to utilize the HGAC contract terms and conditions for the supply of Alternative Energy Equipment and installation services.

If you have any questions, please contact me at (805) 444-7425

Sincerely,

A handwritten signature in black ink, appearing to read "CAS" followed by a long, sweeping horizontal line.

Carol A. Smith  
Government Program Manager

## MATTERS PENDING

Matters Pending will be carried for a maximum of six months, after which time they will be deemed withdrawn and rescheduled whenever a new staff report is received.

### GENERAL MANAGER'S REPORTS:

ORIGINALLY PLACED ON <u>BOARD AGENDA</u>	PLACED ON MATTERS <u>PENDING</u>	DEEMED <u>WITHDRAWN</u>
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None

### BIDS TO BE RECEIVED:

None

### PROPOSALS TO BE RECEIVED:

6/10/14      Operation and Maintenance of The Lummis House

### QUALIFICATIONS TO BE RECEIVED:

4/22/14      Heating, Ventilation, and Air Conditioning Construction, Retrofit, Maintenance  
and/or Repairs