



CITY of CALABASAS

**PROFESSIONAL SERVICES AGREEMENT**

**CONTRACT SUMMARY**

<b>Name of Contractor:</b>	PlayPower Little Tikes Farmington, Inc.
<b>City Department in charge of Contract:</b>	Community Services
<b>Contact Person for City Department:</b>	Erica L. Green
<b>Period of Performance for Contract:</b>	September 14, 2022 – September 14, 2024
<b>Not to Exceed Amount of Contract:</b>	\$1,500,000
<b>Scope of Work for Contract:</b>	Design and construction of new playground equipment and amenities at Gates Canyon Park

**Insurance Requirements for Contract:**

yes  no - Is General Liability insurance required in this contract?

If yes, please provide coverage amounts:

yes  no - Is Auto insurance required in this contract?

If yes, please provide coverage amounts:

yes  no - Is Professional insurance required in this contract?

If yes, please provide coverage amounts:

**California requires Worker’s Compensation insurance. If the vendor has no employees, a Worker’s Compensation Affidavit is required.**

Other:

**Proper documentation is required and must be attached.**

**PROFESSIONAL SERVICES AGREEMENT  
Providing for Payment of Prevailing Wages**

(City of Calabasas/ *PlayPower Little Tikes Farmington, Inc.*)

**1. IDENTIFICATION**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Calabasas, a California municipal corporation (“City”), and PlayPower Little Tikes Farmington, Inc. . a corporation (“Consultant”).

**2. RECITALS**

- 2.1 City has determined that it requires the following professional services from a consultant: Design and construction of new playground equipment and amenities at Gates Canyon Park.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

**3. DEFINITIONS**

- 3.1 “Scope of Services”: Such professional services as are set forth in Consultant’s August 5, 2022 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s August 5, 2022 fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 “Commencement Date”: September 14, 2022
- 3.4 “Expiration Date”: September 14, 2024

4. **TERM**

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 (“Termination”) below.

5. **CONSULTANT’S SERVICES**

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of two-million Dollars (\$2,000,000) unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall perform all work to the highest professional standards of Consultant’s profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant’s performance of such work.
- 5.4 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Greg Sippel** shall be Consultant’s project administrator and shall have direct responsibility for management of Consultant’s performance under this Agreement. No change shall be made in Consultant’s project administrator without City’s prior written consent.
- 5.5 To the extent that the Scope of Services involves trenches deeper than 4’, Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

- (1) Material that the contractor believes may be material that is hazardous

waste, as defined in § 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in the contract.

## **6. COMPENSATION**

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within thirty calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule. Fees for such additional services shall be paid within sixty days of the date Consultant issues an invoice to City for such services.
- 6.4 This Agreement is further subject to the provisions of Article 1.7 (commencing at Section 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates

certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.

- 6.5 To the extent applicable, at any time during the term of the Agreement, the Consultant may at its own expense, substitute securities equivalent to the amount withheld as retention (or the retained percentage) in accordance with Public Contract Code section 22300. At the request and expense of the consultant, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the Consultant. Upon satisfactory completion of the contract, the securities shall be returned to the Consultant.

**7. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material (“written products” herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

**8. RELATIONSHIP OF PARTIES**

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant’s employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

**9. CONFIDENTIALITY**

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

**10. INDEMNIFICATION**

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice.
- 10.3 City shall have the right to offset against the amount of any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and related to Consultant's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 will not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of

Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

## **11. INSURANCE**

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.

11.1.3 Worker's Compensation insurance as required by the laws of the State of California, including but not limited to California Labor Code § 1860 and 1861 as follows:

Contractor shall take out and maintain, during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of improvement; and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Contractor. Contractor and any of Contractor's subcontractors shall be required to provide City with a written statement acknowledging its obligation to secure payment of Worker's Compensation Insurance as required by Labor Code § 1861; to wit: 'I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against

liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.' If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker's Compensation law, Contractor shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify and hold harmless City for any damage resulting from failure of either Contractor or any subcontractor to take out or maintain such insurance.

- 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The General Liability Policy of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. The General Liability Policy required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of



cancellation imposes no obligation, and to delete the word “endeavor” with regard to any notice provisions. If this contract provides service to a Homeowners Association, that Homeowners Association must be listed as an additional insured in addition to the City.

- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant’s insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant’s employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond or other security acceptable to the City guaranteeing payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant’s liability or as full performance of Consultant’s duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

**12. MUTUAL COOPERATION**

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant’s services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Consultant’s performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require.

**13. RECORDS AND INSPECTIONS**

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities with respect to this Agreement.

**14. PERMITS AND APPROVALS**

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, encroachment permits and building and safety permits and inspections.

**15. NOTICES**

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during the addressee's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

City of Calabasas  
100 Civic Center Way  
Calabasas, CA 91302  
Attn: Erica L. Green  
Telephone: (818) 224-1654

If to Consultant:

PlayPower Little Tikes Farmington, Inc.  
878 E. Highway 60  
Monett, MO 65708  
Attn: Greg Sippel  
Telephone: (573) 701-2236  
Email: greg.sippel@playpower.com

With courtesy copy to:

Matthew T. Summers  
Colantuono, Highsmith & Whatley, PC  
City Attorney  
790 E. Colorado Blvd., Suite 850  
Pasadena, CA 91101  
Telephone: (213) 542-5700  
Facsimile: (213) 542-5710

**16. SURVIVING COVENANTS**

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

**17. TERMINATION**

- 17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on sixty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

**18. GENERAL PROVISIONS**

- 18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable and actual court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

- 18.10 This Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public agency, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.
- 18.11 This Agreement is further subject to the provisions of California Public Contracts Code § 6109 which prohibits the Consultant from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to §§ 1777.1 or 1777.7 of the Labor Code.

**19. PREVAILING WAGES**

- 19.1 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is subject to prevailing wage law, including, but not limited to, the following:
- 19.1.1 The Consultant shall pay the prevailing wage rates for all work performed under the Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Consultant shall pay the wage rate of the craft or classification most closely related to the omitted classification. The Consultant shall forfeit as a penalty to City \$50.00 or any greater penalty provided in the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under the Agreement employed in the execution of the work by Consultant or by any subcontractor of Consultant in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant.
- 19.1.2 Consultant shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Consultant is responsible for compliance with Section 1777.5 by all of its subcontractors.
- 19.1.3 Pursuant to Labor Code § 1776, Consultant and any subcontractor

shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Consultant in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code §§ 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.

19.1.4 Notwithstanding anything to the contrary, Consultant shall defend, indemnify, and hold harmless the City, and its officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of failure or alleged failure of Consultant to comply with such prevailing wage laws.”

19.2 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is further subject to 8-hour work day and wage and hour penalty law, including, but not limited to, Labor Code Sections 1810 and 1813, as well as California nondiscrimination laws, as follows:

19.2.1 Consultant shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Section 12940 of the Government Code. Pursuant to the provisions of the Labor Code, eight hours’ labor shall constitute a legal day’s work. Work performed by Consultant’s employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Consultant shall forfeit as a penalty to City \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by Consultant or by any Subcontractor of Consultant, for each calendar day during which such worker is required or permitted to

Professional Services Agreement  
Providing for Payment of Prevailing Wages  
*City of Calabasas/PlayPower Little Tikes Farmington, Inc.*

the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the provisions of the Labor Code.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

**“City”**  
City of Calabasas

**“Consultant”**  
*PlayPower Little Tikes Farmington, Inc. .*

By: \_\_\_\_\_  
*Mary Sue Maurer, Mayor*

By: \_\_\_\_\_  
*Todd Brinker, Senior Vice President*

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

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

By: \_\_\_\_\_  
*Kindon Meik, City Manager*

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

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

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

By: \_\_\_\_\_  
*Erica Green, Community Services Director*

Attest:

By: \_\_\_\_\_  
Maricela Hernandez, MMC, CPMC  
City Clerk

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

Approved as to form:

By: \_\_\_\_\_  
Matthew T. Summers  
Colantuono, Highsmith & Whatley, PC  
City Attorney

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



EXHIBIT A  
SCOPE OF WORK

See attached proposal.

EXHIBIT B  
APPROVED FEE SCHEDULE

See attached.

**NON-COLLUSION AFFIDAVIT**

State of California     )  
  ) ss.  
County of Los Angeles)

\_\_\_\_\_, being first duly sworn, deposes and says that he or she is \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.”

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Place of Residence

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

Notary Public in and for the County  
of  
State of California.

My Commission Expires \_\_\_\_\_, 20\_\_.

**WORKERS' COMPENSATION INSURANCE**  
**CERTIFICATE**

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATE: \_\_\_\_\_

(Contractor)

By:

(Signature)

(Title)

Attest:

By:

(Signature)

(Title)

Make Purchase Order/Check payable to: PlayPower LT Farmington, Inc.  
 c/o Pacific Park and Play 714 846-4885 fax 714 846-3485  
 P.O. Box 734155, Dallas, TX 75373-4155 email: pacificdzn@aol.com

**QUOTATION**

**PlayPower LT Farmington, Inc.**



Contact PlayPower LT Farmington at 800-325-8828

Sales Person: GUY DONAHOE

Pacific Park and Play

SITE LOCATION		BILL TO	
Quote #	2140021242	Date	8/9/2022
Version	2	Customer PO#	
CALABASAS - BRANDON'S VILLAGE		CALABASAS, CITY OF	
CALABASAS, CA 91302		COMMUNITY SERVICES DEPARTMENT	
Site Phone:		100 CIVIC CENTER WAY	
Site Fax:		CALABASAS, CA 91302	
attn:	ERICA L. GREEN	ATTN:	ERICA L. GREEN
RE::	CALABASAS - BRANDON'S VILLAGE	Phone:	(818) 224-1654 Ext.:
		Fax:	

QTY:	ITEM #	Description	Unit Price	Extended Price
1	LTCPs-BRANDON	CUSTOM LITTLE TIKES INCLUSIVE PLAY EQUIPMENT AS SPECIFIED.	\$350,000.0000	\$350,000.00
1	LTCPs-BRANDON1	INSTALLATION OF ALL EQUIPMENT.	\$142,000.0000	\$142,000.00
1	LTCPs-BRANDON2	SITE WORK FOR 2 - 5 AND 5 - 12 AREAS. SEE BELOW IN SPECIAL INSTRUCTIONS BOX FOR SITE WORK LIST.	\$147,550.0000	\$147,550.00
1	LTCPs-BRANDON3	SITE WORK FOR TOT AREA. SEE BELOW IN SPECIAL INSTRUCTIONS BOX FOR SITE WORK LIST.	\$9,500.0000	\$9,500.00
1	LTCPs-FENCE1	800' SECURITY FENCING.	\$3,200.0000	\$3,200.00
1	LTCPs-OVERNIGHT	OVERNIGHT SECURITY FOR 10 DAYS FOR POUR IN PLACE SURFACING.	\$5,600.0000	\$5,600.00
1	SPECTR-BRANDONPIP	PROVIDE 11,620 SQ/FT OF 3 1/2" POUR IN PLACE SURFACING, ALIPHATIC WITH COMPLEX GRAPHICS. INCLUDES FREIGHT AND INSTALLATION.	\$267,260.0000	\$267,260.00

1	SPECTR-BRANDONTUFPROVIDE 2,000 SQ/FT OF PLAY TURF SURFACING FOR TOT AREA.	\$48,000.0000	\$48,000.00
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ENTER SHIP TO ADDRESS IF DIFFERENT FROM SITE ADDRESS.

Credit Report Required: No

Installer: Installation Quote:

PSI & SPECTRATURF

Special Instructions: Terms: Net 30 days

<b>SubTotal</b>	\$973,110.00
<b>Install</b>	\$0.00
<b>PBO Amount</b>	
<b>PBO Freight</b>	
<b>Freight</b>	\$0.00
<b>TAX RATE</b>	9.50%
<b>TAX</b>	\$33,250.00
<b>TOTAL</b>	\$1,006,360.00

PURCHASE ORDER INFORMATION IS ABOVE ON THE FIRST PAGE OF THE QUOTATION.

\*\*\*PLAY EQUIPMENT, INSTALLATION OF PLAY EQUIPMENT, SITEWORK AND SURFACING ARE ESTIMATES FOR BUDGET PURPOSES ONLY. \*\*\*

\*\*\*QUOTE DOES NOT INCLUDE ANY PERMITS, IF REQUIRED BY YOUR ORGANIZATION, LANDSCAPE ARCHITECT DRAWINGS OR ANY FEES ASSOCIATED WITH THE PERMITS AND DRAWINGS.\*\*\*

INSTALLATION AND SITE WORK ARE INCLUDED IN TOTAL.  
 SITE WORK FOR AREA 2 - 5 AND 5 - 12:  
 REMOVE & DISPOSE OF 11,220 SQ/FT OF POUR IN PLACE SURFACING IS \$44,880.00.  
 REMOVE & DISPOSE OF EXISTING EQUIPMENT IS \$10,700.00.  
 400 SQ/FT OF CONCRETE SUBSTRATE TO EXPAND AREA IS \$4,000.00.  
 REMOVE AND DISPOSE OF 3,834 CU/FT OF BASE SUBSTRATE IS \$19,170.00.  
 PROVIDE 11,680 SQ/FT OF CONCRETE SUBSTRATE IS \$58,400.00.  
 REPAIR / REPLACE (4) SIDEWALK PANELS IS \$8,000.00.  
 REMOVE EXISTING CONCRETE FENCING ON WESTSIDE OF 2-5 AREA IS \$2,400.00.

SITE WORK FOR TOT AREA:  
 REMOVE AND DISPOSE OF EXISTING ACTIVITY PANELS IS \$1,500.00.  
 PROVIDE SITE PREPARATIONS FOR PLAYTURF IS \$8,000.00.

THANK YOU!

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CUSTOMER HEREBY SUBMITS ITS OFFER TO PURCHASE THE EQUIPMENT ACCORDING TO THE TERMS STATED IN THIS QUOTE AND SUBJECT TO FINAL APPROVAL BY PPLT.

Submitted By (Signature) \_\_\_\_\_ Printed Name and Title \_\_\_\_\_ Date \_\_\_\_\_

The foregoing quote and offer are hereby approved and accepted by PPLT.

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

Quote # 2140021242

## ADDITIONAL TERMS AND CONDITIONS OF SALE

1. Use and Maintenance. Customer agrees to regularly inspect and maintain the Equipment, and to provide, inspect and maintain appropriate safety surfacing under around the Equipment, in accordance with PPLT's product literature and the most current Consumer Product Safety Commission Handbook for Public Playground Safety.

2. Default, Remedies Delinquency Charges. Customer's failure to pay any invoice when due, or its failure to otherwise comply with the terms of this Quote, shall constitute a default under all unsatisfied invoices ("Event of Default"). Upon an Event of Default, PPLT shall have all remedies available to it at law or equity, including, without limitation, all remedies afforded a secured creditor under the Uniform Commercial Code. Customer agrees to assist and cooperate with PPLT to accomplish its filing and enforcement of mechanic's or other liens with respect to the Equipment or its location or its repossession of the Equipment and Customer expressly waives all rights to possess the Equipment after an Event of Default. All remedies are cumulative and not alternative, and no exercise by PPLT of a remedy will prohibit or waive the exercise of any other remedy. Customer shall pay all reasonable attorneys' fees plus any costs of collection incurred by PPLT in enforcing its rights hereunder. Subject to any limitations under law, Customer shall pay to PPLT as liquidated damages, and not as a penalty, an amount equal to 1.5% per month of any payment that is delinquent in such month and is not received by PPLT within ten (10) days after the date on which due...

3. Limitation of Warranty/ Indemnity. PPLT MAKES NO EQUIPMENT WARRANTIES EXCEPT FOR THOSE STANDARD WARRANTIES ISSUED WITH THE EQUIPMENT, WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. PPLT SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND SAVE PPLT HARMLESS FROM ALL CLAIMS OF ANY KIND FOR DAMAGES OF ANY KIND ARISING OUT OF CUSTOMER'S ALTERATION OF THE EQUIPMENT, ITS FAILURE TO MAINTAIN THE EQUIPMENT, ITS FAILURE TO PROPERLY SUPERVISE EQUIPMENT USE, OR ITS FAILURE TO PROVIDE AND MAINTAIN APPROPRIATE TYPES AND DEPTHS OF SAFETY SURFACING BENEATH AND AROUND THE EQUIPMENT IN ACCORDANCE WITH PPLT'S INSTALLATION AND OWNER'S MANUALS AND THE MOST CURRENT CONSUMER PRODUCT SAFETY COMMISSION HANDBOOK FOR PUBLIC PLAYGROUND SAFETY.

4. Restrictions. Until all amounts due hereunder are paid in full, Customer shall not: (i) permit the Equipment to be levied upon or attached under any legal process; (ii) transfer title to the Equipment or any of Customer's rights therein; or (iii) remove or permit the removal of the Equipment to any location not specified in this Quote.

5. Purchase Money Security Interest. Customer hereby grants, pledges and assigns to PPLT, and PPLT hereby reserves a purchase money security interest in, the Equipment in order to secure the payment and performance in full of all of Customer's obligations hereunder. Customer agrees that PPLT may file one or more financing statements, in order to allow it to perfect, acquire and maintain a superior security interest in the Equipment.

6. Choice of Law and Jurisdiction. All agreements between Customer and PPLT shall be interpreted, and the parties' obligations shall be governed, by the laws of the State of Missouri without reference to its choice of law provisions. Customer hereby consents to the personal jurisdiction of the state and federal courts located in the city and county of St. Louis, Missouri.

7. Title; Risk of Loss; Insurance. PPLT Retains full title to all Equipment until full payment is received by PPLT. Customer assumes all risk of loss or destruction of or damage to the Equipment by reason of theft, fire, water, or any other cause, occurrence of any such casualty shall not relieve the Customer from its obligations hereunder and under any invoices. Until all amounts due hereunder are paid in full, Customer shall insure the Equipment against all such losses and casualties.

8. Waiver; Invalidity. PPLT may waive a default hereunder, or under any invoice or other agreement between Customer PPLT, or cure such a default at Customer's expense, but shall have no obligation to do either. No waiver shall be deemed to have taken place unless it is in writing, signed by PPLT. Any one waiver shall not constitute a waiver of other defaults or the same kind of default at another time, or a forfeiture of any rights provided to PPLT hereunder or under any invoice. The invalidity of any portion of this Quote shall not affect the force and effect of the remaining valid portions hereof.

9. Entire Agreement; Amendment; Binding Nature. This fully-executed Quote, as supplemented by Change Orders invoices containing exact amounts of estimates provided herein, constitutes the complete and exclusive agreement between the parties. A Change Order is a written instrument signed by the Customer and PPLT stating their agreement as to any amendment in the terms of this Quote. Customer acknowledges that Change Orders may result in delays and additional costs. The parties agree that all Change Orders shall include appropriate adjustments in price and time frames relating to any requested amendments Upon full execution, this Quote shall be binding upon and inure to the benefit of the parties and their successors and assigns..

10. Counterparts; Electronic Transmission. This Quote, any invoice, and any other agreement between the parties, may be executed in counterparts, each of which shall constitute an original. The facsimile or other electronic transmission of any signed original document, retransmission of any signed facsimile or other electronic transmission, shall be the same as the transmission of an original. At the request of either party, the parties will confirm facsimile or other electronically transmitted signatures by signing an original document..



Make Purchase Order/Check payable to: PlayPower LT Farmington, Inc.  
 c/o Pacific Park and Play 714 846-4885 fax 714 846-3485  
 P.O. Box 734155, Dallas, TX 75373-4155 email: pacificdzn@aol.com

**QUOTATION**

**PlayPower LT Farmington, Inc.**



Contact PlayPower LT Farmington at 800-325-8828

Sales Person: GUY DONAHOE

Pacific Park and Play

SITE LOCATION		BILL TO	
Quote #	2140021242	Date	8/9/2022
Version	3	Customer PO#	
CALABASAS - BRANDON'S VILLAGE		CALABASAS, CITY OF	
CALABASAS, CA 91302		COMMUNITY SERVICES DEPARTMENT	
Site Phone:		100 CIVIC CENTER WAY	
Site Fax:		CALABASAS, CA 91302	
attn:	ERICA L. GREEN	ATTN:	ERICA L. GREEN
RE::	CALABASAS - BRANDON'S VILLAGE	Phone:	(818) 224-1654 Ext.:
		Fax:	

QTY:	ITEM #	Description	Unit Price	Extended Price
1	LTCPs-BRANDON	CUSTOM LITTLE TIKES INCLUSIVE PLAY EQUIPMENT AS SPECIFIED.	\$1,025,000.0000	\$1,025,000.00
1	LTCPs-BRANDON1	INSTALLATION OF ALL EQUIPMENT.	\$288,000.0000	\$288,000.00
1	LTCPs-BRANDON2	SITE WORK FOR 2 - 5 AND 5 - 12 AREAS. SEE BELOW IN SPECIAL INSTRUCTIONS BOX FOR SITE WORK LIST.	\$147,550.0000	\$147,550.00
1	LTCPs-BRANDON3	SITE WORK FOR TOT AREA. SEE BELOW IN SPECIAL INSTRUCTIONS BOX FOR SITE WORK LIST.	\$9,500.0000	\$9,500.00
1	LTCPs-FENCE1	800' SECURITY FENCING.	\$3,200.0000	\$3,200.00
1	LTCPs-OVERNIGHT	OVERNIGHT SECURITY FOR 10 DAYS FOR POUR IN PLACE SURFACING.	\$5,600.0000	\$5,600.00
1	SPECTR-BRANDONPIP	PROVIDE 11,620 SQ/FT OF 3 1/2" POUR IN PLACE SURFACING, ALIPHATIC WITH COMPLEX GRAPHICS. INCLUDES FREIGHT AND INSTALLATION.	\$267,260.0000	\$267,260.00

1	SPECTR-BRANDONTUFPROVIDE 2,000 SQ/FT OF PLAY TURF SURFACING FOR TOT AREA.	\$48,000.0000	\$48,000.00
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ENTER SHIP TO ADDRESS IF DIFFERENT FROM SITE ADDRESS.

Credit Report Required: No

Installer: Installation Quote:

PSI & SPECTRATURF

Special Instructions: Terms: Net 30 days

PURCHASE ORDER INFORMATION IS ABOVE ON THE FIRST PAGE OF THE QUOTATION.

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INSTALLATION AND SITE WORK ARE INCLUDED IN TOTAL.  
SITE WORK FOR AREA 2 - 5 AND 5 - 12:  
REMOVE & DISPOSE OF 11,220 SQ/FT OF POUR IN PLACE SURFACING IS \$44,880.00.  
REMOVE & DISPOSE OF EXISTING EQUIPMENT IS \$10,700.00.  
400 SQ/FT OF CONCRETE SUBSTRATE TO EXPAND AREA IS \$4,000.00.  
REMOVE AND DISPOSE OF 3,834 CU/FT OF BASE SUBSTRATE IS \$19,170.00.  
PROVIDE 11,680 SQ/FT OF CONCRETE SUBSTRATE IS \$58,400.00.  
REPAIR / REPLACE (4) SIDEWALK PANELS IS \$8,000.00.  
REMOVE EXISTING CONCRETE FENCING ON WESTSIDE OF 2-5 AREA IS \$2,400.00.

SITE WORK FOR TOT AREA:  
REMOVE AND DISPOSE OF EXISTING ACTIVITY PANELS IS \$1,500.00.  
PROVIDE SITE PREPARATIONS FOR PLAYTURF IS \$8,000.00.

THANK YOU!

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Submitted By (Signature) Printed Name and Title Date

The foregoing quote and offer are hereby approved and accepted by PPLT.

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

Quote #

<b>SubTotal</b>	\$1,794,110.00
<b>Install</b>	\$0.00
<b>PBO Amount</b>	
<b>PBO Freight</b>	
<b>Freight</b>	\$0.00
<b>TAX RATE</b>	9.50%
<b>TAX</b>	\$97,375.00
<b>TOTAL</b>	<b>\$1,891,485.00</b>

## ADDITIONAL TERMS AND CONDITIONS OF SALE

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Make Purchase Order/Check payable to: PlayPower LT Farmington, Inc.  
 c/o Pacific Park and Play 714 846-4885 fax 714 846-3485  
 P.O. Box 734155, Dallas, TX 75373-4155 email: pacificdzn@aol.com

**QUOTATION**

**PlayPower LT Farmington, Inc.**



Contact PlayPower LT Farmington at 800-325-8828

Sales Person: GUY DONAHOE

Pacific Park and Play

SITE LOCATION		BILL TO	
Quote #	2140021242	Date	8/4/2022
Version	1	Customer PO#	
CALABASAS - BRANDON'S VILLAGE		CALABASAS, CITY OF	
CALABASAS, CA 91302		COMMUNITY SERVICES DEPARTMENT	
Site Phone:		100 CIVIC CENTER WAY	
Site Fax:		CALABASAS, CA 91302	
attn:	ERICA L. GREEN	ATTN:	ERICA L. GREEN
RE::	CALABASAS - BRANDON'S VILLAGE	Phone:	(818) 224-1654 Ext.:
		Fax:	

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1	LTCPS-BRANDON2	SITE WORK FOR 2 - 5 AND 5 - 12 AREAS. SEE BELOW IN SPECIAL INSTRUCTIONS BOX FOR SITE WORK LIST.	\$147,550.0000	\$147,550.00
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1	SPECTR-BRANDONPIP	PROVIDE 11,620 SQ/FT OF 3 1/2" POUR IN PLACE SURFACING, ALIPHATIC WITH COMPLEX GRAPHICS. INCLUDES FREIGHT AND INSTALLATION.	\$267,260.0000	\$267,260.00

1	SPECTR-BRANDONTUFPROVIDE 2,000 SQ/FT OF PLAY TURF SURFACING FOR TOT AREA.	\$48,000.0000	\$48,000.00
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ENTER SHIP TO ADDRESS IF DIFFERENT FROM SITE ADDRESS.

Credit Report Required: No

Installer: Installation Quote:

PSI & SPECTRATURF

Special Instructions: Terms: Net 30 days

PURCHASE ORDER INFORMATION IS ABOVE ON THE FIRST PAGE OF THE QUOTATION.

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SITE WORK FOR AREA 2 - 5 AND 5 - 12:  
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REMOVE & DISPOSE OF EXISTING EQUIPMENT IS \$10,700.00.  
400 SQ/FT OF CONCRETE SUBSTRATE TO EXPAND AREA IS \$4,000.00.  
REMOVE AND DISPOSE OF 3,834 CU/FT OF BASE SUBSTRATE IS \$19,170.00.  
PROVIDE 11,680 SQ/FT OF CONCRETE SUBSTRATE IS \$58,400.00.  
REPAIR / REPLACE (4) SIDEWALK PANELS IS \$8,000.00.  
REMOVE EXISTING CONCRETE FENCING ON WESTSIDE OF 2-5 AREA IS \$2,400.00.

SITE WORK FOR TOT AREA:  
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THANK YOU!

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CUSTOMER HEREBY SUBMITS ITS OFFER TO PURCHASE THE EQUIPMENT ACCORDING TO THE TERMS STATED IN THIS QUOTE AND SUBJECT TO FINAL APPROVAL BY PPLT.

Submitted By (Signature) Printed Name and Title Date

The foregoing quote and offer are hereby approved and accepted by PPLT.

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

Quote #

<b>SubTotal</b>	\$1,322,950.00
<b>Install</b>	\$0.00
<b>PBO Amount</b>	
<b>PBO Freight</b>	
<b>Freight</b>	\$0.00
<b>TAX RATE</b>	9.50%
<b>TAX</b>	\$61,750.00
<b>TOTAL</b>	<b>\$1,384,700.00</b>

## ADDITIONAL TERMS AND CONDITIONS OF SALE

1. Use and Maintenance. Customer agrees to regularly inspect and maintain the Equipment, and to provide, inspect and maintain appropriate safety surfacing under around the Equipment, in accordance with PPLT's product literature and the most current Consumer Product Safety Commission Handbook for Public Playground Safety.

2. Default, Remedies Delinquency Charges. Customer's failure to pay any invoice when due, or its failure to otherwise comply with the terms of this Quote, shall constitute a default under all unsatisfied invoices ("Event of Default"). Upon an Event of Default, PPLT shall have all remedies available to it at law or equity, including, without limitation, all remedies afforded a secured creditor under the Uniform Commercial Code. Customer agrees to assist and cooperate with PPLT to accomplish its filing and enforcement of mechanic's or other liens with respect to the Equipment or its location or its repossession of the Equipment and Customer expressly waives all rights to possess the Equipment after an Event of Default. All remedies are cumulative and not alternative, and no exercise by PPLT of a remedy will prohibit or waive the exercise of any other remedy. Customer shall pay all reasonable attorneys' fees plus any costs of collection incurred by PPLT in enforcing its rights hereunder. Subject to any limitations under law, Customer shall pay to PPLT as liquidated damages, and not as a penalty, an amount equal to 1.5% per month of any payment that is delinquent in such month and is not received by PPLT within ten (10) days after the date on which due...

3. Limitation of Warranty/ Indemnity. PPLT MAKES NO EQUIPMENT WARRANTIES EXCEPT FOR THOSE STANDARD WARRANTIES ISSUED WITH THE EQUIPMENT, WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. PPLT SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND SAVE PPLT HARMLESS FROM ALL CLAIMS OF ANY KIND FOR DAMAGES OF ANY KIND ARISING OUT OF CUSTOMER'S ALTERATION OF THE EQUIPMENT, ITS FAILURE TO MAINTAIN THE EQUIPMENT, ITS FAILURE TO PROPERLY SUPERVISE EQUIPMENT USE, OR ITS FAILURE TO PROVIDE AND MAINTAIN APPROPRIATE TYPES AND DEPTHS OF SAFETY SURFACING BENEATH AND AROUND THE EQUIPMENT IN ACCORDANCE WITH PPLT'S INSTALLATION AND OWNER'S MANUALS AND THE MOST CURRENT CONSUMER PRODUCT SAFETY COMMISSION HANDBOOK FOR PUBLIC PLAYGROUND SAFETY.

4. Restrictions. Until all amounts due hereunder are paid in full, Customer shall not: (i) permit the Equipment to be levied upon or attached under any legal process; (ii) transfer title to the Equipment or any of Customer's rights therein; or (iii) remove or permit the removal of the Equipment to any location not specified in this Quote.

5. Purchase Money Security Interest. Customer hereby grants, pledges and assigns to PPLT, and PPLT hereby reserves a purchase money security interest in, the Equipment in order to secure the payment and performance in full of all of Customer's obligations hereunder. Customer agrees that PPLT may file one or more financing statements, in order to allow it to perfect, acquire and maintain a superior security interest in the Equipment.

6. Choice of Law and Jurisdiction. All agreements between Customer and PPLT shall be interpreted, and the parties' obligations shall be governed, by the laws of the State of Missouri without reference to its choice of law provisions. Customer hereby consents to the personal jurisdiction of the state and federal courts located in the city and county of St. Louis, Missouri.

7. Title; Risk of Loss; Insurance. PPLT Retains full title to all Equipment until full payment is received by PPLT. Customer assumes all risk of loss or destruction of or damage to the Equipment by reason of theft, fire, water, or any other cause, occurrence of any such casualty shall not relieve the Customer from its obligations hereunder and under any invoices. Until all amounts due hereunder are paid in full, Customer shall insure the Equipment against all such losses and casualties.

8. Waiver; Invalidity. PPLT may waive a default hereunder, or under any invoice or other agreement between Customer PPLT, or cure such a default at Customer's expense, but shall have no obligation to do either. No waiver shall be deemed to have taken place unless it is in writing, signed by PPLT. Any one waiver shall not constitute a waiver of other defaults or the same kind of default at another time, or a forfeiture of any rights provided to PPLT hereunder or under any invoice. The invalidity of any portion of this Quote shall not affect the force and effect of the remaining valid portions hereof.

9. Entire Agreement; Amendment; Binding Nature. This fully-executed Quote, as supplemented by Change Orders invoices containing exact amounts of estimates provided herein, constitutes the complete and exclusive agreement between the parties. A Change Order is a written instrument signed by the Customer and PPLT stating their agreement as to any amendment in the terms of this Quote. Customer acknowledges that Change Orders may result in delays and additional costs. The parties agree that all Change Orders shall include appropriate adjustments in price and time frames relating to any requested amendments Upon full execution, this Quote shall be binding upon and inure to the benefit of the parties and their successors and assigns..

10. Counterparts; Electronic Transmission. This Quote, any invoice, and any other agreement between the parties, may be executed in counterparts, each of which shall constitute an original. The facsimile or other electronic transmission of any signed original document, retransmission of any signed facsimile or other electronic transmission, shall be the same as the transmission of an original. At the request of either party, the parties will confirm facsimile or other electronically transmitted signatures by signing an original document..