

CONTRACT



www.pacificplayinc.com

Customer	Contractor	Project	Camino N Burlin...
Camino Nuevo Charter Academy, Burlington 3435 W. Temple St Los Angeles CA 90026	Pacific Play Systems, Inc.	Date	1/16/2024
	Contractor Lic. # 957776	Terms	50% Deposit
	Class A/B/C61/D34/D12	Valid for	30 Days
	Phone (760) 599-7355	Est. No.	2023-1180

Description	Qty	Rate	Total
Camino Nuevo Burlington - 5-12 Area Project Location: 697 S Burlington Ave, Los Angeles, CA 90057 Scope of Work: Provide, equipment, materials and services as outlined per below:			
Playcraft ST#PAC23CNB5-12, custom 5" OD steel play system, 5-12 age-group	1	49,830.00	49,830.00T
Special Discount		-2,500.00	-2,500.00
Sub-total of play equipment after discount			47,330.00
PIP rubberized surfacing, 50% color, 50% black, includes turndown and keyway on concrete, aprox. 1500 SF	1	37,222.00	37,222.00
Installation labor, playground equipment with standard manufacturer's surface-mount footings using Factory Certified Installers. Includes unloading equipment. *assuming concrete as sub-surface. Otherwise quote will have to be revised.	1	20,803.15	20,803.15
Utility Locating Service	1	1,000.00	1,000.00
Temporary chain-link fence (excludes privacy screen and sand bags)	1	2,500.00	2,500.00
3rd party CPSI inspection and report	1	1,200.00	1,200.00
Freight costs, playground equipment	1	4,508.50	4,508.50
Project administration, mobilization, coordination, overhead costs	1	3,500.00	3,500.00
Additional Services: 1. If storage container is needed, add \$2,000 to total contract cost. Initials here to add _____. 2. If payment and performance bond is needed, add \$2,390 to total contract cost. Initials here to add _____.			
PAYMENT TERMS: 50% deposit			

Attached Exhibit A (Terms and Conditions) shall be made a part of this Contract.

Total

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Description	Qty	Rate	Total
<p>EXCLUSIONS: This Contract only covers the cost of equipment, materials and services that are clearly outlined in the Scope of Work. All other equipment, materials and/or services that are not clearly outlined in this quotation are excluded. Exclusions include, but are not limited to the following:</p> <ol style="list-style-type: none"> 1. Additional services, PSA/PLA requirements, concrete patching, relocating utilities, grading, drainage, site drains, curbing, border, sidewalks, pavement, site materials, ADA accessible path of travel, payment and performance bond, builders risk insurance, furnishing plans, obtaining permits, dealing with inspections and/or permit agencies, engineering calculations, stamped engineered or architectural drawings, etc. 2. Inspection costs, testing and outside testing agencies, special inspections, surfacing HIC test, survey work of any kind, fencing, swpps, barricades, traffic control, flagging, erosion control, dust control, removal of hazardous materials or contaminated soils, digging through rock and rocky soils. 3. Customer shall be responsible for keeping traffic away from the PIP rubberized surfacing area for at least 24 hours after it is poured so that surface can cure properly. PIP must be cured for a minimum of 2 weeks before any testing is performed. 4. Additional move-in costs, if required (only one move-in cost is included in this quote), dealing with unforeseen conditions and extra work required as a result of these conditions and anything else that is not clearly outlined in this Contract. See Exhibit A, Terms and Conditions for a description of Unforeseen Conditions. <p>LABOR RATES: Standard Rates.</p> <p>Required Statement for California Projects: Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a latent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.</p>			

Attached Exhibit A (Terms and Conditions) shall be made a part of this Contract.

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Description	Qty	Rate	Total
<p>This Contract is executed between Pacific Play Systems, Inc., a California corporation and Customer (also referred to as Owner), identified in the Customer section of this Contract. Either Customer or Pacific Play Systems, Inc. may be referred to as Party, together as Parties. The purpose of this Contract is for Pacific Play Systems, Inc. to provide Customer with equipment, materials and/or services as outlined in the Scope of Work section of this Contract in exchange for the sum of money as outlined in this Contract.</p> <p>By signing below, both Parties acknowledge that they are entering into a legally binding Contract, which includes Exhibit A. Customer acknowledges the receipt and review of Exhibit A (Terms and Conditions) which shall be made a part of this Contract and enforceable to the full extent allowed by law.</p> <p>ACCEPTED BY CUSTOMER: Customer's Name: _____ Date accepted: _____ Signature: _____ Signed By: _____</p> <p>ACCEPTED BY PACIFIC PLAY SYSTEMS, INC.: Federal Tax I.D. #: 27-4620108 - DIR No. 1000012253 Date accepted: _____ California Contractors License #957776, Classifications: A, B, C61-D12, C61-D34</p> <p>Signature: _____ Signed By: _____ CA Sales Tax, Los Angeles County</p>		9.50%	4,496.35

Attached Exhibit A (Terms and Conditions) shall be made a part of this Contract.	Total	\$122,560.00
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EXHIBIT A- TERMS AND CONDITIONS

(Revised 09-01-2022)

1. **ACTS OF GOD:** In the event either party is unable to perform its obligations under the terms of this Agreement because of acts of God, interruption of electrical power or other utilities, shortages of materials and/or labor, manufacturing issues or delays beyond its control, failures or damage reasonably beyond its control, pandemic related issues, or other causes reasonably beyond its control, such party shall not be liable to the other party for any damages resulting from such failure to perform or otherwise from such causes. Pacific Play Systems, Inc. and Customer shall notify each other as soon as reasonably possible following the occurrence of an event described in this subsection.
2. **ATTORNEY FEES & EXPENSES:** In the event of any dispute under this Contract, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs of suit, including any fees and costs incurred in preparation of such suit. If timely payments are not made by Customer and collection becomes necessary, Pacific Play Systems, Inc. shall be entitled to collect interest and all reasonable collection and legal costs incurred to the extent allowed by law.
3. **BUSINESS LICENSE:** If obtaining a business license becomes necessary for a city in which Pacific Play Systems, Inc. does not hold a current license, Pacific Play Systems, Inc. shall obtain the required license and Customer shall reimburse Pacific Play Systems, Inc. for its cost (including staff time) at cost plus 20%.
4. **CHANGE ORDERS:** Extra Work and change orders shall become part of the contract once the change order is prepared in writing and signed by the parties prior to the commencement of any work covered by the new change order. Change order shall describe the scope of the extra work or change, the cost to be added or subtracted from the contract and describe effects on the schedule (if applicable). Change Orders encountered during the installation phase of project require immediate action by the Customer to avoid stoppage of work which may cause demobilization and remobilization and Customer agrees to pay the additional cost.
5. **COST ESCALATION CLAUSE:** Given the recent dramatic increases in the cost of materials and freight, if Pacific Play's cost of materials and/or freight associated with this project increases by over 5% by the time this project gets installed, Customer shall be responsible for paying the additional cost over the initial 5% increase.
6. **DELAYS:** If a project is delayed for reasons beyond Pacific Play Systems, Inc. control, Customer agrees to pay for the cost of equipment, materials and products which are already manufactured. Storage fees may be added for stored products. If a project installation is delayed, new installation date will be assigned based on availability of installer. Any cost escalation incurred during the delayed period shall be passed onto the Customer and Customer agrees to pay it. Customer shall hold Pacific Play Systems, Inc. harmless for additional delays due to unavailability of the installer or resources when a project is delayed. If additional mobilization becomes necessary to receive and unload the equipment when a project is not ready for installation, Customer shall pay the cost incurred plus 20%.
7. **DEMOLITION:** Unless other arrangements are made prior to the start of demolition, all demolition items shall be disposed of by Pacific Play Systems, Inc. in a manner selected by Pacific Play Systems, Inc. For demo purposes, unless otherwise noted in the Contract, all slab thicknesses are assumed to be 4" or less with no reinforcement. If thickness of slab turns out to be greater than 4" or has reinforcement in it, its demo, hauling and disposal cost shall increase at the rate of our actual cost plus 20% and Customer agrees to pay the additional cost. All PIP rubberized surfacing thicknesses are assumed to be no more than 3.5" thick. If PIP thickness turns out to be greater than 3.5", its demo, hauling and disposal cost shall increase at the rate of our actual cost plus 20% and



Customer agrees to pay the additional cost. All changes in the scope of work shall be handled with a change order, promptly executed by both Parties so that no delays are experienced.

8. **DISCOUNTS:** Discounts (if any) provided are valid only if Customer completely fulfills his or her obligations under this Contract for the scope identified, including making timely payments per Payment Terms of Contract. Customer's failure to pay amounts due under this Contract in a timely fashion or reducing the scope of work shall constitute forfeiture of all discounts provided under this Contract and shall increase Contract sum by the amounts of discounts provided.

9. **ENGINEERED WOOD FIBERS (EWF)** are sold in quantities of cubic yards. EWF will settle during and after installation, reducing its depth. Therefore, its depth cannot be guaranteed. Generally speaking, 18" of material settles to a compacted depth of 10"-12". EWF require maintenance and topping off is necessary from time to time.

10. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subject matter hereof. In the event of conflicting provisions between this Contract and Customer's own Contract (if any), the provisions of this Contract shall prevail.

11. **EXPANSIVE, UNSUITABLE SOILS:** Pacific Play Systems, Inc. shall not be responsible for undesirable effects (poor drainage, settlement, expansion, contraction, finish surface cracking, etc.) of unsuitable grounds or soils provided to us. Unsuitable grounds or soils include expansive soils, poorly drained soils, uncompacted or poorly compacted grounds, unstable and/or expansive soils such as clay, excessively moist soils, uncompacted sand, etc. If applicable, it shall be Customer's responsibility to test soil samples and determine if the existing soil is suitable for the intended work, prior to the start of any work. If applicable, expansive, loose or uncompacted soils shall be removed and replaced by others at Customer's cost, prior to our mobilization on site. Additional engineering and deeper footings may be required if excessive moisture is encountered during the excavation, and Customer agrees to reimburse Pacific Play Systems, Inc. for the additional cost encountered at cost plus 20 percent.

12. **FINAL INSPECTION:** Customer shall perform a final inspection of the project while Pacific Play Systems, Inc. and its agents are still on site and shall report any concerns to Pacific Play Systems, Inc. at that time so that valid concerns can be corrected right away to avoid delays and additional trips to the job site.

13. **FOOTINGS.** Playground footings (Playcraft equipment or any other manufacturer) are quoted per manufacturer's standard footing details. Unless otherwise noted in Quotation, Contract or Purchase Order, if playground footings are enlarged due to permit requirements or to remedy unsuitable soil conditions, etc. upgrade costs shall be extra.

Some permit agencies may require structural calculations for footings which may cause larger footings and deeper embedment of posts into concrete footings than shown in the manufacturer's standard footings details. Additional rebar cages may also be needed. Our equipment and installation cost are based on supplying standard length posts and using manufacturer's standard footing details with no rebar cages. If footings are enlarged due to permit requirements or for any other reason, Customer agrees to pay the additional cost for longer posts, rebar cages and additional labor and materials required for excavating and installing deeper and larger footings. Additional cost shall be billed at the rate of Pacific Play Systems' cost plus 20% and Customer agrees to pay for it.

14. **GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the domestic laws of the State of California without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of California. Jurisdiction shall be the County of San Diego, North County Judicial District.



15. **INSURANCE:** Pacific Play Systems, Inc. agrees to carry the following limits during the course of project:

Liability Insurance: \$1,000,000 Each Occurrence, \$1,000,000 Personal and Advertising Injury, \$2,000,000 General Aggregate, \$2,000,000 Products, Completed Operations Aggregate.

Excess Liability Insurance: \$3,000,000 Each Occurrence, \$3,000,000 General Aggregate.

Workers Compensation: \$1,000,000

Commercial Auto Insurance: \$1,000,000

Proof of insurance or additional insured certificates (issued to Customer only) shall be provided upon request. Any custom wording (Primary Wording, Waiver of Subrogation, Cancellation Notices, etc.) on insurance policies or certificates to multiple entities shall be provided at additional cost, if requested and only if available. Customer acknowledges that Pacific Play Systems' subcontractors may have lower insurance limits and carry no excess liability insurance. Additional insurances not listed here, if required & available, may be provided at additional cost.

16. **LABOR RATES:** Unless otherwise noted in writing, all labor rates are Non-Prevailing Wage Rates. It shall be Customer's responsibility to inform us if a project is Prevailing Wage, before a contract is signed.

17. **LIABILITY LIMIT:** Pacific Play Systems, Inc.'s liability on any claim of any kind, including negligence, for any loss or damage arising out of, connected with or resulting from this Contract, or from the performance or breach thereof, or from the manufacture, sale, delivery, installation, resale, repair or use of any products covered by or furnished under this Contract, shall in no case exceed the price of the products or parts thereof which gives rise to this claim. In no event shall Pacific Play Systems, Inc. be liable for special, incidental or consequential damages, or for damages in the nature of penalties.

18. **LEAD TIME:** Unless otherwise noted, due to continuing supply chain issues and materials shortages, lead time for delivery of equipment is approximately 32 weeks (+/-) AFTER receipt of a signed Contract, deposit and color selection from the Customer. Lead time does not include time needed for shipping, site work and installation. Lead time may vary for different projects and different products, depending on product, size and scope of work.

19. **MOBILIZATION:** Unless otherwise noted in the Quotation, Contract or Purchase Order, our cost includes only one mobilization per project. If additional mobilizations become required due to various factors beyond Pacific Play Systems control such as site not being ready, stop notices by the Customer, permit and governing agencies, etc., additional mobilization cost shall apply at the rate of cost plus 20% or \$2,000 minimum for private projects and \$2,500 for public works projects whichever is greater. Minimum charge for receiving and unloading equipment when project is not ready for installation shall be \$1,500 for private projects and \$2,500 for public works projects and Customer agrees to pay these additional costs.

20. **MAINTENANCE:** Customer shall be responsible for maintenance and upkeep of all acquired equipment and materials associated with this Contract, including but not limited to maintenance of equipment, materials, surfacing, drainage system, etc. Playground equipment and surfacing require daily, weekly and monthly inspections. It is common that some bolts may come loose after the initial installation and some use, particularly in moving parts. It shall be Customer's responsibility to inspect for loose or missing hardware and attend to it as needed.

21. **NOTICES:** All notices required by this Agreement shall be in writing and be delivered via email, United States Certified Mail, addressed to the party to whom such notices are directed. Either party may change its address for notices hereunder by giving notice to the other party in the same manner as provided herein.



22. **OWNERSHIP:** Once equipment and materials are delivered to the Customer's premises, it is considered delivered and Customer shall become responsible for its security. All costs associated with replacement of vandalized and/or stolen equipment, materials shall be Customer's responsibility. Customer shall take necessary steps to secure site and protect the work under progress, including keeping traffic away from the equipment under construction and protect finished surfaces (concrete, PIP surfacing, etc.) for a minimum of 24 hours after pour.

23. **OPTIONS, ADDITIONAL SERVICES:** Equipment, materials and services listed under Options or Additional Services are not included in the Scope of Work (cost is extra). If Customer chooses to add any of these items, Customer shall notify Pacific Play Systems, Inc. in writing as soon as possible and prior to the ordering of equipment so that Contract can be modified to incorporate the added items. Once equipment and materials are ordered, it may be too late to make any changes, without incurring additional costs.

24. **PAYMENT TERMS:** All payments are due per Contract Payment Terms. Past due balances are subject to an annual interest rate of 18%, or the maximum allowed by law, whichever is greatest. If payments are not received on time and collection becomes necessary, aside from adding interest, all discounts provided shall be reversed and added to the contract sum and Pacific Play Systems, Inc. shall be entitled to collection costs incurred plus attorneys' fees & expenses to the full extent allowed by the applicable laws. Additionally, Pacific Play Systems, Inc. may suspend all warranties until such time that all past due balances, interest and fees are paid in full.

25. **PERMITS:** Unless otherwise noted in writing, obtaining permits are excluded from this Contract and shall be the Customer's responsibility. Prior to the award of this Contract, Customer shall perform his or her own due diligence and determine if a permit is required and notify Pacific Play Systems, Inc. in writing accordingly. If required, Customer shall obtain all required permits and licenses and pay all applicable fees.

If Pacific Play Systems, Inc. is instructed in writing to obtain a permit, all associated costs (including engineering fees) shall be extra, billed at cost plus 20%. Staff time shall be billed at \$90 per hour. Building permit fees shall be billed at cost. Customer agrees to pay all costs and fees. While we will do our best to obtain a permit at the earliest time possible (if instructed in writing to do so), no guarantees can be made that a permit can be obtained. Additionally, obtaining a permit can be very time-consuming process and can easily delay a project for months and beyond Customers expectations.

Some permit agencies may require structural calculations for footings which may take several weeks to get and cause delays. Unless otherwise note in Quotation, Contract or PO, cost of obtaining structural calculations shall be billed at cost plus 20% or \$2,500 minimum, whichever is greater, and Customer agrees to pay for it.

26. **PROTECTION OF EXISTING PLAYGROUND SURFACING:** Sites at some playground renovation projects may contain existing playground safety surfacing that may be either sand, engineered wood fibers, rubber tiles, PIP rubberized surfacing, artificial turf or a combination of these items that may need to be protected while new improvements are made. Unless otherwise noted in our Contract, Customer shall remove and stockpile filter fabric, sand and engineered wood fibers out of the way prior to the start of work to minimize its contamination during construction and shall be responsible to place it back after completion of our work. Customer acknowledges that some damage to the existing rubber tiles or PIP rubberized surfacing or artificial turf may occur due to our work and the use of machinery, regardless of various protection methods used. Customer shall be responsible for the cost of its repair or replacement, if damage occurs.

27. **REPAIRS:** If any part of the project requires repairs (during or after completion) and becomes a safety concern, Customer shall close site immediately and properly barricade the site until repairs are made.

28. **RETURNS:** Equipment, materials associated with this Contract are highly customized and shall be considered Non-Returnable. Once the Contact is signed and equipment, materials and services are ordered, it



cannot be cancelled. No Returns or Substitutions are permitted under this Contract, unless agreed to in writing by Pacific Play Systems, Inc. If Pacific Play Systems, Inc. agrees to a change involving a reduction in the Scope of Work or the Contract Sum after the award of Contract, Pacific Play Systems, Inc. shall be entitled to charge the Customer a fee 30% of the cost of items deleted for the time and effort put forth into processing those items. Additionally, any discounts associated with the deleted items shall be reversed.

29. SEVERABILITY: Any term or provision of this Contract that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

30. SHADE STRUCTURES: Shade structures, shade sails, umbrellas, shelters and canopies (hereafter referred to as Shade Structures) included in the Scope of Work (if any) are non-engineered (no calculations or engineering drawings are provided), non-structural (not rated for fire, wind or earthquakes), unless otherwise noted in writing. Non-engineered, non-structural Shade Structures are considered temporary structures and will not be suitable for installation at locations that require obtaining a permit. It shall be Customer's responsibility to determine if a permit is required for these Shade Structures and communicate same with Pacific Play Systems, Inc. in writing, prior to executing this Contract so that Shade Structures can be designed, fabricated and priced accordingly for the structural upgrades needed for engineered structures so that a permit can be obtained by others. Unless otherwise noted, if Pacific Play Systems, Inc. is instructed to obtain a permit, all associated engineering costs shall be billed at cost plus 20% as well as staff time at the rate of \$120/hour, plus all applicable costs, permit fees, etc.

31. SITE WORK: Site work includes all work that is needed to prepare the site for the installation of equipment and materials. Site work includes, but is not limited to demo, hauling, grading, installation of site materials, sub-base, drainage, curbing, sidewalks, creating sufficient space to accommodate the Use Zone of the equipment, etc. If site work is excluded from the Scope of Work:

- A. Customer shall prepare site so that it is ready for Pacific Play Systems, Inc. to move in.
- B. It shall be Customer's responsibility to coordinate site requirements with Pacific Play Systems, Inc. and provide the proper rough grade elevation in order to have the site ready for installation.
- C. If site is determined to not be ready upon move-in by Pacific Play Systems, Inc. and additional move-ins become necessary, a \$2,000 - \$2,500 extra move-in charge shall apply for each additional move-in and Customer shall become responsible for the safety of the site and for the safekeeping of the equipment and materials that are delivered to the job site until Pacific Play Systems, Inc. is able to return and re-start installation. Additionally, project delays due to unavailability of installers may occur if demobilization becomes necessary.

Some damage to existing grounds, pavement and landscaping shall be expected due to Pacific Play Systems, Inc.'s operations. Unless otherwise noted in writing, repairs to underground utilities, landscaping and irrigation system are excluded from Pacific Play Systems, Inc.'s scope of work and shall be Customer's responsibility. Pacific Play Systems, Inc.'s liability for cleaning marks (tire marks, etc.) on pavement shall be limited to power washing.

32. SLAB: All concrete slabs associated with the Scope of Work (if any), shall be 4" nominal (3 1/2" thick) without any reinforcement, unless otherwise noted.

33. SUCCESSION & ASSIGNMENT: This Contract shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. A Party may not assign either this Contract or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party. Customer shall not assign this Contract to any third-party implementation agencies such as property management companies, contract compliance agencies, etc. without the prior written consent of Pacific Play Systems, Inc.



34. **STORAGE FEES:** If a project is delayed for any reason due to factors beyond Pacific Play Systems, Inc. control, Customer agrees to pay storage fees for equipment which has already been manufactured at cost plus 15% for storage rental or \$250-\$500 per month (cost varies based on space required and may be more for larger projects) for equipment stored at our warehouse or at the manufacturer. If a free-standing storage container becomes necessary to secure the equipment on site, Customer shall provide the space for it and become responsible for covering its cost at the rate of cost plus 20% plus unloading costs due to the additional mobilization to unload the equipment and forklift rental.

35. **SUB-BASE:** PIP rubberized surfacing, tiles or artificial turf require either a concrete slab sub-base or a 90-95% compacted Class II or crushed aggregate sub-base. When replacing an existing surface (PIP, rubber tiles or turf), it is difficult to know what kind of sub-base is installed underneath the existing surface or if that sub-base is suitable for the installation of the new surfacing, without removing the existing surface and damaging it. Unless otherwise noted in our Contract, if during work, it becomes clear that the existing sub-base is not suitable for the installation of the new surfacing and requires repairs, removal and/or replacement, cost associated with this work shall be extra (via a change order) and shall be billed at our cost plus 20%. Customer shall be notified of this condition and the associated cost to remedy it, once discovered. If additional work becomes necessary, Customer shall execute a change order for the additional scope without delay so that work can proceed timely. If an additional move-in becomes necessary due to Customer having this work done by others, an additional move in cost shall be added to our Contract.

36. **SUB-CONTRACTORS:** Pacific Play Systems, Inc. reserves the right to use subcontractors to perform labor without prior consent from the Customer as long as subcontractors used are licensed and insured. Sub-contractors insurance limit is limited to \$1M for General Liability Insurance, \$2M General Aggregate.

37. **TERMINATION:** This Contract shall not be terminated by either party without material cause. Pacific Play Systems, Inc. may terminate this Contract with Customer for lack of payment and for other material breach, if not cured within 10 days of receipt of a written notice to Customer. If this Contract is terminated by any party for any reason, Customer shall remain fully liable for the cost of equipment and materials ordered, administrative and other time spent on the project and for services rendered to the full extent allowed by law.

38. **TESTING:** Unless specifically noted in contract, cost of any testing such as CPSI, surfacing HIC testing, soil testing, etc. shall be extra. HIC testing for PIP or turf shall not occur until the surface has a minimum of ten (10) days to cure.

39. **UNFORESEEN CONDITIONS:** Unforeseen conditions include, but are not limited to, having to deal with, modify or repair underground utilities (water, sewer, gas, electricity, irrigation lines & wiring, data, phone, drainage lines, etc.) found during excavation. Unforeseen Conditions shall also include having to excavate or remove boulders, rocks, rocky soil, etc. that cannot be cored through with a standard Bobcat, augur or excavated with a shovel and requires the use of a jack hammer or other means. Other examples of Unforeseen Conditions include unexpected items found during excavation that were not obvious or not disclosed by Customer, such as discovery of unsuitable soil conditions, existing footings, curbing, border, pavement, tree roots, filter fabric, etc. found during the excavation for new footings, unless removal of these items was clearly noted in the Scope of Work. Finally, Unforeseen Conditions shall include any factors and/or conditions that adversely affect the cost of the project which were not disclosed by Customer in writing prior to the signing of this Contract. Cost of dealing with unforeseen conditions shall become extra and shall be added to the Contract sum at the rate of Pacific Play Systems, Inc.'s cost plus 20%. Customer shall indemnify Pacific Play Systems, Inc. from any liability associated with damage to underground utilities due to Unforeseen Conditions.

40. **UTILITIES:** Utilities include but are not limited to water, sewer, gas, electricity, irrigation lines & wiring, data, phone, drainage lines, etc. To minimize damage to utilities, Customer shall mark, cap or relocate all underground



utilities that are located within the work area, prior to the start of work. Pacific Play Systems, Inc. and its subcontractors shall do their best to minimize damage to underground utilities that are identified by the Customer prior to the start of construction. However, should unintended damage occur due to site operations, repairs or relocation of underground utilities shall be excluded from the scope of our work. If utilities are damaged or have to be relocated, Customer shall repair, replace or relocate them at Customer's cost as soon as possible to minimize delays. At Customer's request, repairs may be made to damaged utilities by Pacific Play Systems, Inc. or its subcontractors at an additional cost of actual cost plus 20%.

41. UTILITY LOCATING SERVICE: For projects requiring excavation, prior to the start of work, Customer shall either clearly mark underground utilities and their depth, hire a utility locating service to locate them or authorize Pacific Play Systems, Inc. to hire a utility locating service to do so. Locating underground utilities is not an exact science and sometimes they are missed by utility locating companies or locations are not accurate, leading to unintended damage during excavation. Also, PVC or plastic pipes cannot be detected by these companies. Therefore, some potential damage to utilities should be expected. If utilities are damaged, Customer shall hold Pacific Play Systems, Inc., its subcontractors, employees and officers harmless as it relates to any potential damages or liabilities. If underground utilities are damaged, regardless of whether a utility locating service was hired or not, Customer shall be responsible for the cost of their repair, replacement or relocation.

42. WARRANTY: Equipment warranties are provided by equipment manufacturers and not by Pacific Play Systems, Inc. Material warranties are provided by the supplier of materials and not by Pacific Play Systems, Inc. When available, Pacific play Systems, Inc. shall provide copies of equipment and material warranties to Customer upon request. Pacific Play Systems, Inc. shall warrant all Labor provided in the Scope of Work for a period of one year from the date of completion.

Customer acknowledges that moving parts (spinners, zip lines, track rides, rope connections, swings, etc.) require regular maintenance in order to stay operational. Pacific Play Systems, Inc. shall not be responsible for the maintenance of these items which may involve tightening of bolts, connections, etc. Any service calls required to maintain moving parts (even during the one-year labor warranty) shall be billed to Customer at cost plus 20%. Zip lines require additional maintenance to operate properly and shall be regularly maintained by the Customer.

