



Representing: Play & Park Structures, Webcoat Products, LA Steelcraft,
L.Ph. Bolander & Sons, International Mulch Company, Tot Turf, Jet Mulch, Victor
Stanley, Custom Canopies, Superior Shades

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Revised Proposal and Contract Option #2

Upon acceptance, this Contract is between Northern California Play Works, Inc. ("Supplier") and Buyer. This proposal remains good for 30 days, unless withdrawn by Supplier at earlier date.

Buyer: Heather Elementary School Project: Heather Elementary School Date: July 27, 2015
2757 Melendy Drive 2757 Melendy Drive
San Carlos, CA 94070 San Carlos, CA 94070

A. Contract Scope. Supplier shall furnish the following materials and equipment:

Quantity	Description	Amount
	<u>Playground Equipment Option #2</u>	<u>Unit Price</u>
1 ea.	Custom Play Structure, 2-5 Age Group, 3-1/2" OD Aluminum Posts, Std. Mfr's Color Choices, By Play & Park Structures	\$ 19,387.00 ea.
	Less Courtesy Discount	(\$2,000.00)
1 ea.	Double Flyer Bouncer, Std. Mfr's Color Choices By Play & Park Structures	\$ 1,034.00 ea.
1 ea.	2+2 Swinger Bouncer, Std. Mfr's Color Choices By Play & Park Structures	\$ 749.00 ea.
	Materials Delivered to Project Site (Sales Tax and Freight Included)	\$ 23,254.00
1 ea.	Std. Installation of (1 ea.) Custom Play Structure 2-5 Years of Age by Play & Park Structures	
1 ea.	Std. Installation of (1 ea.) Double Flyer Bouncer by Play & Park Structures	
1 ea.	Std. Installation of (1 ea.) 2+2 Swinger Bouncer by Play & Park Structures	
	Total Cost of Installation Above	\$ 7,592.00
1600 Sq. Ft.	Resilient Rubber Surfacing, 2" Thick for up to 6'0 CFH, Color-50% Black & 50% Std. Color (Blue, Green, Terra Cotta), Aromatic Binder, Prevailing Wage, Furnished & Installed by Tot Turf	\$ 21,946.00

#000331

Site Preparation by Others

No Design Work

**Materials Delivered & Installed at Project Site
(Sales Tax and Freight Included)**

Heather Preschool Surfacing Existing Area Unit Price

-Provide Material, Equipment & Labor for
Removal & Disposal of 795 Sq. Ft. of 10"
Depth Wood Fiber in Preparation of Installing
New Poured in Place Pad

Provide Material & Labor for Installation of
795 Sq. Ft. of 2.5" Depth 50/50 Standard ~~Green~~ *Blue* *Sum*
And Black EPDM Poured in Place Safety Surfacing
with Aromatic Binder by Tot Turf

No Design Work

**Materials Delivered & Installed at Project Site \$ 17,128.00
(Sales Tax and Freight Included)**

Base Bid TOTAL: \$ 69,920.00

Clarifications and Exclusions:

Price includes sales tax and freight to project site.

Exclude All Other Items Not Mentioned in this Proposal.

B. Contract Price. The Contract Base Bid Total is \$ 69,920.00, subject to additions and deductions as provided for in this Contract.

C. Payment Schedule. Payments shall be made as follows with respect to the materials or equipment to be furnished: within fifteen (15) days of the approval of submittals, Buyer shall pay fifty (50) percent of the cost for the approved item(s); within fifteen (15) days of delivery, Buyer shall pay the balance for the full amount of the item(s)

D. Delivery. Buyer should allow at least four to six (4-6) weeks for the materials and equipment specified above from the date of receipt of payment and approved submittals. The parties acknowledge and agree that the actual date of delivery is subject to product availability and manufacturers' delivery dates at the date the order is placed.

E. Attached Documents. Attachment No. 1 "Terms and Conditions" and is hereby incorporated into this Contract by reference.

Signature: Terri Barber
Terri Barber, Sales Representative
Northern California Play Works, Inc.

Date: July 27/15

This Proposal is hereby accepted and I represent and warrant that I am authorized to sign this Contract on behalf of Buyer.

Signature: Suzanne Webster Morris

Date: 7/27/15

Print Name: Suzanne Webster Morris

Title/Position: Director of Special Education

Attachment 1: "Terms and Conditions"

- 1. Lien Releases.** Upon satisfactory payment being made for any portion of the materials furnished under this Contract, Supplier shall, prior to any further payment being made, furnish to Buyer a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that portion of the materials for which payment has been made.
- 2. Change-Orders.** A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract only if it is in writing and signed by the parties prior to the commencement of any work covered by a change order. A change-order shall adjust the Contract Price and shall extend the time for performance accordingly. Absent an executed written change-order, Supplier shall have no obligation to furnish any additional materials for the project.
- 3. Information and Access.** Buyer shall provide in a timely manner all information required for the project, shall ensure that Supplier has timely access to the site for the performance of this Contract, and shall fully cooperate with Supplier in all respects in connection with this Contract.
- 4. Submittals.** Within thirty (30) days of the execution of this agreement by both parties, Supplier shall furnish submittals for materials to be furnished under this Contract. In the event that the owner, architect, contractor or any other reviewing party requests additional information or documentation, Buyer shall promptly provide such request to Supplier and Supplier shall respond within thirty (30) days of receipt of such request. Within thirty (30) days of receipt of fully approved submittals for any materials to be provided under this Contract, Supplier shall order those materials from the manufacturer or supplier. Supplier shall have no obligation to furnish any material under this Contract unless and until it receives fully approved submittals for such materials. In the event that Supplier does not receive fully approved submittals within one hundred and eighty (180) days of the date of execution of this Contract, Supplier may exercise its right to terminate this Contract pursuant to Section 12 of this agreement.
- 5. Price Increases.** The parties acknowledge and understand that the materials to be furnished under this Contract are subject to regular price increases, and that such increases may occur prior to the approval of submittals. Supplier shall be responsible for any price increases that occur within thirty (30) days of the original bid date. Buyer shall be responsible for any price increases that occur more than thirty (30) days after such date. Within ten (10) days of receipt of the fully approved submittals, Supplier shall notify Buyer of any price increases. Upon receipt of such notice, Buyer shall execute and deliver to Supplier a written change order within five (5) days. Failure of the Buyer to provide such a change-order to Supplier constitutes a material breach of this Contract and Supplier may exercise its right to terminate this Contract pursuant to Section 12 of this agreement.
- 6. Verification of Funds.** Within seventy-two (72) hours of Supplier's request, Buyer shall provide to Supplier the name, address and phone number of any lender, owner, or other entity or individual providing funds for the project. Buyer shall provide, and shall authorize as necessary the release of, information to Supplier with regard to the amount and availability of funds for the project, as well as any other information requested by Supplier to verify that sufficient funds are available.
- 7. Withholding Payments.** Within seven (7) days of receipt of an invoice or other request for payment from Supplier, Buyer shall notify Supplier in writing of any portion of the performance that Buyer claims is not complete or requires corrections, or of any other offsets asserted by Buyer. Buyer shall specify in detail such claims, and shall give Supplier a reasonable opportunity to cure any such problems. If Buyer fails to provide such notice and opportunity to cure, Supplier shall not be responsible for any resulting damages. Buyer may initially withhold, and continue to withhold, from Supplier only amounts it reasonably, and in good faith, estimates to be necessary for the correction or completion of Supplier's performance under this Contract. The notice provided by Buyer under this section shall include a detailed accounting regarding any funds withheld. Buyer shall promptly make any and all payments otherwise due to Supplier.
- 8. Delay.** If progress of Supplier's performance is delayed due to any act or neglect of Buyer or agents of Buyer, or by changes ordered in the project, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions that could not reasonably be anticipated, or by any causes beyond Supplier's control, the contract time shall be extended to compensate for such delays.
- 9. Risk of Loss.** Buyer shall bear the risk of any loss or damage to the materials furnished under this Contract upon delivery to the project site or other designated storage sites.
- 10. Waiver of Subrogation.** Buyer and Supplier waive all rights against each other, subcontractors and suppliers, and their subcontractors and suppliers for damages caused by perils to the extent covered by property insurance provided under this Contract, except such rights as they may have to the proceeds of such insurance held by the parties as trustees.
- 11. Right to Stop Performance.** Supplier may, upon twenty-four (24) hours written notice, stop its performance under this Contract if Buyer is guilty of a material breach of this Contract or any provision thereof. The parties expressly agree that a material breach shall include, without limitation, the following: failure by Buyer to make payments when due under this Contract; failure by Buyer to furnish reasonable evidence satisfactory to Supplier that sufficient funds are available and committed for the entire cost of the project; failure by Buyer execute written Change Orders as required

Buyer's Initials



hereunder. Supplier shall not be responsible for any loss or damage (including consequential, indirect, incidental or specific damages) of any kind whatsoever incurred by Buyer as a result of such stoppage of performance. Furthermore, Buyer shall be liable to any third parties, including contractor and suppliers, for losses incurred as a result of such stoppage of performance.

12. Termination by Supplier. Supplier may, upon seven (7) days written notice, terminate this Contract if: (i) Supplier has stopped work on the project pursuant to Section 11 above; or (ii) the work on the project is stopped, in whole or in substantial part, for a period of thirty (30) days through no fault of Supplier, as a result of any order of a court or other public authority, or as a result of an act of government making materials unavailable. If this Contract is so terminated, Supplier may, without prejudice to any other right or remedy, recover costs, plus overhead and profits which shall be calculated as twenty (20) percent of the costs. If such termination is due to a material breach of Buyer, Supplier shall also recover profits that would have been earned had Supplier fully completed the project in addition to all other damages, and Supplier shall have no obligation to provide any warranty or warranty service in connection with any work, services or products furnished.

13. Termination of Other Contracts. In the event that Supplier exercises termination rights pursuant to Section 12 due to a material breach of Buyer, Supplier may also terminate any other contracts that Supplier has entered into with Buyer. In the event of such termination of other contracts, Supplier shall not be responsible for any loss or damage (including consequential, indirect, incidental or specific damages) of any kind whatsoever incurred by Buyer as a result of such termination(s). Furthermore, Buyer shall be liable to any third parties, including subcontractors and suppliers, for losses incurred as a result of such termination(s). Notwithstanding the termination of other contracts by Supplier, Buyer shall be obligated to pay Supplier any amounts due and payable under this and other contracts.

14. Termination by Buyer. Buyer may, upon seven (7) days written notice, terminate this Contract if Supplier repeatedly fails to supply proper materials in a timely manner, or repeatedly fails to make proper payment to suppliers, or persistently disregards laws or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial and material breach of this Contract. If this Contract is so terminated, Buyer may, without prejudice to any other right or remedy, finish the project by whatever reasonable method Buyer deems expedient, and shall take all reasonable measures to mitigate the costs in finishing the project.

15. Assignment. The parties to this Contract shall not assign their respective interests in this Contract, without the written consent of the other except as to the assignment of proceeds.

16. Governing Law. This Contract shall be governed by California law and any disputes shall be resolved in San Jose, California.

17. Notices. All notices required or permitted by this Contract shall be in writing, and shall be given (i) by personal delivery, or (ii) by registered or certified mail, return receipt requested, first class postage prepaid, and shall be addressed to the addresses specified herein above, or to any other address the parties shall designate in writing. Notices by personal delivery shall be deemed to have been given upon tender to natural person at the address provided herein above. Notices delivered by mail shall be deemed to have been given on the day it is deposited in the mail.

18. Interest. Payments due and unpaid under this Contract shall bear interest from the date payment is due at the rate of eighteen (18) percent per annum.

19. Attorneys' Fees. In the event that either party retains counsel to enforce this Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to other costs.

20. Nonwaiver. The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition. No receipt by Supplier of a lesser payment than the amount due under this Contract shall be considered to be other than on account of the earliest amount due, and no endorsement or statement on any check or letter accompanying a payment or check shall be considered an accord and satisfaction. Supplier may accept checks or payments without prejudice to Supplier's right to recover all amounts due and pursue all other remedies provided for in this Contract.

21. Time of Essence. Time is of the essence of this Contract and of each provision contained in it.

22. Parties in Interest. The terms, covenants, and conditions herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

23. Severability. Every provision of this Contract is intended to be severable. If any provision hereof is legally unenforceable, such provision shall not affect the enforceability of the remaining provisions of this Contract.

24. Precedence. In the event of an inconsistency or conflict between the documents, the specifications shall control the drawings, and these Terms and Conditions shall control all other documents.

25. Entire Contract. This Contract constitutes the final, complete and exclusive statement of the terms of the Contract between Buyer and Supplier, and supersedes all prior and contemporaneous understandings, negotiations, representations, and contracts of the parties. This Contract shall not be amended or modified except by a written instrument signed by both Buyer and Supplier.

Buyer's Initials

