



PRICE AGREEMENT NO. 14613  
AMENDMENT NO.

ALBUQUERQUE PUBLIC SCHOOLS - PROCUREMENT DIVISION  
PO BOX 25704  
ALBUQUERQUE, NEW MEXICO 87125  
PHONE (505) 881-8415  
FAX (505) 830-1161

V  
E  
N  
D  
O  
R

ExerPlay Inc  
P.O. Box 1160  
Cedar Crest, NM 87008

SHIP TO

Maintenance & Operations Recreation Yard  
912 Oak St SE  
Albuquerque, NM 87106

ATTENTION  
OF

Karen Alarid, John Dufay, Rick Leydig,  
Adam Hendrickson

| DATE       | VENDOR CODE |
|------------|-------------|
| 11/16/2016 | 10902       |

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico Criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**PLEASE SHOW PRICE AGREEMENT NUMBER ON ALL INVOICES, SHIPPING PAPERS, PACKAGES, CORRESPONDENCE, ETC. INVOICE IN DUPLICATE.**

**ITEMS, TERMS, & CONDITIONS**

**PRICE AGREEMENT**

Playground Equipment and Replacement Parts  
Contract Term: November 17, 2016 - November 16, 2021  
Per terms and conditions of: 17-025MM-KV  
Board Approved: 11/16/2016  
Pricing Attached

**SERVICES AND/OR GOODS TO BE PROVIDED:** The Contractor shall provide the good(s) and/or service(s), as defined in this agreement, on an "as ordered" basis. This is not an order and no funds are obligated under this Pricing Agreement. Funds are obligated by approved purchase orders on an "as needed" basis. Contractor shall receive separate individual Purchase Orders for each individual requests.

**MINIMUM AMOUNT:** Albuquerque Public Schools does not guarantee a minimum amount of purchases in conjunction with this pricing agreement.

**QUOTES AND PAYMENT:** The Contractor shall include the APS Pricing Agreement Number on each quote and reflect the price as awarded. The invoice submitted for payment shall match the quote and shall note the purchase order number.

**PRICING ESCALATION:** Price escalation will be considered only at yearly observance of award and only upon receipt of written request from contractor stating reason for escalation and the amount being requested. Justifying documentation must accompany price escalation request.

**Amendments:** This Pricing Agreement shall not be altered, changed, or amended except by written agreement signed by both parties.

**Reason for Amendment:**

Contact: Doug Carp

Phone: 505-281-0151

Email: doug@exerplay.com

PROCUREMENT DIVISION AUTHORIZED SIGNATURE

  
Date: 11/17/16

VENDOR AUTHORIZED SIGNATURE

  
Date: 11/17/16

## ALBUQUERQUE PUBLIC SCHOOLS (APS) GENERAL TERMS AND CONDITIONS

- 1. INSPECTION.** The materials, supplies or services furnished shall be exactly as specified in this order, free from defects in Seller's design, workmanship and materials, and, except as otherwise provided in this order, shall be subject to inspection and test by APS at all times and places. If, prior to final acceptance, any materials, supplies or services are found to be defective or not as specified, APS may reject them, require Seller to correct them without charge, or require delivery of such materials, supplies, or services at a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct such defects within a time deemed reasonable by APS, APS may terminate the order in whole or in part. Seller shall bear all risks as to rejected materials, supplies and services and, in addition to any other costs for which Seller may become liable to APS under other provisions of this order, shall reimburse APS for all transportation costs, other related costs incurred, or payments to Seller in accordance with the terms of this order for unaccepted materials, supplies and services. Notwithstanding final acceptance and payment, Seller shall be liable for latent defects, fraud or such gross mistakes as amount to fraud. Any test programs and procedures required by the specifications are in addition to, and do not limit, APS's rights provided in this Paragraph.
- 2. WARRANTIES.** Seller warrants the materials, supplies or services furnished to be exactly as specified in this order, free from defects in Seller's design, labor, materials and manufacture, and to be in compliance with any drawings or specifications incorporated herein and with any samples furnished by Seller. All applicable UCC warranties, express or implied are incorporated herein.
- 3. ASSIGNMENT.** Neither the order nor any interest therein, nor claim thereunder shall be assigned or transferred by the Seller except as authorized in writing by APS. No assignment or transfer shall relieve the Seller from its obligations and liabilities.
- 4. CHANGES.** APS may make changes within the general scope of this order by giving notice to Seller and subsequently confirming such changes in writing. If such changes affect the cost of, or the time required for performance of this order, an appropriate equitable adjustment shall be made. No change by Seller shall be recognized without written approval of APS. Any claim of Seller for an adjustment under this Paragraph must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change unless APS waives this condition. Nothing in this Paragraph shall excuse Seller from proceeding with performance of the order as changed hereunder.
- 5. LABOR DISPUTES.** Seller shall give prompt notice to APS of any actual or potential labor dispute which delays or may delay timely performance of this order.
- 6. TERMINATION AND DELAYS.** APS may by written notice stating the extent and effective date, terminate this order for convenience in whole or in part, at any time. APS shall pay Seller as full compensation for performance until such termination: (1) the unit or pro rata order price for the delivered and accepted portion; and (2) a reasonable amount, not otherwise recoverable from other sources by Seller as approved by APS with respect to the undelivered or unaccepted portion of this order; provided compensation hereunder shall in no event exceed the total order price. Such amount will be limited to the Seller's actual cost and shall not include anticipated profits.

APS may by written notice terminate this order for Seller's default, in whole or in part, at any time, if Seller refuses or fails to comply with the provisions of this order, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the items or services or to perform the services within the time specified or any written extension thereof. In such event, APS may purchase or otherwise secure items or services and, except as otherwise provided herein, Seller shall be liable to APS for any excess costs occasioned APS thereby, including incidental and consequential damages.

If, after notice of termination for default, APS determines that the Seller was not in default or that the failure to perform this order is due to causes beyond the control and without the fault or negligence of Seller (including, but not restricted to, acts of God or of the public enemy, acts of APS, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, and delays of a subcontractor or supplier due to such causes and without the fault or negligence of the subcontractor or supplier), termination shall be deemed for the convenience of APS, unless it shall be determined that the items or services covered by this order were obtainable from other sources in sufficient time to meet the required delivery schedule.

If APS determines that Seller has been delayed in the work due to causes beyond the control and without the fault and negligence of the Seller, APS may extend the time for completion of the work called for by this order, when promptly applied for in writing by the Seller; and if such delay is due to failure of APS, not caused or contributed by Seller, to perform services or deliver property in accordance with the terms of the order, the time and price of the order shall be subject to change under the Changes Paragraph. Sole remedy of Seller in event of delay by failure of APS to perform shall, however, be limited to any money actually and necessarily expended in the work during the period of delay, solely by reason of delay. No allowance will be made for anticipated profits.

The rights and remedies of APS provided in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order. As used in this Paragraph, the word "Seller" includes Seller and its sub suppliers at any tier.
- 7. AFFIRMATIVE ACTION.** Seller shall not maintain or provide racially segregated facilities for employees at any establishment under his control. Seller agrees to adhere to the principle set forth in Executive Order 11246 and 11375, and to undertake specifically to maintain employment policies and practices that affirmatively promote equality of opportunity for minority group persons and women; to take affirmative steps to hire and promote women and minority group persons at all job levels and in all aspects of employment; to communicate this policy effectively to all persons concerned within Seller's company, with outside recruiting services and the minority community at large; to provide APS on request a breakdown of its labor force by ethnic group, sex, and job category; and to discuss with APS its policies and practices relating to its affirmative action program.
- 8. INDEMNIFICATION AND INSURANCE.** Seller assumes the entire responsibility and liability for losses, expenses, damages, demands and claims in connection with or arising out of any actual or alleged personal injury (including death) and/or damage or destruction to property sustained or alleged to have been sustained in connection with or arising out of the performances of the work by Seller, its agents, employees, subcontractors or consultants, except to the extent of liability arising out of the negligent performance of the work by or willful misconduct of APS. Seller shall indemnify and hold harmless APS, its officers, agents, and employees from any and all liability for such losses, expenses, damages, demands, and claims and shall defend any suit or action brought against any or all of them based on any actual or alleged personal injury or damage and shall pay any damage costs and expenses including attorneys' fees, in connection with or resulting from such suit or action. Seller agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable amounts covering the above obligation and will maintain workers' compensation coverage covering all employees performing this order on premises occupied by or under the control of APS.
- 9. PATENT AND COPYRIGHT INDEMNITY.** Seller shall pay all royalty and license fees relating to deliverables and other items covered hereby. In the event any third party shall claim that the reproduction, manufacture, use or sale of goods or items covered hereby infringes any copyright, trademark, patent, or other intellectual property rights, Seller shall indemnify and hold APS harmless from any cost, expense, damage, or loss resulting therefrom.
- 10. DISCOUNTS.** APS will take advantage of prompt payment discounts whenever possible; however these will not be used as a means to determine the low responsive and responsible bidder. Any discount period will not begin until the materials, supplies or services have been received and accepted and a correct invoice submitted for payment. If testing is required, discount period will not begin until such tests are satisfactorily completed.
- 11. CONTINGENCY FEES.** Seller warrants that no person or selling agency has been employed or retained to solicit or secure this order upon an agreement or understanding for a commission, percentage, brokerage or contingent fee excepting bona-fide employees or bona-fide established commercial or selling agencies maintained or utilized by Seller for the purpose of securing business. For violation or breach of this warranty, APS shall have the right to annul this order without liability or, at its discretion, to deduct from this order, price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 12. PENALTIES.** The New Mexico Procurement Code (NMSA 1978) imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose penalties for bribes, gratuities and kickbacks.
- 13. TITLE AND DELIVERY.** Title to the materials and supplies passed hereunder shall pass to APS at the F.O.B. point specified subject to the right of APS to reject upon inspection. For any exception to the delivery date specified, Seller shall give prior notification and obtain approval thereto from APS's Purchasing Department. Order is subject to termination for failure to make timely delivery.
- 14. TAX STATUS.** APS holds a Class 9 Nontaxable Transaction Certificate and is exempt from payment of tax on the purchase of tangible personal property. This certificate will be issued upon request. It is not valid for the purchase of services including construction, or materials that become part of a construction project or for the lease of property. Seller is responsible for payment of all applicable taxes, which will be added to invoice as a separate item at the current rate.
- 15. APPLICABLE LAWS.** If this order is a subcontract under a U.S. Government Prime Contract, applicable clauses of the Federal Acquisition Regulations are incorporated herein by reference. Any provision required to be included in a contract of this type by any applicable and valid Executive Order, federal, state or local law, ordinance, rule or regulation also shall be deemed to be incorporated herein. Any contract or litigation resulting from acceptance of this purchase order will be construed according to the laws of the State of New Mexico unless otherwise stated.



**RFP Form/Price Sheet  
Product/Equipment Pricing**

| <b>MFG Part NO</b>                   | <b>Product Name</b>        | <b>Product Description</b>   | <b>List Price</b>                 | <b>% Discount off List Price</b> | <b>Net Price</b>       |
|--------------------------------------|----------------------------|--|-----------------------------------|----------------------------------|------------------------|
| All Products, see attached pricelist | Landscape Structures, Inc. | Playground Equipment, shade, site furnishings, exercise equipment, and musical play. | See attached pricelist            | 5%                               | See attached pricelist |
| Per custom design                    | Landscape Structures, Inc. | All custom products  | Priced by manufacturer per design | 5%                               | Discount off MSRP      |
| All Products                         | USA Shade                  | Fabric Shade Structures, standard and custom   | Priced by manufacturer per design | 5%                               | Discount off MSRP      |
| All Products                         | Classic Recreation Systems | Metal Shade Structures, standard and custom  | Priced by manufacturer per design | 5%                               | Discount off MSRP      |
| All Products, see attached pricelist | Dumor                      | Site Furnishing – tables, benches, trash receptacles, bike racks and the like.       | See attached pricelist            | 5%                               | See attached pricelist |
| All Products, see attached pricelist | Anova                      | Site Furnishing – tables, benches, trash receptacles, bike racks and the like.       | See attached pricelist            | 5%                               | See attached pricelist |
| All Products, see attached pricelist | SSI (WebCoat)              | Site Furnishing – tables, benches, trash receptacles, bike racks and the like.       | See attached pricelist            | 5%                               | See attached pricelist |
| All Products, see attached pricelist | My TCoat                   | Site Furnishing – tables, benches, trash receptacles, bike racks and the like.       | See attached pricelist            | 5%                               | See attached pricelist |



**RFP Form/Price Sheet  
Product/Equipment Pricing**

| <b>MFG Part NO</b>                   | <b>Product Name</b>       | <b>Product Description</b>   | <b>List Price</b>      | <b>% Discount off List Price</b> | <b>Net Price</b>       |
|--------------------------------------|---------------------------|--|------------------------|----------------------------------|------------------------|
| All Products, see attached pricelist | Dero                      | Bike Racks   | See attached pricelist | 5%                               | See attached pricelist |
| All Products, see attached pricelist | Gared Sports              | Athletic Equipment including but not limited to basketball goals and nets, volleyball posts and nets, soccer goals, football field goals, post pads, bleachers and so forth. | See attached pricelist | 5%                               | See attached pricelist |
| All Products, see attached pricelist | PW Athletic               | Athletic Equipment including but not limited to basketball goals and nets, volleyball posts and nets, soccer goals, football field goals, post pads and so forth.            | See attached pricelist | 5%                               | See attached pricelist |
| All Products, see attached pricelist | KayPark                   | Site Furnishing – tables, benches, trash receptacles, bike racks, bleachers and the like.  | See attached pricelist | 5%                               | See attached pricelist |
| All Products, see attached pricelist | FreeNotes Harmony         | Commercial Grade, Outdoor musical instruments  | See attached pricelist | 5%                               | See attached pricelist |
| All Products, see attached pricelist | Most Dependable Fountains | Drinking water fountains   | See attached pricelist | 5%                               | See attached pricelist |
| All Products, see attached pricelist | Action Play               | Plastic Playground Boarders, plastic ADA ramps. Swing mats and swing seats   | See attached pricelist | 5%                               | See attached pricelist |



**RFP Form/Price Sheet  
Product/Equipment Pricing**

| <b>MFG Part NO</b> | <b>Product Name</b> | <b>Product Description</b>   | <b>List Price</b>                                   | <b>% Discount off List Price</b> | <b>Net Price</b>  |
|--------------------|---------------------|--|---|----------------------------------|-------------------|
| EWF                | South West Soils    | Engineered Wood Fiber  | As quoted by the manufacturer by yard and delivered | 5%                               | Discount off MSRP |
| EWF                | Zeager              | Engineered Wood Fiber  | As quoted by the manufacturer by yard and delivered | 5%                               | Discount off MSRP |
| Per custom design  | ForeverLawn         | Synthetic Playground Grass and Athletic Field Turf   | Priced by manufacturer per design                   | 5%                               | Discount off MSRP |
| Per custom design  | PebbleFlex          | Advanced bond-in-place technology where engineered pebbles bond together to create a safe, durable surface | Priced by manufacturer per design                   | 5%                               | Discount off MSRP |
| Per custom design  | FlexGround          | Poured-in-Place unitary surfacing  | Priced by manufacturer per design                   | 5%                               | Discount off MSRP |
| Per custom design  | VitriTurf           | Poured-in-Place unitary surfacing  | Priced by manufacturer per design                   | 5%                               | Discount off MSRP |
| Per custom design  | SofSurfaces         | Playground Safety Tile   | Priced by manufacturer per design                   | 5%                               | Discount off MSRP |



**RFP Form/Price Sheet  
Replacement Parts Pricing**

| <b>MFG Part NO</b>                            | <b>Product Name</b>        | <b>Product Description</b>  | <b>List Price</b>             | <b>% Discount off List Price</b> | <b>Net Price</b>       |
|---|----------------------------|---|-------------------------------|----------------------------------|------------------------|
| All replacement parts, see attached pricelist | Landscape Structures, Inc. | Playground Equipment, shade, site furnishings, exercise equipment, and musical play replacement parts as needed | See attached pricelist        | 5%                               | See attached pricelist |
| Replacement parts                             | USA Shade                  | Replacement tops and parts quoted by manufacturer as needed.  | Manufacturer recommended MSRP | 5%                               | Discount off MSRP      |
| Replacement parts                             | Classic Recreation Systems | Replacement tops and parts quoted by manufacturer as needed.  | Manufacturer recommended MSRP | 5%                               | Discount off MSRP      |
| Replacement parts                             | Dumor                      | Replacement Parts quoted by manufacturer as needed  | Manufacturer recommended MSRP | 5%                               | Discount off MSRP      |
| Replacement parts                             | Anova                      | Replacement Parts quoted by manufacturer as needed  | Manufacturer recommended MSRP | 5%                               | Discount off MSRP      |
| Replacement parts                             | SSI (WebCoat)              | Replacement Parts quoted by manufacturer as needed  | Manufacturer recommended MSRP | 5%                               | Discount off MSRP      |
| Replacement parts                             | My TCoat                   | Replacement Parts quoted by manufacturer as needed  | Manufacturer recommended MSRP | 5%                               | Discount off MSRP      |



**RFP Form/Price Sheet  
Replacement Parts Pricing**

| <b>MFG Part NO</b> | <b>Product Name</b>       | <b>Product Description</b>                         | <b>List Price</b>             | <b>% Discount off List Price</b> | <b>Net Price</b>  |
|--------------------|---------------------------|--|-------------------------------|----------------------------------|-------------------|
| Replacement parts  | Dero                      | Replacement Parts quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | Gared Sports              | Replacement Parts quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | PW Athletic               | Replacement Parts quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | KayPark                   | Replacement Parts quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | FreeNotes Harmony         | Replacement Parts quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | Most Dependable Fountains | Replacement Parts quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | Action Play               | Replacement Parts quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |



**RFP Form/Price Sheet  
Replacement Parts Pricing**

| <b>MFG Part NO</b> | <b>Product Name</b> | <b>Product Description</b>                        | <b>List Price</b>             | <b>% Discount off List Price</b> | <b>Net Price</b>  |
|--------------------|---------------------|---|-------------------------------|----------------------------------|-------------------|
| Replacement parts  | ForeverLawn         | Replacement work quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | PebbleFlex          | Replacement work quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | FlexGround          | Replacement work quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | VitriTurf           | Replacement work quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |
| Replacement parts  | SofSurfaces         | Replacement work quoted by manufacturer as needed | Manufacturer recommended MSRP | 5%                               | Discount off MSRP |