CIFAC construction industry force account council

D. A. McCosker, President | Steve Harris, Vice President | Dave Thomas, Secretary | Michael Hester, Treasurer

March 17, 2011

Jeff Armstrong, Chair
California Uniform Construction Cost Accounting Commission
Office of the State Controller
Division of Accounting and Reporting
Local Government Policies Section
P.O. Box 942850
Sacramento, CA 94250

Sent Certified Mail: March 17, 2011

Re: Complaint against the City of Atwater

Dear Commissioner Armstrong,

This letter shall serve as a formal complaint against the City of Atwater. We believe that they have violated the California Public Contract Code, Section 22042 (b). We request that the Commission review the work as required. The work in question is described as:

Veterans Park Play Equipment Project
Scope of work: Furnish, design and installation of new play structures, concrete curbing, ADA ramps and wood fiber chips. City removed three existing play structures, cement curbing and rubber chips.
Force account work completed January 10-17, 2011
Contract work not yet completed
Low bid: $74,690.86
Force account value: $2,999.31
Total project value: $77,690.17
City of Atwater
760 East Bellevue Road
Atwater, CA 95301
(209) 357-6310
Agency Contact: Patrick E. Faretta, Parks and Community Services Director
Dennis L. Myers, City Attorney
Gregory B. Wellman, City Manager

Attached please find supporting documentation. We have mailed a copy of our complaint to the City of Atwater. We have attached a copy of that letter for your records.

The Construction Industry Force Account Council (CIFAC) is a non-profit organization that represents contractors, contractor associations and the various building trades. As such we meet the definition of an "interested party" per Public contract Code Section 22042, II.

Please feel free to contact Cathryn Hilliard, Executive Director if you should have any questions. Michelle Tucker, Central Region Representative conducted this investigation and is also

Cathryn Hilliard, Executive Director
837 Arnold Drive, Suite 200, Martinez, CA 94553 • *phone* 800-755-3354 • *fax* 925-957-1800 • *email* info@cifac.org • *web* www.cifac.org

available to answer any detailed questions you may have in regards to this complaint. We request that you notify us in writing of the findings of the Commission.

Sincerely,

Cathryn Hilliard

Cathryn Hilliard, Executive Director
chilliard@cifac.org
(925) 957-1700
837 Arnold Drive, Suite 200
Martinez, CA 94553

Enclosures:
- Copy of CUCCAC complaint letter to City of Atwater
- Copies of letters and emails to City of Atwater
- Copies of response letters from City of Atwater
- Copy of informal bid advertisement
- Copy of contractors bid
- Copy of bid results
- Copy of contract
- Notice to Proceed
- Copy of city employee payroll records

CIFAC construction industry force account council

D. A. McCosker, President | Steve Harris, Vice President | Dave Thomas, Secretary | Michael Hester, Treasurer

March 17, 2011

COPY

Gregory B. Wellman, City Manager
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Sent Via Certified Mail: March 17, 2011

Re: Veterans Park Play Equipment Project

Dear Mr. Wellman,

The Construction Industry Force Account Council (CIFAC) is a non-profit organization that monitors governmental entities to ensure they abide by the California Public Contract Code. We represent contractors, contractor organizations and labor unions.

This letter is to inform you that we have filed a complaint against the City with the California Uniform Construction Cost Accounting Commission. We believe that the city has violated Section 22042(b) of the Public Contract Code; "Exceeded the force account limit".

Sincerely,

Michelle Tucker, CIFAC Central Region Representative
mtucker@cifac.org
19815 Rough and Ready Trail
Sonora, CA 95370

Michelle Tucker

From: Patrick Faretta [pfaretta@atwater.org]
Sent: Tuesday, October 12, 2010 11:35 AM
To: Michelle Tucker
Subject: Re: RFP for new playground equipment. project no. 10-06

October 12, 2010

Dear Ms. Tucker:

As indicated clearly in the RFP, City Staff will be looking after the removal of the existing play equipment, curbing and rubber chips.

If you do not mind me asking, why would you be concerned about who is doing the removal?

Thanks for your inquiry.

Best regards,

'Patrick Faretta

Sent from my iPhone

On Oct 12, 2010, at 11:07 AM, "Michelle Tucker" <mtucker@cifac.org> wrote:

> Good morning Mr. Faretta,
>
> I work for the Construction Industry Force Account Council as a Public Contract Code Compliance Investigator. While reviewing the City's website, I came across the above referenced RFP for the design and installation of new playground equipment at Veterans Park.
>
> The removal of the existing play equipment, rubber chips and cement curbing was excluded from the RFP. Has this portion of the project been bid out? Who will be performing this portion of the work?
>
> I look forward to your response.
>
> Regards,

Michelle Tucker, CIFAC Central Region Field Representative

mtucker@cifac.org

(209) 532-2942 Phone/Fax

19815 Rough and Ready Trail

Sonora, CA 95370

CIFAC construction industry force account council

D. A. McCosker, President | Steve Harris, Vice President | Dave Thomas, Secretary | Michael Hester, Treasurer

October 12, 2010

Patrick E. Faretta, Director of Parks and Community Services
City of Atwater
760 East Bellevue Road
Atwater, CA 95301

COPY

Sent Via Certified Mail: October 12, 2010
Follow Up of October 12, 2010 Email

Re: Design, Installation and Furnishing of Playground Equipment at Veterans Park, City Project No. 10-06

Dear Mr. Faretta,

The Construction Industry Force Account Council (CIFAC) is a non-profit organization that monitors governmental agencies to ensure they abide by the California Public Contract Code. We represent contractors, contractor organizations and various building trades.

We have recently been in contact regarding the above referenced project. It is my understanding, per your email, that the City intends on self-performing the removal of existing playground equipment, rubber chips and cement curbing. The design, furnishing of the new equipment and installation will be performed by the contractor awarded the Request for Proposals (RFP). In addition, the contract will include the installation of new cement curbing, walkways and ADA ramps.

Request for Proposals cannot be used for construction work. They are only to be used for certain types of professional services.

Design-build procurement can only be used for public projects that have a total aggregate value that exceeds $1 million.

The City cannot self-perform any work on this project, as the total aggregate value of the project exceeds the $30,000 force account limit per the California Public Contract Code, Section 22032.

The City may choose to request proposals for the procurement of equipment and design of the park only. The removal of existing equipment, installation of both equipment and cement work must be competitively bid per Section 22034 or 22037.

Please inform me as to how the City intends on bringing this project into compliance with the California Public Contract Code.

As the City is signatory to the California Uniform Construction Cost Accounting Act (CUCCAA), the City you are required to adhere to those statutes.

Cathryn Hilliard, Executive Director
837 Arnold Drive, Suite 200, Martinez, CA 94553 • *phone* 800-755-3354 • *fax* 925-957-1800 • *email* info@cifac.org • *web* www.cifac.org

Michelle Tucker

From: Joe Hollstein [jhollstein@atwater.org]
Sent: Saturday, October 16, 2010 8:05 AM
To: Michelle Tucker
Cc: Patrick Faretta; Len Guillette
Subject: RE: RFP for new playground equipment. project no. 10-06, Veterans Park

Ms Tucker

As I said before, we are not trying to evade the bidding requirements as section 22033. We are bidding the purchase and installation of the play equipment. We are trying to complete a project within the funds we have.

Joe Hollstein
City Engineer
City of Atwater

From: Michelle Tucker [mtucker@cifac.org]
Sent: Friday, October 15, 2010 9:06 AM
To: Joe Hollstein
Cc: Patrick Faretta
Subject: RE: RFP for new playground equipment. project no. 10-06, Veterans Park

Mr. Holstein,

The applicable section of the Public Contract Code is listed here:

22032. (a) Public projects of thirty thousand dollars ($30,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.
(b) Public projects of one hundred twenty-five thousand dollars ($125,000) or less may be let to contract by informal procedures as set forth in this article.
(c) Public projects of more than one hundred twenty-five thousand dollars ($125,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

22033. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

The bidding threshold is determined by the total aggregate value of the project. If the city chooses to use force account work on this project, the city will be in direct violation of the law.

Your response: "I disagree with you that the demolition can not be done with City forces. The law provides that the work can be done with City forces if it is determined that it would cost less and the proper records are kept." What law are you referring to?

The applicable section of the code: Force account work can only be used AFTER rejecting all bids. The city cannot reject a portion of the bid as this is one project.

22038. (a) **In its discretion, the public agency may reject any bids presented, if the agency, prior to rejecting all bids and declaring that the project can be more economically performed by employees of the agency, furnishes a written notice to an apparent low bidder.** The notice shall inform the bidder of the agency's intention to reject the bid and shall be mailed at least two business days prior to the hearing at which the agency intends to reject the bid. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the public agency shall have the option of either of the following:

(1) Abandoning the project or readvertising for bids in the manner described by this article.

(2) By passage of a resolution by a four-fifths vote of its governing body declaring that the project can be performed more economically by the employees of the public agency, may have the project done by force account without further complying with this article.

(b) If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the public agency may accept the one it chooses.

(c) If no bids are received through the formal or informal procedure, the project may be performed by the employees of the public agency by force account, or negotiated contract without further complying with this article.

I request that the city further revise the Informal Bid Invitation to include the proposed force account work.

Thank you,

Michelle Tucker, CIFAC Central Region Field Representative
mtucker@cifac.org
(209) 532-2942 Phone/Fax

From: Joe Hollstein [mailto:jhollstein@atwater.org]
Sent: Friday, October 15, 2010 8:21 AM
To: Michelle Tucker
Cc: Len Guillette; Patrick Faretta
Subject: RE: RFP for new playground equipment. project no. 10-06, Veterans Park

The request for bids have been modified to provide the method of selecting the lowest bidder in accordance with the requirements of the Public Contract Code. The selection process is the bid amount and the number of play equipment supplied.

The bids will come in sealed envelops and be publicly opened.

I disagree with you that the demolition can not be done with City forces. The law provides that the work can be done with City forces if it is determined that it would cost less and the proper records are kept. Please under stand that we have limited funds to do this project and wish to provide the maximum amount of play equipment at the end of the project.

Joe Hollstein
City Engineer
City of Atwater

From: Michelle Tucker [mtucker@cifac.org]
Sent: Thursday, October 14, 2010 10:07 AM
To: Joe Hollstein

Cc: Patrick Faretta
Subject: RE: RFP for new playground equipment. project no. 10-06, Veterans Park

Thank you for your answer. I have a couple more questions/concerns. I would appreciate clarification of the following:

This project must be awarded to the lowest responsible bidder, without any specific requirements, how does the city intend to compare what may be apples and oranges?

In addition, will the removal of existing equipment, rubber chips and cement now be included in the informal bid? This work cannot be performed by city employees, as the total aggregate value of the project exceeds the $30,000.

Will the bids be sealed and publicly opened?

From: Joe Hollstein [mailto:jhollstein@atwater.org]
Sent: Thursday, October 14, 2010 6:16 AM
To: Michelle Tucker
Cc: Len Guillette; Patrick Faretta
Subject: FW: RFP for new playground equipment. project no. 10-06, Veterans Park

Subject: RE: RFP for new playground equipment. project no. 10-06, Veterans Park

Ms Tucker

Your email has been forwarded to me for response. We are fully aware of the requirements of the California Uniform Cost Accounting Act. We have no intention of ciromventing it. Since the cost of the project was going to be under $125,000, we were proceeding with the informal bidding procedure. We did use the incorrect term on the bid. It should have been titled Request for Informal Bid, not Request for Proposal.

In accordance with 22034 (b) of the Public Contract Code, we notified all of the contractors on our list that were capable of performing the work. We provide significantly more than 10 days for them to bid the work.

As to the question of Design/build, the construction of park play equipment is often handled the way we are. The play equipment from the various play equipment manufacturers has different footing requirements. Therefore the City can not specify those footings. In addition, the size of the play area varies depending on the equipment selected. Since the City is trying to get the most play equipment for the lowest cost, we want to give the manufacturers as much flexibility as possible.

In order to resolve this issue, the City is revising the request to reflect that it is a Request for Informal Bid, renotifying the potential bidders and providing them with an additional 10 days to prepare their bids.

At no time was the City dispensing with the bidding requirements for this work.

If you have any questions, please contact me at jhollstein@atwater.org or call me at 209 357-6231.

Joe Hollstein
City Engineer
City of Atwater.

From: Michelle Tucker [mailto:mtucker@cifac.org]
Sent: Tuesday, October 12, 2010 11:52 AM

To: Patrick Faretta
Cc: citymanager; Mayor
Subject: RE: RFP for new playground equipment. project no. 10-06, Veterans Park

Mr. Faretta: The City is signatory to the California Uniform Construction Cost Accounting Act, CUCCAC. This Act requires all public projects that exceed $30,000 be competitively bid. In addition, there are specific advertising and bidding requirements that must be followed.

Request for Proposals are generally used for professional services and cannot be used for construction work.

This project is being treated as a design-build, as indicated in the language of the RFP. Design-build is only allowed for projects that exceed $1 million.

Under what legal authority is the City dispensing with competitive bidding?

If the city goes forth with awarding the construction work in the RFP, and or self-performs any portion of this project, the City will be out of compliance with the California Uniform Construction Cost Accounting Act requirements and the California Public Contract Code.

From: Patrick Faretta [mailto:pfaretta@atwater.org]
Sent: Tuesday, October 12, 2010 11:35 AM
To: Michelle Tucker
Subject: Re: RFP for new playground equipment. project no. 10-06

October 12, 2010

Dear Ms. Tucker:

As indicated clearly in the RFP, City Staff will be looking after the removal of the existing play equipment, curbing and rubber chips.

If you do not mind me asking, why would you be concerned about who is doing the removal?

Thanks for your inquiry.

Best regards,

'Patrick Faretta

Sent from my iPhone

On Oct 12, 2010, at 11:07 AM, "Michelle Tucker" <mtucker@cifac.org> wrote:

> Good morning Mr. Faretta,
>
> I work for the Construction Industry Force Account Council as a Public Contract Code Compliance Investigator. While reviewing the City's website, I came across the above referenced RFP for the design and installation of new playground equipment at Veterans Park.

The removal of the existing play equipment, rubber chips and cement curbing was excluded from the RFP. Has this portion of the project been bid out? Who will be performing this portion of the work?

I look forward to your response.

Regards,

Michelle Tucker, CIFAC Central Region Field Representative
mtucker@cifac.org
(209) 532-2942 Phone/Fax
19815 Rough and Ready Trail
Sonora, CA 95370

CIFAC construction industry force account council

D. A. McCosker, President | Steve Harris, Vice President | Dave Thomas, Secretary | Michael Hester, Treasurer

October 18, 2010

COPY

Gregory B. Wellman, City Manager
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Sent Via Certified Mail: October 18, 2010

Re: Design, Installation and Furnishing of Playground Equipment at Veterans Park, City Project No. 10-06

Dear Mr. Wellman,

The Construction Industry Force Account Council (CIFAC) is a non-profit organization that monitors governmental agencies to ensure they abide by the California Public Contract Code. We represent contractors, contractor organizations and various building trades.

I have recently been in contact with the City regarding several concerns I had with City Project No. 10-06. My concerns stemmed from improper bidding procedures used on this project. It appears that all but one of my concerns has been rectified. I left you a message and sent you a detailed email on Friday, October 15 and have yet to receive a response.

It is my understanding that the City intends on self-performing the removal of existing playground equipment, rubber chips and cement curbing.

I would like to inform you that the City may not self-perform any work on this project, as the total aggregate value of the project exceeds the $30,000 force account limit/bidding threshold per the California Public Contract Code, Section 22032. Listed below is the applicable section of the law for your reference.

22032. (a) Public projects of thirty thousand dollars ($30,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.
(b) Public projects of one hundred twenty-five thousand dollars ($125,000) or less may be let to contract by informal procedures as set forth in this article.
(c) Public projects of more than one hundred twenty-five thousand dollars ($125,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

22033. It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

Cathryn Hilliard, Executive Director
837 Arnold Drive, Suite 200, Martinez, CA 94553 • *phone* 800-755-3354 • *fax* 925-957-1800 • *email* info@cifac.org • *web* www.cifac.org

We request an immediate revision of the Request for Proposals to include the removal and disposal of the existing playground equipment, rubber chips and cement curbing and extension of the bid opening date.

This letter shall **not** serve as a formal complaint; it is our intention to guide the City into staying in compliance.

As we have been told, time is of the essence on this project, so we need to find a mutual remedy prior to the project bid opening. We would appreciate an immediate response to this letter. You may contact me if you have any questions at (209) 532-2942.

Sincerely,

Michelle Tucker, CIFAC Central Region Representative
mtucker@cifac.org
19815 Rough and Ready Trail
Sonora, CA 95370

CC Joan Faul, Mayor

CIFAC construction industry force account council

D. A. McCosker, President | Steve Harris, Vice President | Dave Thomas, Secretary | Michael Hester, Treasurer

November 3, 2010

COPY

Dennis L Myers, City Attorney
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Sent Via Certified Mail: November 3, 2010

Re: Design, Installation and Furnishing of Playground Equipment at Veterans Park, City Project No. 10-06

Dear Mr. Myers,

We have received the City's response letter, dated October 26, 2010. It is our understating that the City disagrees with our position regarding the use of force account work on the above referenced project. In addition, you have made it clear that the City intends on proceeding with self-performing the demolition of the existing play equipment, rubber chips and cement curbing.

This is *not* a formal complaint; however, we wish to inform the City, that if you should proceed with self-performing the work, we will file a complaint against the City, with the California Uniform Construction Cost Accounting Commission.

As this work needs to be competitively bid, it is our opinion that the City has two options;

1) Reject all bids and rebid the project with the demolition work
2) Separately bid the demolition work

Per the California Public Records Act: Government Code 6250 et. seq., we request a copy of the bid results be sent to us for review. If you feel that this document is exempt, please state the legal authority under which you claim exemption.

We would appreciate an immediate response to this letter. You may contact me if you have any questions at (209) 532-2942.

Sincerely,

Michelle Tucker, CIFAC Central Region Representative
mtucker@cifac.org
19815 Rough and Ready Trail
Sonora, CA 95370

CC Joan Faul, Mayor
CC Gregory B Wellman, City Manager

CIFAC construction industry force account council

D. A. McCosker, President | Steve Harris, Vice President | Dave Thomas, Secretary | Michael Hester, Treasurer

January 21, 2011

COPY

Patrick E. Faretta, Director of Parks and Community Services
City of Atwater
760East Bellevue Road
Atwater, CA 95301

Re: Design, Installation and Furnishing of Playground Equipment at Veterans Park, City Project No. 10-06

Dear Mr. Faretta,

The Construction Industry Force Account Council (CIFAC) is a non-profit organization that monitors governmental agencies to ensure they abide by the California Public Contract Code. We represent contractors, contractor organizations and various building trades.

We have recently had a number of inquiries regarding the Veterans Park Playground Installation Project. This letter is to obtain clarification from you regarding these inquiries. Please provide copies of the following documents or the legal authority under which you claim exemption:

1. Copies of all change orders and/or amendments to the contract
2. Copies of certified payrolls for all city employees performing work on the project, including the amount of hours performed by each
3. Copies of all documents showing the scope of work performed by city employees

Thank you for your prompt reply to this letter. We are requesting these documents per the California Public Records Act; Government Code 6250 et. seq. and, therefore, will expect a reply by February 4, 2011. Please contact me if you have any questions at (209) 532-2942.

Sincerely,

Michelle Tucker, CIFAC Central Region Representative
mtucker@cifac.org
19815 Rough and Ready Trail
Sonora, CA 95370

CITY OF ATWATER

CIVIC CENTER
750 BELLEVUE ROAD
ATWATER, CALIFORNIA 95301

OFFICE OF THE CITY ATTORNEY

October 26, 2010

Michelle Tucker,
CIFAC Central Region Field Representative
19815 Rough and Ready Trail
Sonora, CA 95370

RE: RFP for new playground equipment. Project No. 10-06, Veterans Park

Ms Tucker:

The City is in receipt of your letter of October 18, 2010. The City still disagrees with your interpretation of Sections 22032 and 22033 of the Public Contract Code. Subsection 22032 provides the procedure to be used for contracting work within specified dollar amounts. The City is in compliance with that section. The proposed work will be less than $125,000; so informal bidding is the appropriate method to proceed.

Pursuant to Section 22033, it is unlawful to split a project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding. The City is not trying to evade bidding the work. In fact, the City is currently bidding the work in accordance with Section 22034.

The City has a limited amount of funds for the project. Once those funds are used, no additional work can be done. All, including the demolition in the bid would do is reduce the amount of play equipment that will be installed. In order to provide the maximum benefit for the citizens, the City chose to remove the old play equipment with its own forces.

We believe the City's actions are according to the law as set forth above. Thus, we believe we have a meritorious defense to whatever action you wish to bring. Please address all further correspondence regarding this matter to this office.

Sincerely,

Dennis L Myers
City Attorney
City of Atwater

CITY OF ATWATER

PARKS & COMMUNITY SERVICES DEPARTMENT

~~REQUEST FOR PROPOSAL~~
REQUEST FOR INFORMAL BID

CITY PROJECT NO. 10 – 06

The City of Atwater Parks & Community Services Department invites qualified firms to submit ~~proposals~~ informal bids for design and installation of playground equipment in Veterans Park, located at 2680 Buhach Road in Atwater, CA.

PROJECT: Furnish, design and install playground equipment for two areas in Veterans Park. **City of Atwater will remove existing play equipment, rubber chips and existing cement curbing**. Installation will include twelve (12) inches of Sof'Fall Engineered Wood Fiber or equivalent throughout the entire play ground areas. Due to Atwater's sandy soil conditions, a drainage system will likely not be needed. However, an appropriate weed barrier fabric should be included. Both play areas will require the installation of a wheelchair accessible ramp(s), cement curbing and cement walkways that connect the two play areas to each other and to other facilities within the park.

PROJECT AREA: Veterans Park is located at 2680 Buhach Road in Atwater, CA. Enclosed with the ~~Request For Proposal~~ Request for Informal Bid is an overhead view of the project area, project location map and site photos of the existing play areas that will be removed by the City of Atwater.

SPECIFICATIONS: Playground area No. 1

- Play equipment apparatus with no swings.
- Play equipment must conform to current U.S. Consumer Product Safety Commission Guidelines.
- Play equipment must comply with access standards set forth by the American Disabilities Act.
- Engineered Wood Fiber must meet all relevant ASTM standards.
- Wheelchair accessible ramp(s) that meet access standards set forth by the American Disabilities Act.
- ~~Design must include an appropriate balance of apparatus for ages 2 – 12 with extra emphasis on fitness and fun.~~
- Design shall include appropriate apparatus for ages 5 – 12 with extra emphasis on fitness and fun.
- Installation of cement walkway to create an accessible path from playground to existing picnic shelter.

Playground area No. 2

- Swings only.
- Swings must conform to current U.S. Consumer Product Safety Commission Guidelines.
- Engineered Wood Fiber must meet all relevant ASTM standards.
- Proper use zones for swing units must be considered in design.
- Wheelchair accessible ramp(s) that meet access standards set forth by the American Disabilities Act.
- Design must include a minimum of ~~two (2) bays~~ one (1) bay for tot swings and ~~two (2) bays~~ one (1) bay for belt swings.
- Installation of cement walkway to create an accessible path from Playground area No. 1 to Playground area No. 2.

BUDGET: The City of Atwater has allocated approximately $65,124 for this project. The City also received a private donation for this project in the amount of $10,000. The total project budget is $75,124.

DELIVERABLES: At time of submittal due date:

- 3 – D rendering of proposed design for both Playground areas that will include wheelchair accessible ramps, cement curbing and cement walkways.
- Itemized list of costs for playground apparatus, Engineered Wood Fiber, weed barrier fabric, cement curbing, wheelchair accessible ramps, cement walkways and complete installation.
- Sealed proposal.

At time firm is selected and prior to project start up:

- Performance Bond.
- Payment Bond.
- Proof of appropriate/ required insurance documents.

SUBMITTAL DATE: Responses to the ~~Request For Proposal~~ Request for Informal Bid must be received no later than ~~5:00 PM PST on Thursday, October 14, 2010~~ 2:00 PM PST on Thursday, October 28, 2010. Responses to the ~~RFP~~ request for Informal Bid that are received after that time will be returned to the sender unopened. Postmarks will not be accepted.

Send or deliver responses to ~~Request For Proposal~~ Request for Informal Bid to:

City of Atwater
Parks & Community Services Department
Atwater Community Center
760 East Bellevue Road
Atwater, CA 95301
Attn: Patrick E. Faretta, Director
Subject: Response to ~~Request For Proposal~~ Request for Informal Bid for Veterans Park Playground Equipment

Two (2) copies of each response to the ~~RFP~~ request for Informal Bid are required.

Any questions should be submitted in writing, e-mailed or faxed to:

Questions in Response to ~~Request For Proposal~~ Request for Informal Bid for Veterans Park Playground Equipment
Attn: Patrick E. Faretta
Director of Parks & Community Services
Atwater Community Center
760 East Bellevue Road
Atwater, CA 95301

Site visits are not required, but are encouraged and will be accommodated by contacting Patrick E. Faretta.

Contact Telephone Number
Patrick E. Faretta (209) 357-6322
E-mail: pfaretta@atwater.org

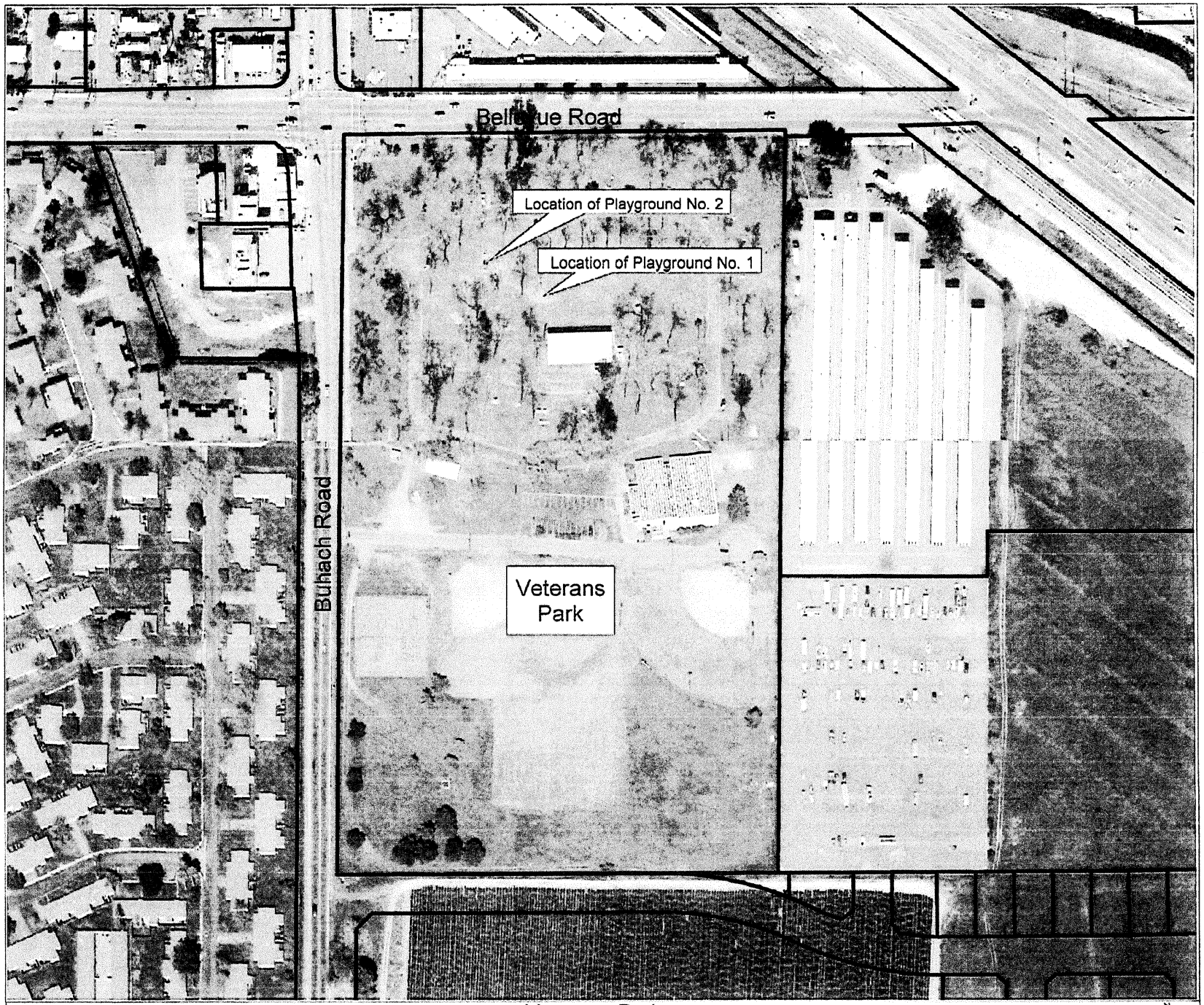
Fax Number: (209) 357-6325

The City of Atwater's web site http://www.atwater.org/ will have posted a copy of the ~~Request For Proposal~~ Request for Informal Bid for the Veterans Park Playground Equipment.

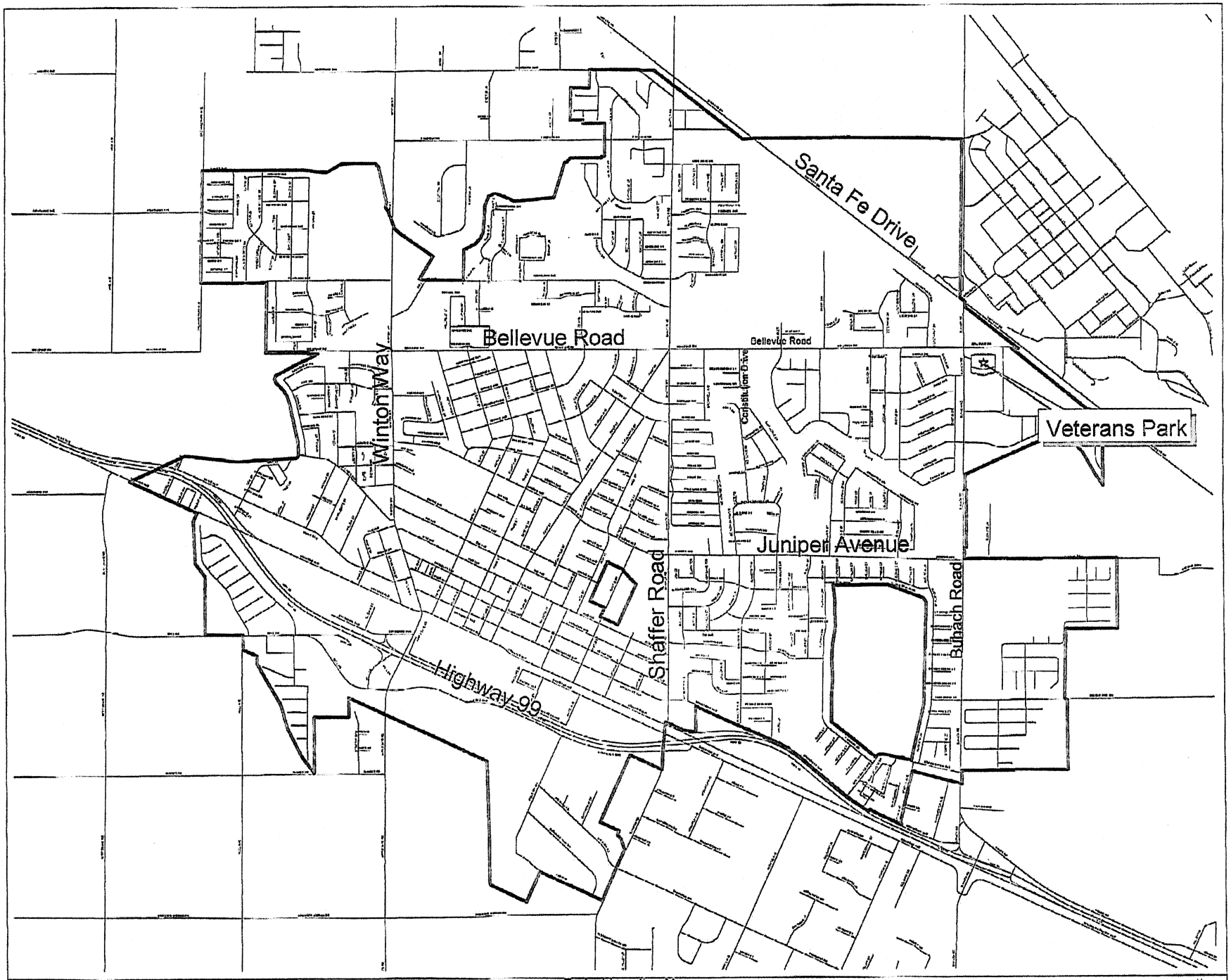
SELECTION CRITERIA:

- Lowest total cost.
- The amount of individual play components that will be incorporated into the overall design of the playground equipment and to the degree in which the play structure provides an emphasis on fitness and fun.
- Compliance to all applicable safety rules and guidelines.

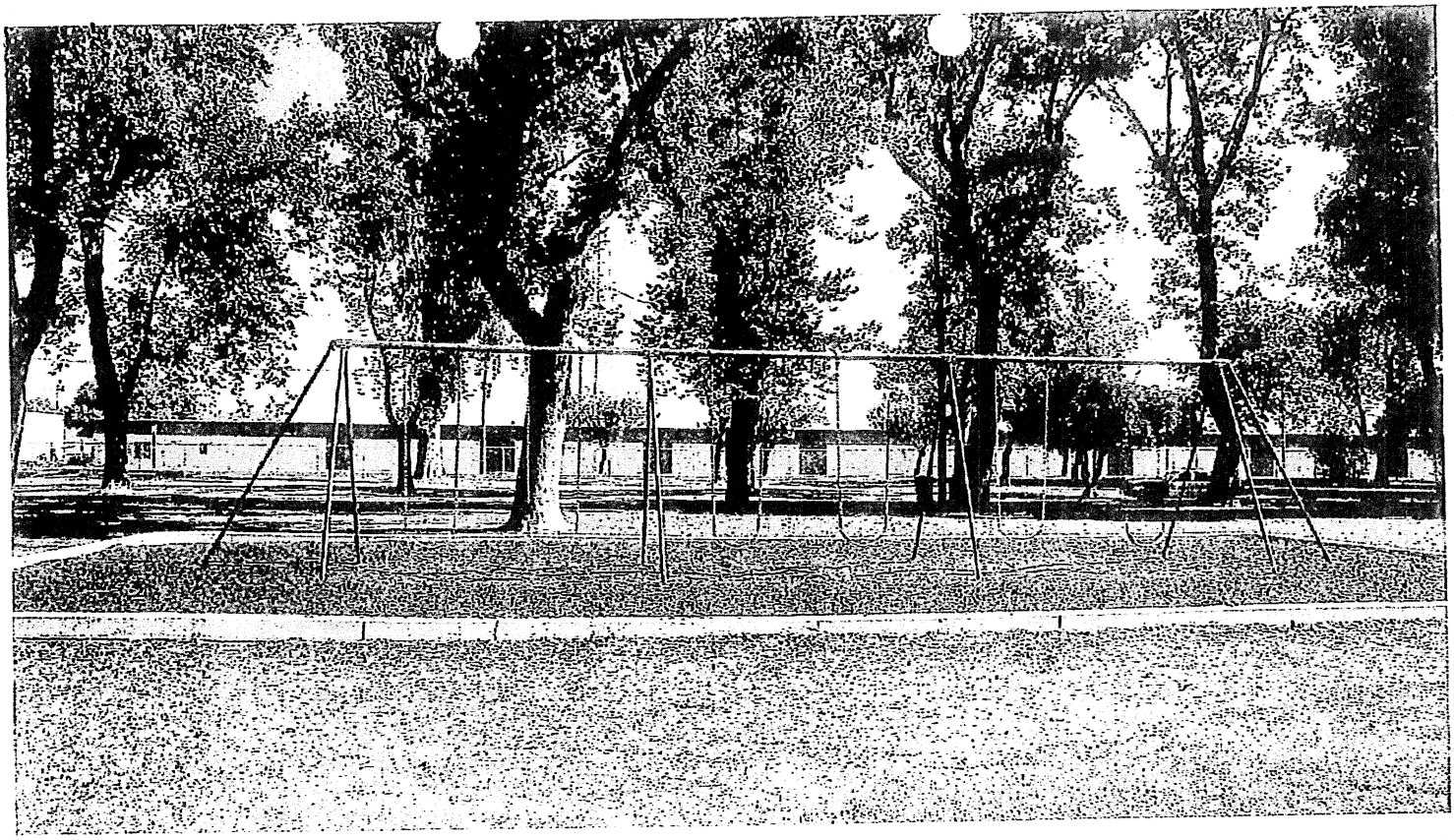
AWARD DATE: Although subject to change, anticipated date of contract award will be Monday, ~~October 25, 2010~~. November, 8, 2010.



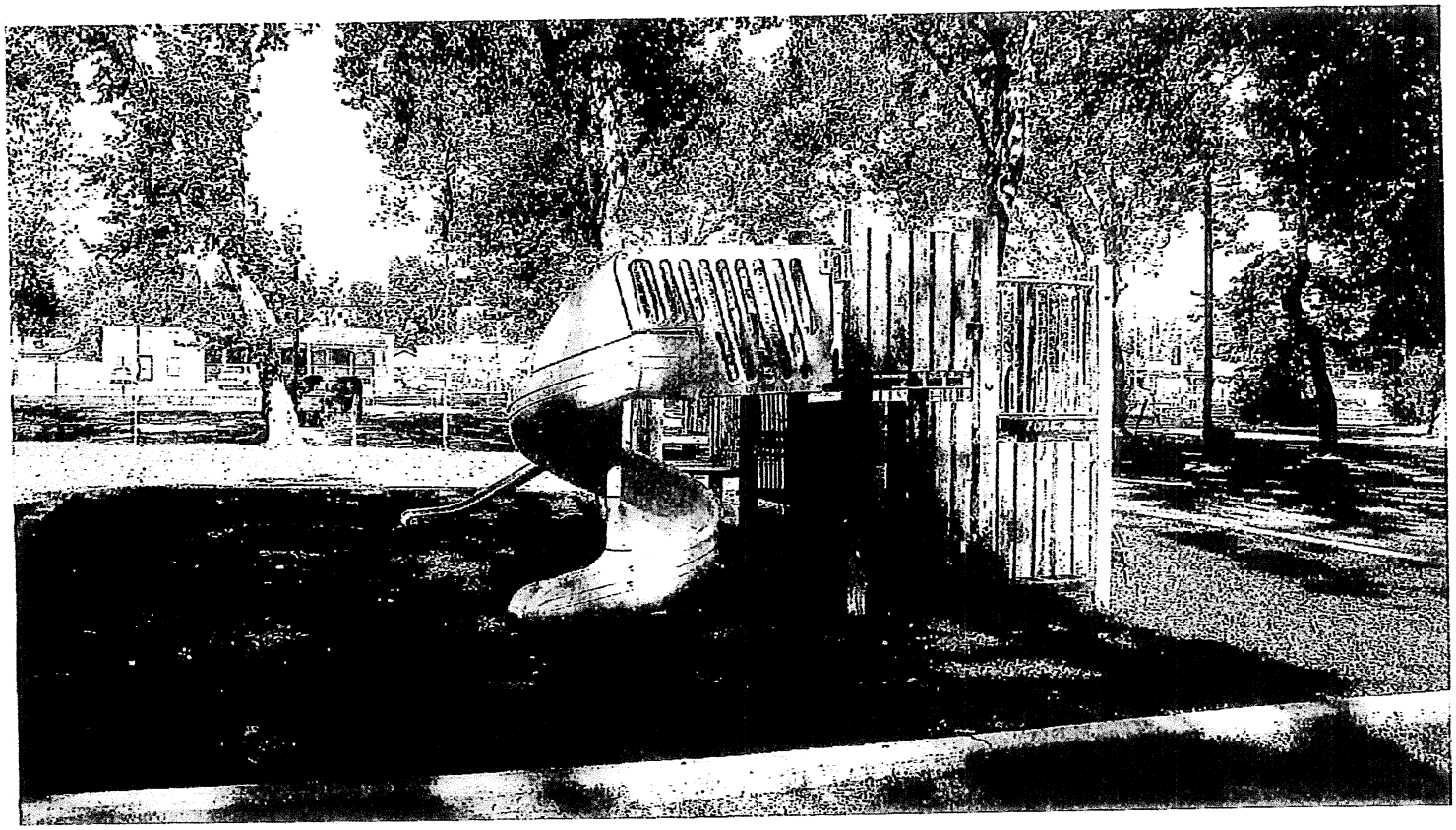
Veterans Park
Playground Equipment
Removal & Replacement



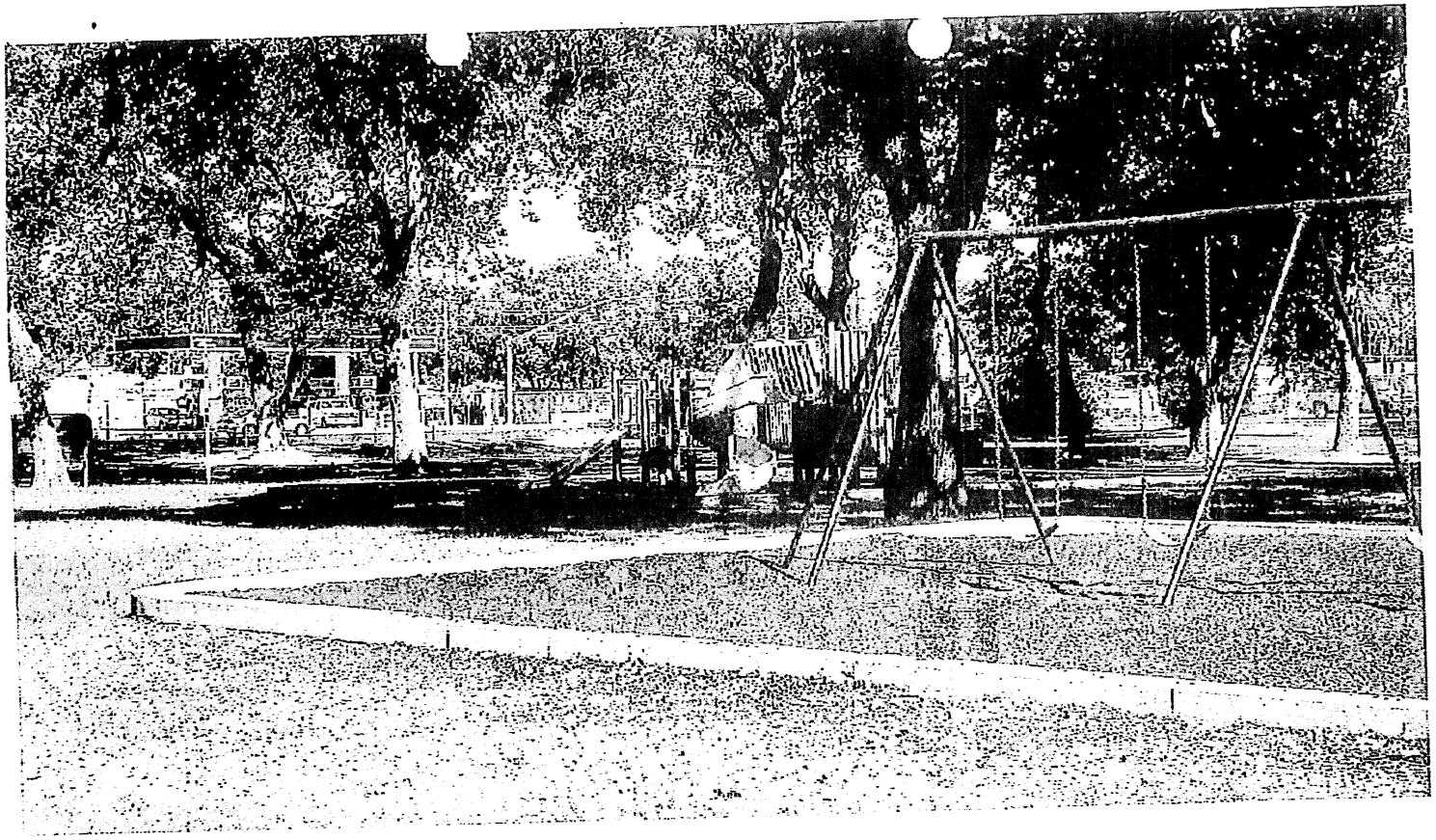
Project Location Map
Veterans Park Playground Equipment
Removal and Replacement
2680 Buhach Road Atwater CA 95301



REMOVE AND REPLACE



REMOVE AND REPLACE



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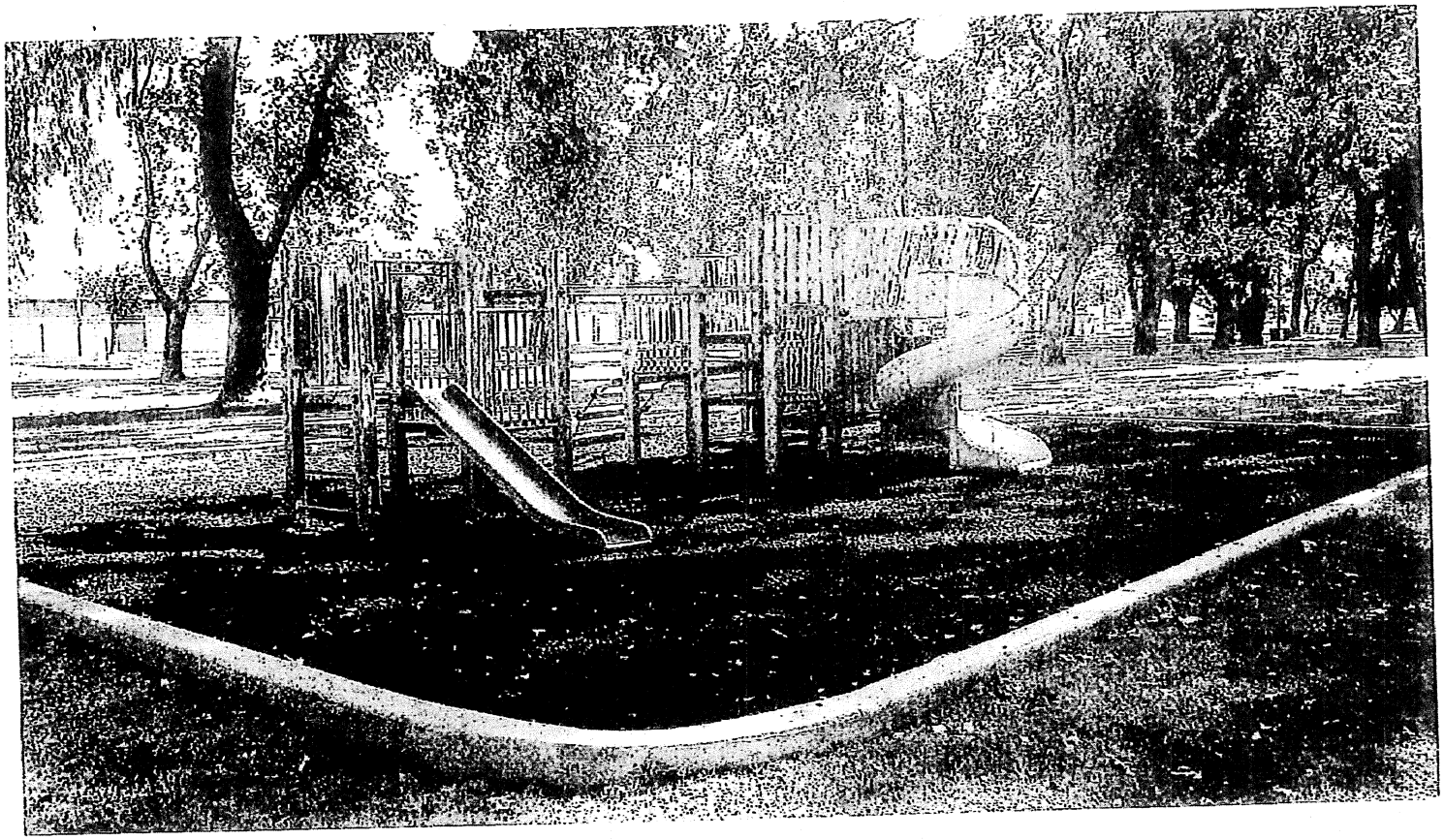
REMOVE AND REPLACE



REMOVE AND REPLACE

REMOVE AND REPLACE

REMOVE AND REPLACE

REMOVE AND REPLACE

October 26, 2010

CITY OF ATWATER
VETERANS PARK
2680 BUHACH RD
ATWATER CA

Dear City of Atwater

A.I.R.S and NSP3 is delighted to provide the City of Atwater with this playground equipment proposal.

This design was developed with your specific needs in mind, and we look forward to discussing this project further with you to ensure your complete satisfaction. A.I.R.S is confident that this proposal will satisfy Veterans park functional, environmental, and safety requirements -- and most importantly -- bring joy and excitement to the children and families directly benefiting from your new playground.

You have our personal commitment to support this project and your organization in every manner possible, and we look forward to continue developing a long-standing relationship with the City of Atwater. We appreciate your consideration and value this opportunity to earn your business.

Sincerely,

DARIN MCCULLOUGH
A.I.R.S #790619
4436 SAN VITO DR
SALIDA CA 95368

EXHIBIT "A"

BID INSTALLATION AND SUPPLIES

10/27/2010

Job #

TO: THE CITY OF
ATWATER

A.I.R.S.
#790619
#CPSI 7939-0909
DARIN MCCULLOUGH
4436 SAN VITO DRIVE
SALIDA, CA 95368
CELL (209)765-6594
FAX (209)545-6939
EMAIL INSTALLPROS @JPS.NET

We are pleased to submit the following bid:

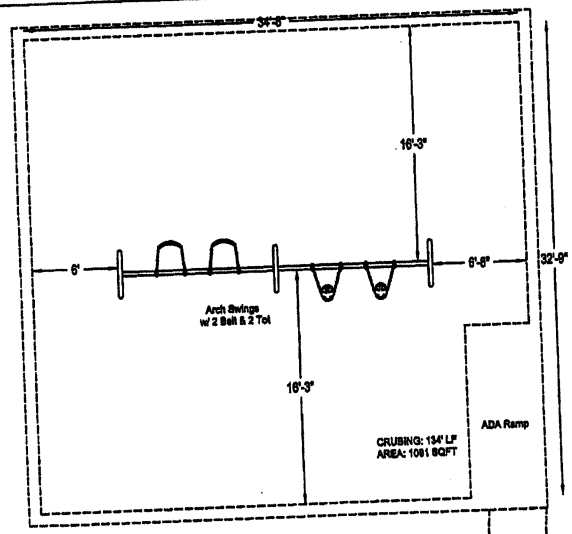
Job Description:

ATWATER PLAYGROUND VETERANS PARK
OPTION #2

SERVICE HOURS	DESCRIPTION	CHARGES	TOTAL
	POUR CONCRETE RETAINER AROUND STRUCTURE	10 X 12	$3,381.12
	POUR CONCRETE RETAINER AROUND SWINGS	10 X 12	$2,359.74
	EXCAVATION		$2,200.00
	POUR CONCRETE WALKWAY 4 FT X 140 FT		$5,600.00
	S PATH PAST FROM SHELTER TO PLAYAREA 1 AN AREA 2		$7,200.00
	INSTALL PLAY STRUCTURE		$2,000.00
	INSTALL SWINGS		$400.00
	INSTALL WEED SCREEN		$2,000.00
	INSTALL WOOD CHIPS		$600.00
	INSTALL ADA RAMPS LONG STYLE		$2,200.00
	PROVIDE BONDS/ PERFORMANCE AND PAYMENT		$7,800.00
	SUPPLY ENGINEERED WOODFIBER		$1,200.00
	SUPPLY WEED SCREEN		
	SUPPLY SWING SET 1 AND		$37,750.00
	SUPPLY STRUCTURE OPTION # 2		
	SHIPPING AND HANDLING INCLUDED		
	CITY TO REMOVE STRUCTURE AND ALL UNITARY SURFACE AND SAND DOWN TO 12 INCHES		
	CITY TO RECEIVE PLAYGROUND EQUIPMENT AT CORPRATE YARD		

Total service charges: $74,690.86

Price valid until: 12/26/2010



*Playground Supervision Required

CPSC #325

60 USERS

5-12

PLAYWORLD™

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6 Ft.

as noted

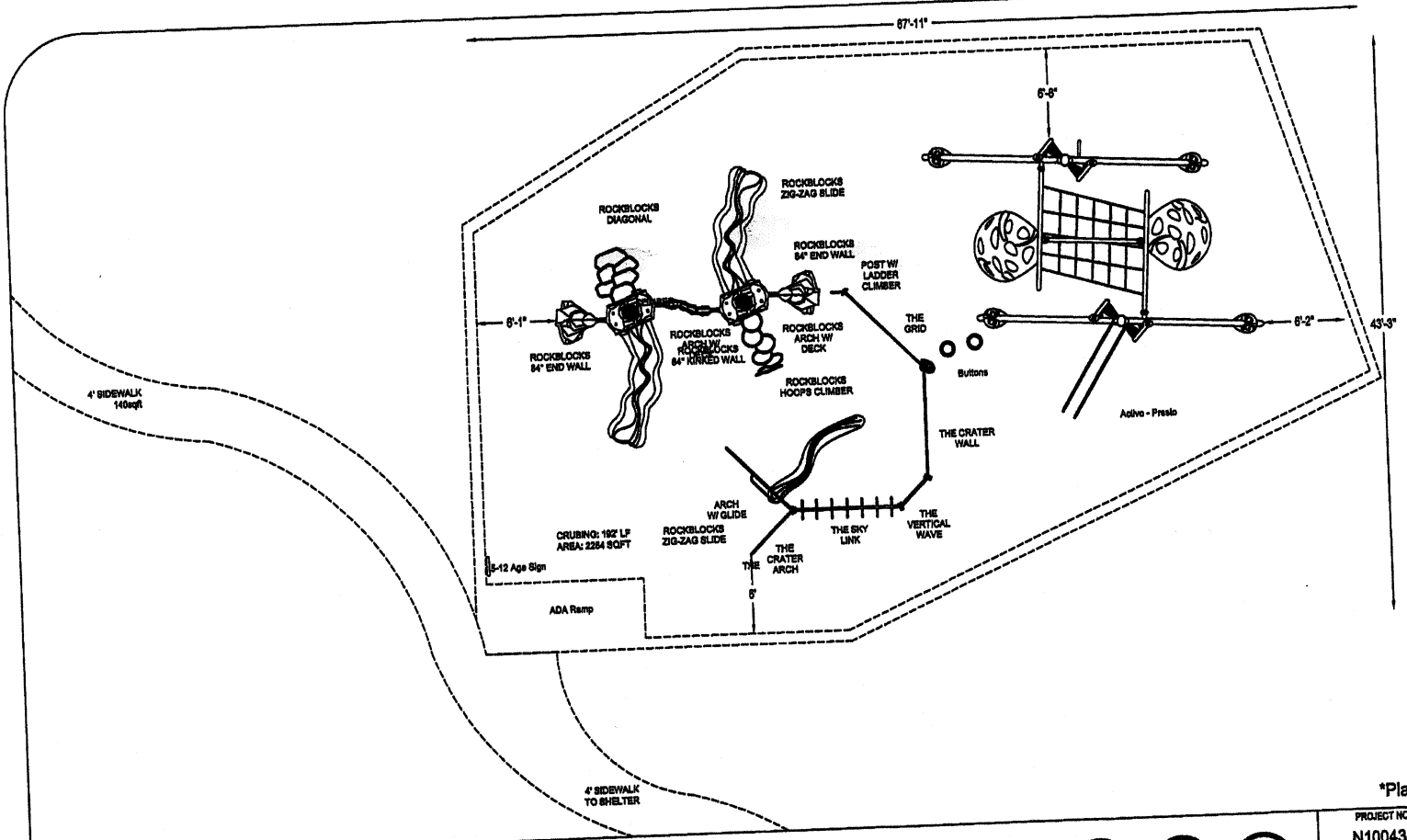
as noted

PROJECT NO:	REV:	DATE:
N100439	-	10-8-10
SYSTEM:		SCALE:
CHALLENGERS		1/8" = 1'-0"
SITE PLAN		DRAWN BY: Melissa

Veterans Park Option 2

Atwater, CA

NSP³
1555 Tahoe Court Redding CA 96003
www.nspx3.com
Phone 1-877-473-7619



*Playground Supervision Required

CPSC #325 | 60 USERS | 5-12

PLAYWORLD™

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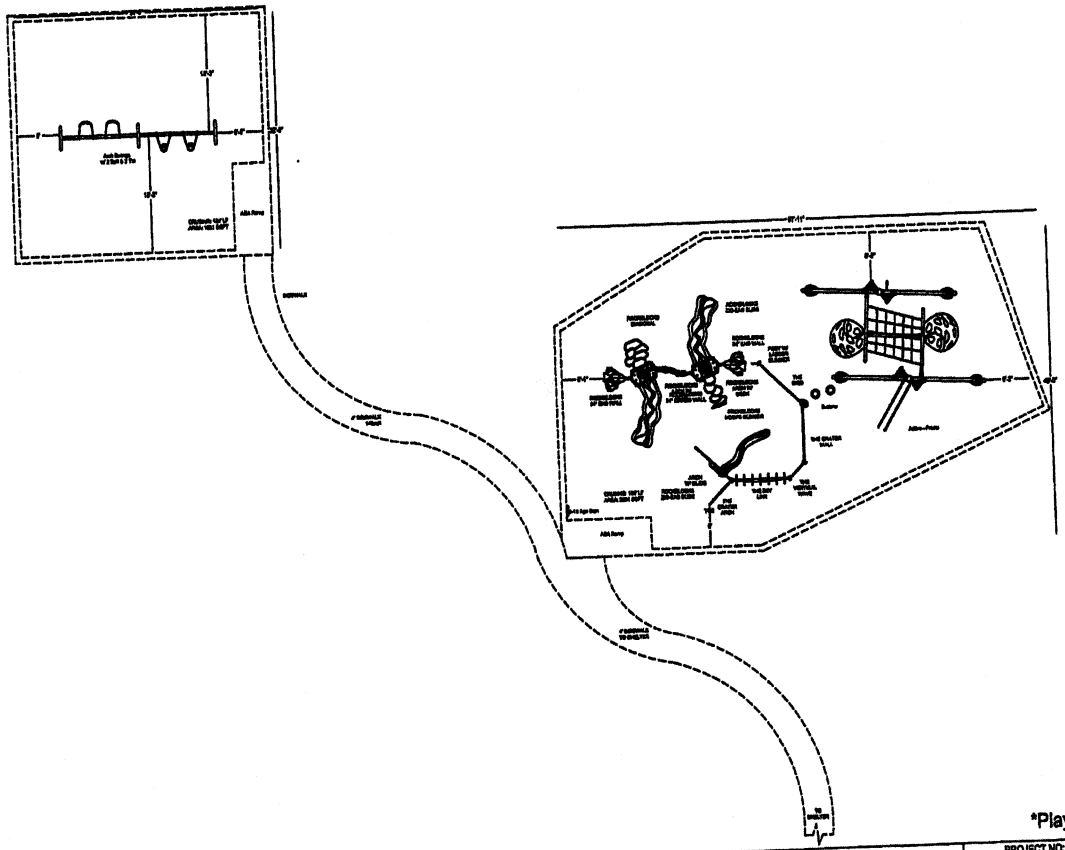
8 Ft. | as noted | as noted

PROJECT NO:	REV:	DATE:
N100439	-	10-8-10
SYSTEM: CHALLENGERS		SCALE: 1/8" = 1'-0"
SITE PLAN		DRAWN BY: Melissa

Veterans Park Option 2

Atwater, CA

NSP3
1555 Tahoe Court Redding CA 96003
www.nspx3.com
Phone 1-877-473-7619



*Playground Supervision Required

PROJECT NO: N100439	REV: -	DATE: 10-8-10
SYSTEM: CHALLENGERS		SCALE: nts
SITE PLAN		DRAWN BY: Melissa

CPSC #325 | 60 USERS | 5-12

PLAYWORLD™

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Playworld™ is a brand of Playworld Systems, Inc.

8 Ft. | as noted | as noted

Veterans Park Option 2

Atwater, CA

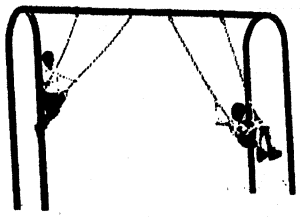
NSP3
1555 Tahoe Court Redding CA 96003
www.nspx3.com
Phone 1-877-473-7619

Veterans Park Option 2
Atwater, CA

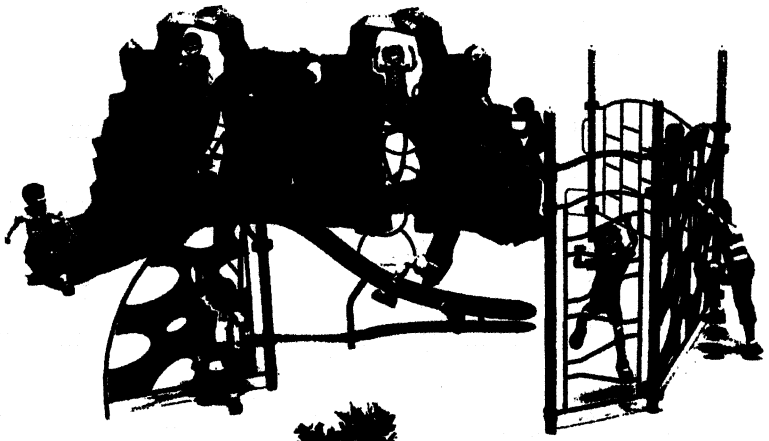
Challengers
Fall Heights'
Age Group: 5-12
Universal
Colors:
Tangerine, Cobalt, Silver, Greystone

Design Number: N1004394

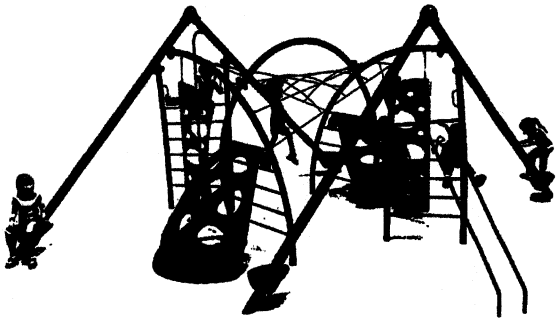
Site View 1



Arch Swings



PE 1010



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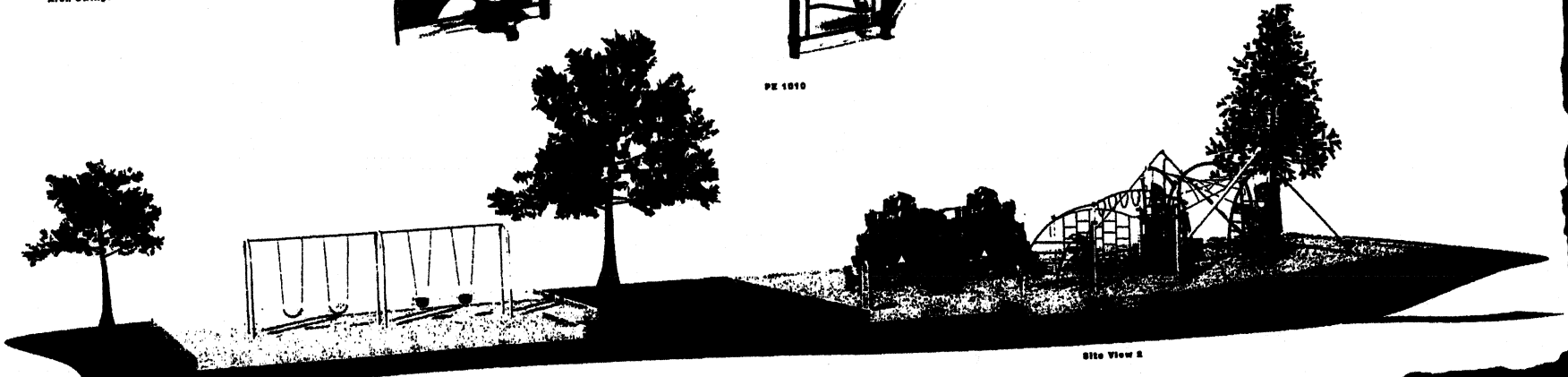


Site View 2

EXHIBIT "C"

BID SUMMARY
VETERANS PARK PLAYGROUND EQUIPMENT

Project No. 10-6; Bid Call No. 643-10; Project No. 10-6
Bid Opening: October 28, 2010 at 3:00 pm

Maximum Funds Available $75,124.00

	Contractor	Bid No.	Total Bid	No. of Play Stations	Amount Per Play Station
	Playcraft Direct 123 N. Valley Dr. Grants Pass, OR 97526	1	$ 73,743.65	20	$ 3,687.18
	Edwards & Associates P.O. Box 909 Carmel Valley, CA 93924	1	$ 73,899.19	19	$ 3,889.43
	Game Time 1030-B Railroad Ave. Novato, CA 94945	1	$ 73,587.49	20	$ 3,679.37
	Game Time 1030-B Railroad Ave. Novato, CA 94945	2	$ 74,608.53	18	$ 4,144.92
Low Bid	A.I.R.S. & N.S.P.3 4436 San Vito Dr. Salida, CA 95368	1	$ 74,690.85	23	$ 3,247.43
		LOWEST BID BASED ON EQUIPMENT			
	A.I.R.S. & N.S.P.3 4436 San Vito Dr. Salida, CA 95368	2	$ 73,897.15	21	$ 3,518.91
	BYO Playground 101 E. Town Place, Suite 650 St. Augustine, FL 32092	1	$ 74,983.75	22	$ 3,408.35
	BYO Playground 101 E. Town Place, Suite 650 St. Augustine, FL 32092	2	$ 73,128.58	20	$ 3,656.43
	Ross Recreation Equipment 101 Brush Creek Rd. Santa Rosa, CA 95404	1	$ 73,756.54	10	$ 7,375.65
	Ross Recreation Equipment 101 Brush Creek Rd. Santa Rosa, CA 95404	2	$ 74,945.77	15	$ 4,996.38
	Recreation Republic 7668 El Camino Real, Suite. 104-287 Carlsbad, CA 92009	1	$ 73,339.60	11	$ 6,667.24

EXHIBIT "B"

CONTRACT

THIS AGREEMENT, made and entered into this 8th day of November, 2010, by and between the CITY OF ATWATER, California, a municipal corporation of the General Law Class, herein called the "City", and **AIRS**, herein called the "Contractor".

RECITALS

A. The City gave notice inviting bids to be submitted by 2:00 p.m. 10/28/10 for the **Veterans Park Play Equipment Project** by published notice and/or posting in accordance with California Public Contract Code Section 20164 and other applicable law.

B. On November 1, 2010, City representatives opened bids for the **Veterans Park Play Equipment Project.**

C. On November 8, 2010, the City Council awarded the **Veterans Park Play Equipment Project** to the Contractor and directed City staff to send the Contractor written notice of award of the project. The City Council conditioned award of the project on the Contractor's providing executed copies of all documents specified in the contract checklist included in the bid package within ten (10) working days of receiving written notice of award of the project.

D. The Contractor has provided the City executed copies of all documents specified in the contract checklist included in the bid package within ten (10) working days of receiving written notice of award.

AGREEMENT TERMS

That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the City, the Contractor hereby agrees with the City to commence and complete the work embraced in the Plans, Technical Specifications, Special Provisions and contract documents for the **VETERANS PARK PLAY EQUIPMENT** including all extra work in connection therewith, under the terms as stated therein, and at the Contractor's own proper cost and expense to furnish all plant, labor, materials, tools, equipment, superintendence, bonds, insurance, guaranties and other accessories and services necessary therefore.

The Agreement consists of the following documents ("Contract Documents"), all of which are incorporated into and made part of this Agreement as if set forth in full:

A. This Agreement and change orders and other amendments to this Agreement signed by authorized representatives of the City and the Contractor.
B. The Special Provisions and any addenda to the Special Provisions signed by authorized representatives of the City and issued prior to bid opening.

C. The Project Plans, addenda to the Project Plans signed by authorized representatives of the City and issued prior to bid opening and change orders and other amendments to the Project Plans signed by authorized representatives of the City and the Contractor.
D. Notice to Bidders.
E. Instructions to Bidders.
F. The successful bidder's completed Proposal Form. (Exhibit "A")
G. The successful bidder's completed Contractor License Information.
H. The successful bidder's completed List of Proposed Subcontractors.
I. The successful bidder's completed Non-collusion Affidavit
J. The successful bidder's completed Certificates of Insurance and Endorsements.
K. The successful bidder's executed Performance Bond.
L. The successful bidder's executed Payment Bond.

M. The project is subject to the requirements of Section 1770 *et seq.* of the California Labor Code requiring the payment of prevailing wages.

The Contractor hereby further agrees to commence work under this contract and to prosecute the same to completion within the time limits prescribed in the specifications and contract documents; and further agrees to pay, as liquidated damages, the sum of $250.00 for each consecutive calendar day of delay in completing said work or any portion thereof in excess of said time limits and any authorized time extensions.

The Contractor hereby certifies that he is aware of and will comply with the wage requirements as set forth in Chapter 1 of Part 7 of Division 2 of the Labor Code, which require every employer to be insured against liability for workmen's compensation or to undertake self-insurance before commencing any of the work.

The City hereby agrees with the Contractor to employ, and does hereby employ, the Contractor for the performance of the contract according to the terms and conditions herein contained and referred to, and further agrees to pay the Contractor for the performance of the contract in accordance with the prices set forth in the Contractor's proposal, a copy of which is bound herein, subject to additions and deductions as provided in the specifications and contract documents, and to make payments on a monthly basis as provided in the specifications.

Assignment: No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.

Notices: All notices permitted or required hereunder shall be addressed as follows and shall be deemed delivered upon posting the notice first class, U.S. mail, postage prepaid:

Any written notice to the City shall be sent to:

Len Guillette, Deputy Director of Engineering
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Any written notice to Contractor shall be sent to:

Darin McCullough

4436 San Vito Dr.

Salida, CA. 95368

Governing law: Venue: The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine. Venue shall be in the County of Merced.

Severability: If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

IN WITNESS WHEREOF, the City and the Contractor have executed this contract in three counterparts, each of which shall be deemed an original, on the date first above written.

FOR THE CITY:

FOR THE CONTRACTOR:

_____

CAROL JOAN FAUL, Mayor

ATTEST:

_____

JEANNA DEL REAL, City Clerk

APPROVED AS TO FORM,
SUBSTANCE AND LEGALITY:

_____

DENNIS L. MYERS, City Attorney

City of Atwater

CIVIC CENTER
750 BELLEVUE ROAD
ATWATER, CALIFORNIA 95301

January 13, 2011

A.I.R.S.
Darin McCullough
4436 San Vito Drive
Salida, CA 953568

NOTICE TO PROCEED

VETERANS PARK PLAY EQUIPMENT
City Project No. 10-6

Gentlemen:

This notice is to inform you that you are to commence work on the construction of the subject project as of January 10, 2011. You will be charged working days beginning January 10, 2011 or whenever you start work, whichever comes first.

CITY OF ATWATER

BY: Leonard P. Guillette
Leonard P. Guillette
Deputy Director of Engineering

Please sign and return copy.

Received by:
A.I.R.S.

BY:_____

DATE:_____

EXHIBIT III-1

Veterans Park Playground Equipment Public Project Unit Employee Weekly Time Report

Week of: 01-10-11

Name: N. Karastathas

Unit: Parks & Community Services

Classification: Maintenance Worker II

Rate: $62.61

Classification	Mon	Tues	Wed	Thurs	Fri	Sat	Sun	Total
Veterans Park Playground Demo		8						8
Remove concrete footings			7	1				8
Locating/relocating irrigation				2.5				2.5
								0
								0
								0
								0
								0
								0
								0
								0
								0
								0
Total	**0**	**8**	**7**	**3.5**	**0**	**0**	**0**	**18.5**

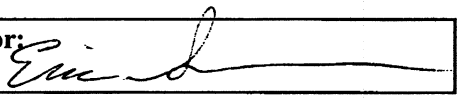
Recording Supervisor: 

EXHIBIT III-1

Veterans Park Playground Equipment Public Project Unit Employee Weekly Time Report

Week of: 01-10-11

Name: R. Bowman

Unit: Parks & Community Services

Classification: Maintenance Worker I

Rate: $31.57

Classification	Mon	Tues	Wed	Thurs	Fri	Sat	Sun	Total
Veterans Park Playground Demo		8						8
Remove concrete footings			7	1				8
Locating/relocating irrigation				4.5				4.5
								0
								0
								0
								0
								0
								0
								0
								0
								0
								0
								0
Total	**0**	**8**	**7**	**5.5**	**0**	**0**	**0**	**20.5**

Recording Supervisor: [signature]

EXHIBIT III-1

Veterans Park Playground Equipment Public Project Unit Employee Weekly Time Report

Week of: 01-17-11

Name: N. Karastathas

Unit: Parks & Community Services

Classification: Maintenance Worker II

Rate: $62.61

Classification	Mon	Tues	Wed	Thurs	Fri	Sat	Sun	Total
Locating/relocating irrigation			3	8				11
								0
								0
								0
								0
								0
								0
								0
								0
								0
								0
								0
								0
Total	**0**	**0**	**3**	**8**	**0**	**0**	**0**	**11**

Recording Supervisor: Eric Lee

EXHIBIT III-1

Veterans Park Playground Equipment Public Project Unit Employee Weekly Time Report

Week of: 01-17-11

Name: R. Bowman

Unit: Parks & Community Services

Classification: Maintenance Worker I

Rate: $31.57

Classification	Mon	Tues	Wed	Thurs	Fri	Sat	Sun	Total
Locating/relocating irrigation			8	8				16
								0
								0
								0
								0
								0
								0
								0
								0
								0
								0
								0
								0
Total	**0**	**0**	**8**	**8**	**0**	**0**	**0**	**16**

Recording Supervisor: Eric