RESOLUTION NO. R17-826

A RESOLUTION TO AUTHORIZE PURCHASE OF PLAYGROUND EQUIPMENT AND ACCESSORIES AT CLARK PARK AND REEVES CREEK TRAIL

WHEREAS, the City of Stockbridge ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia and is charged with being fiscally responsible concerning the use and expenditure of all public funds; and

WHEREAS, the City proposes to purchase certain playground equipment and accessories for Clark Community Park; and

WHEREAS, the staff has recommended purchasing the playground equipment and accessories for rubber surfacing from PlayWorld Preferred (Huntersville, NC) in an amount not to exceed $147,818.00;

THEREFORE, THE CITY COUNCIL OF THE CITY OF STOCKBRIDGE HEREBY RESOLVES:

SECTION 1. Approval of Purchase. The purchase of purchase certain playground equipment and accessories for rubber surfacing from PlayWorld Preferred (Huntersville, NC) in an amount not to exceed $147,818.00 is hereby approved by the City Council.

SECTION 2. Public Record. This document shall be maintained as a public record by the City Clerk and shall be accessible to the public during all normal business hours of the City of Stockbridge.

SECTION 3. Authorization of Execution. The Mayor is hereby authorized to sign all documents necessary to effectuate this Resolution.

SECTION 4. Attestation. The City Clerk is authorized to execute, attest to, and seal any documents which may be necessary to effectuate this ordinance, subject to approval as to form by the City Attorney.

SECTION 5. Effective Date. This resolution shall become effective immediately upon its adoption by the Mayor and City Council of the City of Stockbridge as provided in the City Charter.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

SO RESOLVED this 30th day of May, 2017.

JUDY NEAL, Mayor

ATTEST:

(SEAL)

VANESSA HOLIDAY, City Clerk

APPROVED AS TO FORM:

MICHAEL WILLIAMS, City Attorney

QUOTE

Date	Quote #
4/26/2017	PWCQ11790

Quote valid for 30 days.

PLAYWORLD PREFERRED The world needs play.

11515 Vanstory Drive, Suite 100 - Huntersville, NC 28078
P: 1-800-459-7241 F: 704-584-1034

Bill To:

City of Stockbridge

Donald Riley
4640 North Henry Boulevard
Stockbridge, GA 30281

P: (770) 389-7900
F: (770) 389-7900
driley@cityofstockbridge-ga.gov

Site/End User:

Clark Community Park

Donald Riley
111 N Davis Dr
Stockbridge, GA 30281

P: (770) 389-7900
F: (770) 389-7900
driley@cityofstockbridge-ga.gov

Ship To:

Clark Community Park

Donald Riley
111 N Davis Dr
Stockbridge, GA 30281

P: (770) 389-7900
F: (770) 389-7900
driley@cityofstockbridge-ga.gov

50% Deposit Required.
See Terms and Conditions

Ship Via	Sales Representative	Prepared By
BEST METHOD	Carlton Burr	Carlton Burr

Qty	Item #	Description	Unit Price	Ext. Price
7,200	PPRS	Poured-In-Place Rubber Surfacing Remove approximately 7,200 sq. ft. of existing mulch 2 to 3 inches and dispose. Provide and install compacted stone base. Stone base is calculated @ 4" prior to compaction. Provide and install 7,200 sq. ft. of EPDM Pour-N-Place 50% color and 50% black with aromatic binder for a 9' fall height. Slides and swings will have safety mats installed in heavy ware areas.	$16.28	$117,216.00

SubTotal	$117,216.00
Tax Rate	9.25 %
Sales Tax	$0.00
Shipping	$0.00
Total	**$117,216.00**

We appreciate the opportunity to work with you on this project.
If this quotation does not meet your needs or expectations we will be happy to make any revisions necessary.

Please contact your Playworld Preferred Sales Representative if any of the foregoing information is incorrect.

Order Acknowledgement will be sent within 48 hours after your Purchase Order has been processed. Order Acknowledgement will include the estimated Ship Date. Shipping notification and documentation will be sent once the product ships.

**Please note, due to market variables outside of our control, certain items such as commodity material price fluctuations, freight surcharges, sales tax rates, and additionally requested re-consigned delivery location fees may change the final amount invoiced from the amount originally provided on this quote. **

Terms and Conditions

CONTROLLING TERMS: THIS QUOTATION IS LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY CUSTOMER IN ANY PURCHASE ORDER OR OTHER DOCUMENTS ARE DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM IS HEREBY GIVEN. ANY SUCH PROPOSED TERMS SHALL BE VOID, AND THE TERMS HEREIN SHALL CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS OF THE CONTRACT BETWEEN THE PARTIES. NEITHER SELLER'S ACKNOWLEDGMENT OF A PURCHASE ORDER NOR SELLER'S FAILURE TO OBJECT TO CONFLICTING, DIFFERENT, OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.

PRICES: Prices in this Quote are good for thirty (30) days. Unless otherwise stated in writing, all prices are F.O.B. Origin, and shall be exclusive of transportation, insurance, taxes, license fees, customs fees, duties, premiums, fees, site preparation, installation expenses and other charges, unless specifically stated.

Tax exempt Customers shall provide Playworld Preferred with a copy of its valid tax-exempt certificate at time the order is placed.

CANCELLATION: Orders become final forty-eight (48) hours from Order Acknowledgement. Orders for play structures may NOT be cancelled or returned under any circumstances. Items which may be cancelled or returned are subject to a twenty (20%) percent restocking fee, plus the cost of return freight. Returned items must be in original packaging, in new condition, and returned within thirty (30) days. Authorization for the return must be obtained in writing from Playworld Preferred. Orders for products, other than those from Playworld Systems, may NOT be cancelled or returned.

TERMS OF PAYMENT: For orders in an amount of $100 or less, payment in full is required at the time of the order. For all other orders, a fifty (50%) percent deposit is required, unless expressly waived by Playworld Preferred. (Orders from governmental entities are excluded from the deposit requirement.)

UNLESS CREDIT IS SPECIFICALLY GRANTED IN WRITING BY PLAYWORLD PREFERRED, PAYMENT IN FULL IS DUE WITHIN TEN (10) DAYS OF INVOICE. For orders without installation, the invoice will be issued on the date the order ships. For orders which include installation by Playworld Preferred or its authorized sub-contractor, the invoice will be issued upon the completion of the project.

Past due balances are subject to a one and one-half (1.5%) percent monthly finance charge, but in no event will the late payment finance charge be greater than the maximum rate permitted by law. Customer shall pay all fees and expenses (including attorneys' fees) incurred by Playworld Preferred in the enforcement of its rights hereunder.
WARRANTIES and DISCLAIMERS: Manufacturers' limited warranties are available upon request.

THE MANUFACTURER'S WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF CONDITION, DESCRIPTION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR ANY REPRESENTATIONS OR WARRANTIES IN ANY BROCHURES, MANUALS, CATALOGS, LITERATURE OR OTHER MATERIALS OF PLAYWORLD PREFERRED. FURTHER, NO REPRESENTATION, WHETHER ORAL OR WRITTEN, OF PLAYWORLD PREFERRED MAY BE SUBSTITUTED OR ALTER THE EXCLUSIVE MANUFACTURER'S LIMITED WARRANTY.

LOSS or DAMAGE in TRANSIT: Playworld Preferred is not responsible for loss or damage in transit. Our responsibility ends when the carrier signs the Bill of Lading, which is our receipt that the products were complete and in good condition when shipped. It is the customer's responsibility to check the number of pieces shown on the freight bill and our Bill of Lading. Any shortages or damages must be noted on the freight bill before it is signed.

DELIVERY: Delivery, shipment, and installation dates are estimates only, and do not guarantee shipment, delivery or installation on or by such dates. If shipment is made per the estimated ship date, and you are unable to accept delivery, then storage, demurrage or extra unloading charges may be incurred and billed to your account

INSPECTION: All products must be inspected upon receipt, and claims must immediately be filed with the carrier and Playworld Preferred when there is evidence of shipping damage, either concealed or external. All shipments are FOB Origin, unless quoted FOB Destination. FOB Destination does not change the terms of receiving and inspection of the products as set forth herein.

INSTALLATION: Installation is not included in the purchase price of the products, unless expressly noted on the quote and invoice. IT IS CUSTOMER'S RESPONSIBILITY TO ASSEMBLE, INSTALL AND USE THE PRODUCTS SAFELY AND IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS, UNLESS EXPRESSLY AGREED OTHERWISE BY PLAYWORLD PREFERRED.

LIABILITY EXCLUSIONS: TO THE EXTENT PERMITTED BY LAW, PLAYWORLD PREFERRED SHALL NOT BE LIABLE IN CONNECTION WITH A PRODUCT OR SERVICE FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, BASED ON TORT, CONTRACT OR OTHER LEGAL THEORY, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) ANY DAMAGES WHATSOEVER IN EXCESS OF AN AMOUNT EQUAL TO THE PURCHASE PRICE OF PRODUCT PROVEN TO BE DEFECTIVE. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS CUSTOMER'S EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT THE REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

FORCE MAJEURE: Playworld Preferred shall not be liable because of unforeseen circumstances or causes beyond its control, including, without limitation, strike, lockout, embargo, riot, war, act of terrorism, fire, act of God, accident, failure or breakdown of components necessary for order completion, subcontractor, supplier or Customer caused delays, inability to obtain labor, materials or manufacturing facilities, or compliance with any law, regulation or order.

SAVINGS CLAUSE: If any part of the terms and conditions stated herein is held void or unenforceable, such part, to the extent void or unenforceable will be treated as severable, leaving valid the remainder of the terms and conditions which shall be deemed revised so as to remain enforceable to the greatest extent possible consistent with such holding.

IF INSTALLATION IS INCLUDED WITH THIS ORDER, THE FOLLOWING ADDITIONAL PROVISIONS APPLY:

SCHEDULE: Playworld Preferred will provide Customer with a shipment and installation schedule. Playworld Preferred will take the commercially reasonable steps necessary to complete installation on schedule and without delay. However, Playworld Preferred does not guarantee the start or completion of the project in strict accordance with the installation schedule provided. Installation may be delayed by weather conditions, fire, Act(s) of God or other casualty for which Playworld Preferred is not responsible.

CHANGES: Playworld Preferred reserves the right to change, modify or alter installation terms. INSTALLATION PRICE IS BASED ON NORMAL DIGGING CONDITIONS. IF ROCKS OR OTHER CONDITIONS AT THE SITE BEYOND THE CONTROL OF PLAYWORLD PREFERRED ARE ENCOUNTERED, THERE MAY BE ADDITIONAL CHARGES. If Playworld Preferred deems a change is necessary, it will provide Customer with a Change Order request, including an estimate of the commercially reasonable cost for the additional work required for proper installation of the equipment. Playworld Preferred will not continue with the installation until approval of the Change Order in writing by customer. If Playworld Preferred and Customer cannot agree upon the additional cost for the extra work within fifteen (15) days of the Change Order request, Playworld Preferred may immediately invoice Customer for the equipment, and Customer agrees to pay the equipment invoice in accordance with the payment terms set forth above (NET 10 days).

In the event that Customer requests changes to the installation or installation schedule which results in delays in excess of thirty (30) days, from the date of the original installation schedule, Playworld Preferred may immediately invoice Customer for the equipment, and Customer agrees to pay the equipment invoice in accordance with the payment terms set forth above (NET 10 days).

UTILITIES: Playworld Preferred will locate and mark public utilities on the site. Customer shall locate and mark any private utility lines, such as irrigation lines or local telecommunication lines. Customer's failure to do this may result in damage to its private utility lines and costs associated thereto, and additional installation charges and delays.

PERMITS: Customer is responsible for the cost of all installation-related permits and fees not expressly included in the quotation.

REFUSE: Trash and packaging materials will be consolidated and stacked neatly on Customer's site or placed in Customer's dumpster on site. Upon customer's written request, Playworld Preferred will arrange for the trash and packaging materials to be removed from the site and disposed of for an additional fee.

FINAL INSPECTION: Customer agrees to inspect the project with the lead installer and/or sales representative within five (5) days of completion of the project. If project has been satisfactorily completed, Customer will note acceptance of the project on Playworld Preferred's Client Acceptance Form. Playworld Preferred will then invoice Customer, and Customer agrees to pay the invoice in accordance with the payment terms set forth above (NET 10 days). Signing the client acceptance form does not relieve Playworld Preferred from its on going warranty obligations as they relate to the product shipped or installation work.

I f Customer notes defects in the materials or workmanship ("punch list"), Playworld Preferred will remedy them in a timely manner. However, Playworld Preferred may immediately invoice Customer for the project, less ten (10%), and Customer agrees to pay the invoice in accordance with the payment terms set forth above (NET 10 days). Upon completion of the "punch list," Playworld Preferred shall invoice Customer for the remaining ten (10%) due, and Customer agrees to pay the invoice in accordance with the payment terms set forth above (NET 10 days).

SUPERVISED INSTALLATION: In the event that Playworld Preferred is contracted by Customer to supervise the installation of the equipment subject to this Quotation, Customer shall complete Playworld Preferred's "Supervised Installation Requirements" Form. Said form sets forth the details of the supervised build and the parties' respective responsibilities. The Quotation may be subject to change based upon Customer's responses on the "Supervised Installation Requirements" Form. Within five (5) days of the completion of the supervised installation, the Parties shall comply with the FINAL INSPECTION provisions set forth above.

I acknowledge that I have read, understand, and accept the terms and conditions of this quotation and that I am authorized to do

Print Name Judy NEAL Customer PO # _____

Title Acting City Manager

Signature Judy Neal Date 06.07.17

Playworld Preferred Signature _____ Date _____

Send Signed Quote & Deposit To:
Playworld Preferred
Attn: Signed Quote
11515 Vanstory Drive Suite 100
Huntersville, NC 28078

PLAYWORLD PREFERRED The world needs play.

QUOTE

Date	Quote #
4/26/2017	PWCQ11791

Quote valid for 30 days.

PLAYWORLD PREFERRED
The world needs play.
11515 Vanstory Drive, Suite 100 - Huntersville, NC 28078
P: 1-800-459-7241 F: 704-584-1034

Bill To:	Site/End User:	Ship To:
City of Stockbridge	**Reeves Creek Trail**	**Reeves Creek Trail**
Donald Riley 4640 North Henry Boulevard Stockbridge, GA 30281	Donald Riley 103 Wilson St Stockbridge, GA 30281	Donald Riley 103 Wilson St Stockbridge, GA 30281
P: (770) 389-7900 F: (770) 389-7900 driley@cityofstockbridge-ga.gov	P: (770) 389-7900 F: (770) 389-7900 driley@cityofstockbridge-ga.gov	P: (770) 389-7900 F: (770) 389-7900 driley@cityofstockbridge-ga.gov

50% Deposit Required.
See Terms and Conditions

Ship Via	Sales Representative	Prepared By
BEST METHOD	Carlton Burr	Carlton Burr

Qty	Item #	Description	Unit Price	Ext. Price
2,200	PPRS	Poured-In-Place Rubber Surfacing Remove 2200 sq. ft. of existing mulch and dispose. Provide and install compacted stone base @ 6". Provide and install "J" Curbs. Provide and install 2,200 sq.ft. of EPDM Pour-N-Place (1" base and .5 top) 50% color and 50% black with aromatic binder.	$13.91	$30,602.00

SubTotal	$30,602.00
Tax Rate	9.25 %
Sales Tax	$0.00
Shipping	$0.00
Total	**$30,602.00**

We appreciate the opportunity to work with you on this project.
If this quotation does not meet your needs or expectations we will be happy to make any revisions necessary.

Please contact your Playworld Preferred Sales Representative if any of the foregoing information is incorrect.

Order Acknowledgement will be sent within 48 hours after your Purchase Order has been processed. Order Acknowledgement will include the estimated Ship Date. Shipping notification and documentation will be sent once the product ships.

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Print Name Judy NEAL Customer PO # _____

Title Acting City Mgr + MAYOR

Signature Judy Neal Date 06.07.17

Playworld Preferred Signature _____ Date _____

Send Signed Quote & Deposit To:
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Attn: Signed Quote
11515 Vanstory Drive Suite 100
Huntersville, NC 28078

PLAYWORLD PREFERRED The world needs play.

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SAVINGS CLAUSE: If any part of the terms and conditions stated herein is held void or unenforceable, such part, to the extent void or unenforceable will be treated as severable, leaving valid the remainder of the terms and conditions which shall be deemed revised so as to remain enforceable to the greatest extent possible consistent with such holding.

EQUIPMENT AGREEMENT
BY AND BETWEEN
PLAYWORLD PREFERRED
AND
THE CITY OF STOCKBRIDGE, GEORGIA

This Agreement ("Agreement") is made and entered into this 16th day of June, 2017, by and between PlayWorld Preferred (hereinafter, "CONTRACTOR"), and the City of Stockbridge, Georgia (hereinafter, "City") (CONTRACTOR and City sometimes referred to herein as "Parties").

W I T N E S S E T H:

WHEREAS, City desires to engage the services of CONTRACTOR to perform for City services regarding the installation of certain playground equipment (the "Project") at the Reeves Creek Trail; and

NOW, THEREFORE, in consideration of the promises and mutual agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Termination.** This Agreement shall expire on the date the Project is completed or December 31, 2017, whichever is sooner, provided however that the provisions of Section 2(c) shall specifically survive the termination or expiration of this Agreement. The City may terminate this Agreement at any time for any reason with thirty (30) days advance written notice.

2. **Services.**

(a) Subject to the terms and conditions set forth in this Agreement, City hereby retains CONTRACTOR to provide the services set forth on Exhibit A entitled "Scope of Work" and related sales proposals all attached hereto and incorporated herein by reference. To the extent the terms of Exhibit "A" conflict with the terms of this Agreement, the terms of this Agreement shall govern. Notwithstanding anything in the Scope of Work or any task orders to the contrary, CONTRACTOR shall commence the Project on September 5, 2017 and shall complete the Project within six (6) weeks of commencement.

(b) The standard of care applicable to CONTRACTOR's services will be the degree of skill and diligence normally employed by professional contractors performing the same or similar services at the time said services are performed. CONTRACTOR will re-perform any services not meeting this standard without additional compensation. CONTRACTOR warrants that any services it conducts will be adequate and sufficient to accomplish the purposes for which they are performed, and no review or approval thereof by the City shall be deemed to diminish this warranty in any way.

(c) CONTRACTOR shall indemnify and hold harmless the City and its agents and employees (i) from and against all claims, damages, losses and expenses, including but not

limited to attorney's fees, arising out of or resulting from the performance of the Project, provided that any such claim, damage, loss, expense or attorney's fees is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and is caused in whole or in part by any negligent act or omission of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not the negligent act is caused in part by a party indemnified hereunder and (ii) from the inadequacy of the Services performed by CONTRACTOR or anyone for whom CONTRACTOR is responsible. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Clause. In any and all claims against the City or any of its agents or employees, by any employee of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation set forth in this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any Subcontractor under workers' or workman's compensation acts, disability benefit acts or other employee benefit acts.

3. **Compensation.** CONTRACTOR shall receive compensation from the City as set forth in the attached Exhibit A.

4. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. If any of the provisions of this Agreement shall be declared invalid or unenforceable by laws applicable thereto, or unenforceable as to certain parties, then the performance of said provision shall be excused by the parties hereto and the remaining provisions of this Agreement shall remain in full force and effect.

(b) CONTRACTOR may not assign this Agreement, in whole or in part, without the prior written consent of City. City may assign this Agreement, in whole or in part, without the prior consent of CONTRACTOR; however, City shall provide CONTRACTOR with prior written notice of any such assignment.

(c) This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) The headings contained herein are for the convenience of the parties only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this Agreement.

(e) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement,

and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

(f) This Agreement, including all exhibits hereto (which are incorporated herein by this reference), contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. No waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. This Agreement may not be modified or amended, except by a writing executed by both parties hereto. No waiver by either party hereto of any term or provision of this Agreement or of any default hereunder shall affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(g) CONTRACTOR shall at all times maintain sufficient liability insurance and payment and performance bonds to cover their services under this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties intending to be legally bond hereby, have executed this Agreement as of the date first above written.

PLAYWORLD PREFERRED

By:_____

CITY OF STOCKBRIDGE, GEORGIA

By: Judy Neal
City Mgr
acting Mayor
07.06.17

ATTEST:

Vanessa Holiday
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Exhibit A

NEEDS TO BE ADDED TO REFLECT ONLY
THE WORK TO BE DONE AT THE REEVES CREEK TRAIL