



City of Hercules

111 Civic Drive
Hercules, California 94547

P.O. Number

PURCHASE ORDER

Vendor Address

Gametime Inc.
C/O MRC
P.O. Box 225250
San Francisco, CA 94122

Shipping Address

Hercules Corporation Yard
1000 Sycamore Ave.
Hercules, California 94547

Qty	Product	Description	Unit price	Subtotal
1.0	RDU	GameTime - Custom PrimeTime 2-5 Play Structure	\$48,394.04	\$48,394.04
1.0	RDU	GameTime - Custom PowerScape 5-12 Play Structure	\$125,158.66	\$125,158.66
1.0	RDU	GameTime - PrimeTime ADA swing with (1) Zero-G 5-12 Swing and (1) Belt Swing	\$3,684.00	\$3,684.00
1.0	6264	GameTime - Inclusive Whirl - Playful	\$16,933.00	\$16,933.00
1.0	6299	GameTime - Inclusive Seesaw	\$9,633.00	\$9,633.00
1.0	14927	GameTime - NDS Play On Sign Package	--	--
1.0	Discount	Contract: OMNIA #2017001134	(\$86,470.69)	(\$86,470.69)
			Subtotal	\$117,332.01
			Sales Tax (9.2500%)	\$10,853.21
			Labor / Fees	--
			Shipping	\$14,414.57
			Total	\$142,599.79

Public Works Director

THIS PURCHASE ORDER IS SUBJECT TO TERMS AND CONDITIONS STATED BELOW

Comments

- Price is based on Statewide Initiative Funding.
- A check for the FULL PAYMENT is due with the order.
- Credit card or purchase orders do not qualify for this discount percentage.
- OMNIA Partners f/n/a USC Contract #2017001134 Vendor #121531. Please supply your OMNIA registration # or Federal Tax ID #:
- Supply only. Site preparation and safety surfacing are not included in this proposal.
- CUSTOMER IS RESPONSIBLE FOR OFF-LOADING OF EQUIPMENT FROM DELIVERY TRUCK.
- Please note: The sales tax rate shown on the quote is determinant on the final end use location, which is 1025 Canterbury, Hercules, CA 94547. Any variation will result in a review of the appropriate tax rate, which will be applied to your final order.
- Due to the market volatility of raw materials, pricing is valid for 30 days after date of quotation. All quotes must be reviewed after 30 days.

CITY OF HERCULES PURCHASE ORDER TERMS AND CONDITIONS

The following Purchase Order Terms and Conditions ("**Terms**") apply to the Purchase Order ("**Order**") issued by the City of Hercules ("**City**") to Vendor. The term "**Vendor**" means the seller or supplier of goods or services named in the Order and includes Vendor's employees, subcontractors, and agents.

1. ACCEPTANCE OF TERMS: Written acknowledgement or performance under this Order by Vendor constitutes acceptance of the Order by Vendor, including the Terms stated herein. The Order, along with the Terms, constitute a legally binding contract between City and Vendor. Vendor will comply with these Terms, including any written amendments hereto, and all other specifications or documents referenced in City's Order. Any additional or different terms and conditions proposed by Vendor or used by Vendor in the course of business are rejected, unless expressly agreed to in writing by City. If the goods or services named in the Order are also governed by a separate written agreement signed by City and Vendor, the terms of that agreement will govern over any inconsistent or conflicting provisions in these Terms.

2. TIME IS OF THE ESSENCE: Timely performance and deliveries are essential to this Order. If Vendor believes goods or services will not be provided as scheduled, Vendor must immediately notify City, in writing, stating the cause of the delay.

3. INVOICES AND PAYMENT: Following City's receipt of the goods or services, Vendor will render invoice(s) to City at the address specified on the Order. An invoice must correspond to only one Order and must include the Order number, the item number, a description of the goods or services and the date provided, quantities, unit price(s), and the total purchase price. Invoices must conform to the line items and unit prices stated on the Order. If no price is set forth on the Order, the goods or services will be billed at the price last quoted by Vendor or at the prevailing market price, whichever is lower. In no event will goods or services under this Order be billed at a price higher than last quoted or charged to City without City's specific written authorization. City will not be liable for goods or services furnished without an authorized Order. Prices and quantities shown on the Order are the maximum amounts authorized under this Order, unless City amends the Order. City anticipates that it will pay undisputed amounts in an invoice within 30 days of City's approval of the invoice. City will not be responsible for late payment charges. All claims for money due or to become due from City will be subject to deduction by City for any setoff or counterclaim arising out of this or any other City Order with Vendor.

4. INSPECTION AND ACCEPTANCE: City reserves the right to inspect the goods and services, at all times and location(s), as specified by City. Goods and services are subject to final inspection and acceptance by City, in its sole discretion. Vendor owns the title to all goods and services and bears all risk of loss, damage, or delay of the goods and services, until receipt, inspection, and acceptance of the goods and services by City. City reserves the right to reject and return damaged shipments, at Vendor's sole expense.

5. WARRANTIES: Vendor warrants that the goods and services will conform to the specifications, drawings, and other requirements specified by City in the Order and will be suitable for the intended use, of good quality, merchantable, in good working order, and free from defects in design, material, and workmanship. All goods will be new and unused. Vendor warrants that the goods and services, including any material incorporated therein, do not infringe upon the intellectual property rights of any third party and that title to goods and services will pass to City free of any claims, liens, or encumbrances upon payment to Vendor. Vendor's guarantees the goods and services meet the requirements herein for a period of at least one year from City's acceptance, unless otherwise stated in the Order and except when a longer guarantee is customarily provided by Vendor. City's inspection, testing, acceptance, use, or payment for all or part of any goods and services will not affect City's warranty rights or Vendor's obligations hereunder, nor will such actions constitute an assumption by City of Vendor's responsibility or liability for any defect in the goods and services. Any attempt by Vendor to limit, disclaim, or restrict these warranties or any remedies of City, by acknowledgment or otherwise, will be null, void, and ineffective without City's written consent. If City has access to confidential information of Vendor, City warrants that it will not disclose that information, unless required by Laws, as defined in Section 8.

6. CORRECTION OF DEFECTS: If City discovers defective or deficient goods or services, Vendor will correct such defect or make replacement at no cost to City and will reimburse City for any costs incurred due to the defective or deficient goods or services, including any shipping or storage costs.

7. CHANGES: City may direct changes to this Order in writing, including changes in quantities, specifications or drawings, methods of shipment and packing, schedules, or place(s) of delivery. If necessary, an equitable adjustment in price or time for performance will be made; but any claim by Vendor for such adjustment must be submitted to City within five days after notification of the City-directed change. Nothing in this Section, including any disagreement with City as to any claimed adjustment, will excuse Vendor from proceeding with the change prior to negotiation of any requested adjustment. Changes to this Order will not be binding on City, except as confirmed in writing by the authorized City representative.

8. COMPLIANCE WITH LAWS: Vendor must comply with all federal, state, and local laws, regulations, and rules, including City ordinances (“**Laws**”). Vendor will obtain and pay for all licenses, permits, and inspections required by Laws and by City in connection with the furnishing of goods and services listed in the Order.

9. INDEMNIFICATION: To the full extent permitted by law and subject to any applicable limitations in Civil Code §§ 2782 and 2782.8, Vendor will indemnify, defend with counsel acceptable to City, and hold harmless City, its elected and appointed officials, officers, employees, agents, volunteers, and consultants from and against any and all liability, demands, loss, damages, injuries, claims, settlements, expenses, and costs (including, without limitation, attorney fees, expert witness fees, and costs and fees of litigation) of every nature arising out of or in connection with Vendor’s acts or omissions under this Order, except to the extent caused by the active negligence, sole negligence, or willful misconduct of City. This indemnity requirement applies to any and all intellectual property claims. Vendor assumes full responsibility for the acts or omissions of its employees, subcontractors, or agents as they relate to the goods or services to be provided under the Order.

10. LIMITATION OF LIABILITY: To the maximum extent permitted by law, City will not be liable under this Order for any special, incidental, consequential, indirect, or punitive damages, including, without limitation, lost revenues, even if City has been advised of the possibility of such damages.

11. INSURANCE: Vendor will, at its expense, maintain commercial general liability (“CGL”) insurance (including contractual liability coverage, insuring the liabilities assumed in these Terms), automobile liability insurance, and workers’ compensation insurance (as required by Laws). Each policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against City, and the CGL and automobile liability policies must name City, including its elected and appointed officials, officers, employees, agents, volunteers, and consultants, as an additional insured. At City’s request, Vendor will furnish City with proof of insurance coverage in the form of certificates and endorsements acceptable to City. Each certificate of insurance must state that the coverage afforded by the policies will not be reduced, cancelled, or allowed to expire without at least 30 days written notice to City, unless due to non-payment of premiums, in which case ten days written notice must be made to City.

12. SAFETY: All goods and services must comply with all applicable Laws regarding health and safety, including, but not limited to, OSHA. All shipments of hazardous and toxic material must include Safety Data Sheets pursuant to Labor Code § 6360 et seq. and 8 CCR § 5194. If Vendor’s work under this Order requires Vendor to be on City premises, Vendor will take all necessary precautions to prevent injury to persons or damage to property.

13. PREVAILING WAGE: If the Order requires services that are subject to prevailing wage requirements pursuant to California Labor Code § 1720 et seq., Vendor must comply with the requirements set forth in this Section and in Labor Code § 1720 et seq. and related regulations. Vendor and its subcontractors must pay no less than the current prevailing wage rates to all workers. These prevailing wage rates are on file with City and are available online at <http://www.dir.ca.gov/DLSR>. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half. City may not enter into a contract with Vendor without proof that Vendor is registered with the California Department of Industrial Relations (“DIR”) to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions. The services will be subject to compliance monitoring and enforcement by the DIR, pursuant to Labor Code § 1771.4.

14. DEFAULT: City may terminate this Order, in whole or in part, based on Vendor’s default under this Order, including (1) failure to make delivery or to perform within the time specified in the Order or any extension thereof; (2) delivery of nonconforming goods; (3) failure to perform in accordance with the provisions of this Order or any written agreement executed in relation to this Order; (4) evidence of Vendor’s insolvency, bankruptcy, or lack of financial capacity to perform under the Order; or (5) for any other material default of Vendor. In the event of any such default, City will provide Vendor with written notice of default. If City determines that the default is curable, City may afford Vendor the opportunity to cure the default within ten days of the notice, or within a period reasonably necessary for such cure (including a shorter time, if applicable), as specified by City in writing. If Vendor fails to cure the default within the time specified, then City may terminate the Order for cause, in which case City will only owe Vendor payment for goods or services satisfactorily provided prior to the effective date of termination and may deduct from that payment the costs incurred by City, if any, because of Vendor’s default.

15. TERMINATION FOR CONVENIENCE: City may terminate this Order, in whole or in part, for convenience, by providing written notice of termination to Vendor, effective upon the date stated in the notice. Upon receipt of the notice, Vendor will immediately discontinue performance under the Order, unless otherwise specified in the notice, and deliver, if and as directed by City, all completed and partially completed items and work in progress. If City elects to terminate the Order for convenience, it will pay Vendor for goods and services satisfactorily provided as of the effective date of termination.

16. GOVERNMENT CONTRACTS: If this Order bears a statewide contract number or other government contract number (e.g., for purposes of a leveraged procurement agreement or other cooperative agreement), Vendor will comply

with all applicable provisions of that statewide or other government contract, which are incorporated herein by reference. A copy of the statewide or other government contract will be given to Vendor upon request.

17. WORK PRODUCT: All work product created by Vendor under this Order is the property of City. Vendor will promptly deliver all such Work Product to City following City's receipt of the goods and services, upon termination, or upon request by City.

18. RECORDS: Vendor will maintain records related to this Order for a period of four years from City's acceptance of the goods and services or termination of this Order. Vendor will permit City to inspect and audit Vendor's records relevant to this Order at any reasonable time.

19. MISCELLANEOUS:

(a) *Shipping:* Unless otherwise specified in the Order, Vendor will be responsible for delivery of goods and will prepay all related shipping and delivery charges. All goods are to be shipped F.O.B. destination, freight prepaid. City reserves the right to request and receive a copy of the bill of lading on all purchases. The Order number must be clearly stated on each parcel and packing slip. All items must be prepared and packed for shipment in a manner that will prevent damage in transit.

(b) *Discounts:* Any discount period will begin on the date of acceptance or the date of City's receipt of the invoice, whichever is later.

(c) *Actual Needs:* City's purchases are based on its actual needs and requirements. City will only purchase those items and quantities that it needs and requires, regardless of any estimated quantities provided to Vendor.

(d) *Assignment:* Any subletting or assignment of this Order, by operation of law or otherwise, without the prior written consent of City, will be void.

(e) *Remedies:* All of City's rights and remedies under this Order will be construed as cumulative, and not exclusive, and City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Order.

(f) *Documentation:* Technical documentation and other literature necessary for the proper use of the goods and services will be provided to City, at Vendor's sole cost.

(g) *Independent Contractor:* Vendor and its employees, subcontractors, and agents are independent contractors and not employees or agents of City.

(h) *Force Majeure:* City may delay delivery and/or acceptance due to causes beyond its reasonable control.

(i) *Governing Law and Venue:* The Order, including the Terms herein, will be governed by California law and venue for any dispute in connection with the Order will be in the Contra Costa County Superior Court, and no other place.

(j) *Survival:* Vendor's obligations under Sections 5, 9, 10, and 19 will survive any termination or expiration of this Order.

(k) *Waiver:* A waiver by City of any breach of any term or condition of this Order will not be deemed a waiver of any subsequent breach of the same or any other term or condition contained herein, regardless of the character of any such breach. No waiver is effective unless in writing and signed by City.

(l) *Modifications:* No amendment or modification of this Order, including these Terms, will be binding unless it is in a writing duly authorized and signed by City and Vendor.

(m) *Notices:* All notices and other communications under this Order will be in writing and delivered to the other party at the address on the Order. A party may change its contact information by providing written notice of any change to the other party.

(n) *Nondiscrimination:* Vendor and its subcontractors will not discriminate against any person in the performance of this Order on the basis of race, religious creed, color, sex, national origin, ethnicity, ancestry, disability, medical condition, age, marital status, sexual orientation, or any other protected class, and will comply with all applicable non-discrimination Laws.

(o) *Provisions Deemed Inserted:* Every provision of law required to be inserted in this Order is deemed to be inserted, and the Order will be construed and enforced as though such provision has been included.

(p) *Entire Agreement:* Unless the parties have entered into a separate written agreement in connection with this transaction, this Order, including the Terms and such other documents that are expressly incorporated herein, and authorized amendments thereto, constitute the final, complete, and exclusive terms of the agreement between City and Vendor.