



Date: February 21, 2023
Project: Cottonwood Park
Location: Little Elm, Texas

UPDATED 02.21.23

To: The Town of Little Elm

BUYBOARD CONTRACT # 679-22 (updated September 2022), VENDOR # 3120

We are a self-reporting vendor for Buy Board. Please send all purchase orders, payments, etc. directly to the Whirlix Design team.

Proposal Expires: 60 Days from The Above Date

Please note that current fluctuations in material pricing may cause a proposal increase between now and the acceptance of this agreement.

Series: *Landscape Structures, Playground Design 1153765-01-06*
Surface: *FIBAR Engineered wood Fiber Surfacing*
Installation: *Included: By Factory Trained and Certified Installers*
Quantity/Sizes: *See Renders on this Proposal*

Base Bid: Specified Playground Equipment by Landscape Structures
and Safety Surfacing
\$604,928.00

BuyBoard Discount applied, new total = \$574,681.00
(Five Hundred Seventy-Four Thousand Six Hundred Eighty-One Dollars)

- Playground Design by Landscape Structures
- 300 Series Engineered Wood Fiber Safety Surfacing by FIBAR
(DOES NOT require or include Stone Base)

Base Bid Includes:

- Full Submittal Package
- Warranty as Specified
- Certified Installation
- Playground Design as Noted
- Safety Surfacing as Noted
- Freight

Base Bid Excludes:

- Sales Tax
- Drainage
- Textura, Oracle, Etc.
- Professional Liability Insurance
- Construction Management Software Required for Project
- Payment, Performance, or Maintenance Bonds
- Use of Credit Cards as Payment
- Demolition of Existing Structure

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- Excavation and Removal of Soil
- Stone Base for Loose-Fill EWF (none required)
- Haul off or On-Site Disposal of Remaining Dirt
- Tuff Timber or Concrete Border
- Drilling Through Rocky Soil
- Hitting of New or Existing Sprinkler pipes
- Hitting of private electrical, water, sewer, internet, etc. that are not detectible during a commercial line location
- Sod Replacement due to Reasonable Path of Travel to Project or Play Area Location. We need access to project location.
- Surveying of Site
- Craning of Equipment
- Logistical Issues that Prevent Truck or Equipment Access to Site
- Special Augers or Drilling Equipment
- Certified Payroll / Progress Billing
- Setting of Control Points or Benchmarks
- Remobilization Charges Due to Weather or Project Delays
- Offsite Storage of Equipment Due to Weather or Project Related Delays
- On Site Security
- Permitting and Inspections
- Third Party Inspections
- Wet Stamped Engineering Drawings
- Dumpster
- Latrine on Site
- Soil Testing
- Geotechnical Report

Prepared by Greg Hawkins • Whirlix Design Inc • ghawkins@whirlix.com • 972.824.4815

Payment terms will be based, in part, on credit review that is pulled from The Experian Business Division.

TERMS: 60% Deposit Due Upon Approval of Project and 40% Due When Material Ships.

Pursuant to Tex. Prop. Code § 53.159, Whirlix will need any and all Bond information at the time of Signed Proposal, Contract, and / or Deposit.

All taxes now or hereafter levied by federal, state or local authority upon the sale of any of the forgoing products to be paid for by the purchaser. All quotations are subject to the conditions printed on the following pages if any and when accepted are subject to the approval of an officer of this company.

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TERMS AND CONDITIONS OF SALE

TERMINOLOGY:

The party, to whom this Proposal is submitted will be called the "Purchaser" and Whirlix Design Inc., will be called the "Company." The word "parties" means collectively the Purchaser and the Company.

GENERAL CONDITIONS:

- (a) The Company reserves the right to accept or reject any proposal by Purchaser.
- (b) All proposals accepted by the Company shall be subject to all the terms and conditions stated on the face and back of this Proposal.
- (c) This Proposal, when accepted by an officer of the Company, shall constitute the complete agreement between the parties hereto and it is expressly agreed and stipulated that there are no promises, representations, provisions or understandings of any nature whatsoever pertaining to the subject matter hereof not expressly stated herein.
- (d) No modification of this Proposal and no modification of any ensuing agreement shall be of any force and effect unless the same shall be in writing, signed by the duly authorized representative of the Purchaser and thereafter accepted by an officer of the Company, indicating the agreed price and schedule adjustment, if any.
- (e) All provisions of the contract ensuing from this Proposal shall be subject to all restrictions and regulations of the United States, of any State Government or any subdivision or agency thereof, whether imposed by legal or administrative authority or by voluntary cooperation with any agency, public or private, in existence at the time the Company accepts this Proposal. The goods and/or services described herein (or on the specification provided herewith) comply with applicable safety and health standards issued pursuant to the Occupational Safety and Health Standards Act of 1970 ("the Act") and in effect on this date as such standards are interpreted and understood by the Company. These standards may be amended and/or their meaning may be clarified prior to shipment or performance, and if such change or clarification requires changes in the goods and services described herein, the Company shall make the necessary changes available to the Purchaser. Purchaser shall pay the Company for any and all such changes at the Company's prices therefor in effect at time of shipment or performance, as the case maybe. The foregoing provisions shall not be construed to modify or affect in any manner whatsoever the Company's disclaimer of any liability for consequential damages contained elsewhere in these terms and conditions of sale.
- (f) The Company shall be excused from all responsibility or liability for nonperformance or delayed performance caused by failure of the Purchaser to convey information necessary for the Company to complete its work, any labor difficulty, fire, flood, accident, transportation difficulty, material or fuel or power shortage, war, governmental action or any contingency of whatsoever nature, in whole or in part, beyond its control. If, during the period of delayed performance resulting from any cause in whole or in part beyond the Company's control, the Company's costs are increased, the Company shall be entitled to pass those cost increases on to the Purchaser and Purchaser hereby agrees to pay same. If any delay not within the Company's control, in whole or in part, prevents performance for twelve (12) months or more, the Purchaser or the Company may cancel the remaining unperformed portion of this Proposal.
- (g) The provisions of the contract ensuing from this Proposal shall be interpreted and enforced in accordance with the laws of the state of Texas.
- (h) The provisions of the contract ensuing from this Proposal shall be binding upon the heirs, administrators, executors, legal representatives, successors or assigns to the parties hereto.
- (i) If installation is included in this Proposal, the Purchaser shall provide at no cost to the Company water, electricity, telephone and sanitary facilities unless otherwise agreed in writing. If the installation superintendent finds that these utilities are not available or that, for any other reason the site is not ready for installation, it shall be the obligation of the Purchaser to assume all costs occasioned by failure to timely supply such utilities, proper information or adequate storage.
- (j) It is agreed that the material or equipment described on the face hereof is not consumer goods and that title thereto remains in the Company until the total price has been paid in cash, at which time title will pass to the Purchaser, unless the Terms of Payment as described on the face hereof otherwise provide.
- (k) To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless Purchaser from and against all claims, damages, losses and expenses, including but not limited to attorneys fees arising or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting there from, but only to the extent of the companies negligence. In any and all claims against the Purchaser by any employee of the Company the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of changes, compensation or benefits payable by the Company under worker's compensation acts, disability benefits acts or other employee benefit acts. The obligation of the Company assumed hereunder shall in no event be construed to extend to the liability of any architect or engineer retained by the Purchaser or others. In no event shall the Company be liable to the Purchaser on a claim of any kind, including negligence, for any interruption of operation, loss of anticipated profits or for special, indirect or consequential damages of any nature. The Purchaser shall indemnify and hold the Company harmless from any loss or damage to the Company's work or material resulting from weather, fire, flood, windstorm, other trades or any other peril or cause not within the exclusive control of the Company.
- (l) Any amount past due shall accrue interest at 1.5% per month.
- (m) The Company shall be entitled to recover all legal fees and other costs of collection of payment from Purchaser.
- (n) Purchaser shall, upon notice of completion of installation of each separable unit of Company's work, inspect same. The Purchaser shall conclusively be presumed to have made complete and final acceptance thereof unless written objection is conveyed within ten (10) days of Company's notice.
- (o) Any dispute between the parties arising out of or pertaining in any way to this Proposal, the contract ensuing from it and/or any goods purchased or work performed by the Company shall, at the Company's sole option, be resolved by binding arbitration held in or such other location as the Company may select and give notice of said location to Purchaser.

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**PRICES:**

Unless otherwise specifically stated on the face of this proposal, all prices are:

- (a) F.O.B. shipping point;
- (b) Subject to revision to conform to the Company's price in effect at time of shipment;
- (c) Quoted on delivered basis where installed by others to include delivery to nearest freight station or railroad;
- (d) Do not include the cost of any surety bond for performance or payment of the Company's work, and
- (e) Based on full-time, continuous labor without interruption during regular working hours until completion and subject to revision if the Purchaser requires overtime work or changes to the work, including additional time for performance, increased labor costs, overhead and profit.

SHIPPING CONDITIONS:

Unless otherwise specifically stated on the face hereof, all deliveries and shipments are subject to the following conditions:

- (a) F.O.B. shipping point, with no transportation or other allowances;
- (b) Partial shipments may be made at the Company's sole discretion. Payment for such partial shipment(s) shall be made in the proportion of the contract price that the partial shipment bears to the whole, in accordance with the terms of payment set forth on the face hereof, and
- (c) Shipping dates are approximate. It shall be the responsibility of the Purchaser to advise as to the earliest shipping dates when material may be conveyed, as governed by actual building conditions. If shipment is made and the building is not ready to receive the equipment, the Purchaser must arrange storage in a dry place and assume responsibility for same.

MAINTENANCE:

After delivery the Company shall have no responsibility for maintenance and Purchaser agrees to maintain the material or equipment at its own expense, or until the arrival of the Company's installers.

CLAIMS:

The Company's responsibility for loss, damage, delay, or non-delivery ceases upon delivery of material or equipment to a public carrier, and any such claim must be filed against the carrier by the consignee or the Purchaser. Claims for shortages, errors in packing or overcharges must be made to the Company within twenty (20) days after receipt of shipment or such claim shall be deemed to have been waived.

CANCELLATIONS OR POSTPONEMENTS:

- (a) No contract ensuing from this Proposal is subject to cancellation or postponement by the Purchaser except upon written consent of the president of Whirlix Design Inc.
- (b) Any such duly authorized cancellation or postponement shall be subject to a charge to reimburse the Company for all costs incurred in connection therewith, including reasonable profit and damages for Company's work to date of termination.
- (c) The Company reserves the right to refuse shipment during any period when, in its sole judgment, the Purchaser's credit is unsatisfactory, or until receipt of full or partial advance payment.

SIZES AND WEIGHTS:

Measurements, dimensions and weights are subject to variations and are not guaranteed by the Company.

LIMITED WARRANTY:

As the exclusive limited remedy of the Purchaser, the Company warrants the equipment or material listed on the face hereof to be free from defects in material or workmanship under normal use and service, its obligation under this warranty being limited to the repair or replacement, F.O.B. its factory, for any part or parts of its own manufacture which shall, within one (1) year after date of shipment of such equipment or material to the Purchaser, be returned to it with transportation charges prepaid and of which Company has received written notice of such alleged defects and further provided that this material or equipment shall have been maintained in its original installation or shall have been in the continuous possession of the original user. This warranty is expressly in lieu of all other express or implied warranties including, but not limited to, any warranty of merchantability or fitness for a particular purpose, and of all other obligations and liabilities on the Company's part. The Company neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its material or equipment. There are no warranties except those stated in the Proposal. The Company makes no representations whatsoever in regard to merchandise, equipment, parts or accessories not of the Company's own manufacture, the Company's liability in such cases being limited to such warranty, if any, as the manufacturer thereof may grant to the Company and if none, to the warranties herein expressed. In recognition of the fact that the Company's price makes no provision for such risk, the Company shall not be liable for direct, special or consequential damages or delays, including but not limited to lost profits, good will, loss of time, inconvenience or commercial loss, if such occurs, on account of defective material or workmanship or delays or accelerations in shipment, nor will any allowance be granted for any repairs, alterations, work done or expense incurred in connection with any repairs, alterations or replacements. The Company shall in no way be liable or responsible for injuries or damages to persons or property arising out of the use or operation of all the material or equipment within described, including component parts thereof, and the Purchaser hereby agrees to indemnify and save harmless the Company from all such liability and responsibility. The Company reserves the right to make any changes in design, additions to and improvements in its product without imposing any obligation upon itself to install them on its product previously manufactured.



(PURCHASER SIGN BELOW)

APPROVED AND ACCEPTED:

PLACE

DATE

DATE

PURCHASER'S FIRM NAME

BY _____
AUTHORIZED REPRESENTATIVE

BY _____
OFFICER'S SIGNATURE

TITLE _____

TITLE _____

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