



1452 Concession 4 West • Hamilton, ON, L0R 2B0 • Phone: 1-800-306-3319

Goderich Municipal Child Care Centre  
Phone: (519) 525-7424

Job Address:  
376 Cambridge St  
Goderich, ON N7A 2Z1

**Print Date:** 2023-10-17

## Proposal for Goderich Municipal Child Care Centre - V3 C

# Playground Construction Agreement

This Playground Construction Agreement (this "**Agreement**") is between Bienenstock Natural Playgrounds Inc. ("**Bienenstock**") and Goderich Municipal Child Care Centre (the "**Client**")

The following annexed documents attached to this Agreement shall form part of this Agreement:

<b>Annex 1.0</b>	Construction Estimate
<b>Annex 2.0</b>	Payment Details
<b>Annex 3.0</b>	Substantial Performance: Form 7003
<b>Annex 4.0</b>	Rate Sheet
<b>Annex 5.0</b>	2D Layout Plan

1. Bienenstock will provide the Client the playground installation (the "**Playground**") based upon the pricing and estimates as set out in Annex 1.0 and Annex 2.0 (the "**Price**").
  - a. This contract price is valid for 15 days from the date of issue.
2. Alterations & Contingency
  - a. A contingency has not been allotted in this project budget
  - b. Any alterations or deviations to Annex 1.0 involving extra costs shall be based upon a written change order or amendment to this Agreement ("**Change Order**") executed by Bienenstock and the Client. All extra costs are over and above the Price and may require re-scheduling.
  - c. Any changes to the scope of work will require the issuance of a Change Order which will be based on the rates as set out in Annex 4.0.
  - d. If any Change Order requires Bienenstock to stop work or the Client, at any time, requests that Bienenstock stop work and return at a later date, remobilization fees will be applied over and above the Price.
3. Installation:
  - a. Prior to construction commencement, the site will be free of all encumbrances. This includes:

- i. All Children
- ii. All Toys
- iii. All Garbage/Non-playground Related Disposals

#### 4. Site Access

- a. The client agrees to a Pre-Construction Phone Meeting before the schedule start date with Bienenstock's Site Supervisor to review the site access strategy and the staging area.
- b. This contract price is based upon Bienenstock using an area equivalent to 5 parking spots within 10 metres of the playgrounds.
- c. The Client agrees to provide Bienenstock with timeline of drop of and pick up and other scheduled arrivals or departures that may affect Bienenstock's timing of deliveries.
  - i. Definitions
    - a. Site Access:
      - a. The location(s) that Bienenstock will access the playground(s).
    - b. Staging Area:
      - a. The fenced in (by Bienenstock) location that Bienenstock installers will use to store their equipment and materials for the duration of the contract.
      - b. This will be accessible to delivery vehicles and directly accessible to/from the construction site.

#### 5. Playground Maintenance/Maintenance Program

- a. The client agrees to create and implement a regular maintenance program that at minimum, meets the requirements as identified in the CAN/CSA z614 -Latest Playground Standard.
- b. The Client is solely responsible for ensuring it has complied with the maintenance requirements as identified in the CAN CSA Z614- Latest Playground Standard.
- c. Bienenstock will provide the Client with an operations & maintenance manual that will advise the client of all maintenance requirements for all components, surfacing and vegetation (the "**Operations & Maintenance Manual**").

#### 6. Vegetation

- a. All vegetation (including sod) is warranted for 1 year from the date of installation only when an irrigation system has been installed and the mulch surfaces are maintained in accordance with this Agreement. Bienenstock agrees to water the vegetation during the installation.
- b. If an irrigation system is not installed the client agrees to water all vegetation according to the Operations & Maintenance Manual.

#### 7. Mulch Surfaces

- a. The Client acknowledges that the mulch will need a top up after the first year to maintain compliance and transition points between surfaces. This also ensures that root compaction does not occur.
- b. The Client acknowledges it is required to complete the mulch top up at its sole cost.
- c. If mulch levels are not maintained, the vegetation warranty is void. See Operations and Maintenance Manual for maintenance instructions.

#### 8. Play Components & Construction Start

- a. All play components are to be used according to their intended use as described on the manufacturers' signs and in the Operations & Maintenance Manual.
- b. Bienenstock does hereby warrant the play components supplied to the Client for a period of one year from the date of receipt of the play components for any manufacturing defect. This warranty is voided if: (i) any party other than Bienenstock modify the play components from their original manufactured condition, (ii) the play components are not properly installed or maintained in accordance with the manufacturer's specifications; This warranty does not cover damage caused by force of nature or act of any third party. The obligation under this warranty is limited to the repair or replacement, at Bienenstock's option, provided that prompt notice of any defect is given by the Client to Bienenstock in writing within the applicable warranty period and that upon the Client's return of the defective Component to Bienenstock, properly packed

and with transportation charges prepaid by the Client, an inspection thereof shall reveal to Bienenstock's satisfaction that the Client's claim is valid under the terms of this warranty. The Client shall assume all responsibility and expense for dismantling, removal, re-installation and shipping in connection with the foregoing.

- c. Bienenstock's construction schedule is filled on a first come first served basis.
- d. Start dates are confirmed and held based on the signing of this contract and receipt of the deposit.
- e. Start dates can be affected by external factors such as material availability, union strikes, force majeure etc. Schedules provided by Bienenstock are approximate and are based on prevailing market conditions at the time of Bienenstock's preparation of any schedules.

#### 10. Payments

- a. Bienenstock will communicate any delays to the Client with the anticipated change to the start date if external factors affect the installation commencement timing.
- b. Payment is to be made in progress payments:

Deposit: 40% + HST of Total Project Value Due upon signing of contract  
 Payment 1: 25% + HST of Total Project Value Due upon installation commencement.  
 Payment 2: 25% + HST of Total Project Value Due upon substantial performance.  
 Final Payment: 10% + HST of Total Project Value Due 30 days after substantial performance.

- b. Substantial Performance is defined when Form 7003 (Annex 3.0) is issued to the Client by Bienenstock.
  - i. This indicates the installation is at least 97% complete (This is based upon the contract value in Annex 3.0 and the value of all completed work.) or the Client is able to/is using the playground.
  - ii. Receipt of Form 7003 (Annex 3.0) issued by Bienenstock to the Client indicates the Client may take possession of the space.
  - iii. The 30 Day hold back period will begin as of the date indicated in this document and the final payment will be due at the end of the 30 days.
  - iv. A warranty certificate will be issued once the hold back period has expired and the holdback payment has been received.
- c. Payments to be couriered to **1452 Concession 4 Rd W. Hamilton, ON, L0R 2B0**
- d. All cheques can be made to: **Bienenstock Natural Playgrounds Inc.**

#### 11. Limitation of Liability

- a. The terms of this Agreement shall not be modified, amended or supplemented by any terms and conditions in any Client purchaser order or acceptance documentation, and any such modified, amended or supplemental terms and conditions shall be of no force or effect. Bienenstock's total liability, if any, for any damages suffered by the Client, or any other party claiming on behalf of or through the Client, whether in contract, tort, warranty, or otherwise, shall be limited to direct money damages actually incurred, and shall not exceed the amount of money actually paid to Bienenstock by the Client for the services giving rise to such claim. In no event shall Bienenstock be liable for any loss of profit or loss of opportunity whether direct or indirect, and in no event shall Bienenstock be liable for any indirect or consequential damages.

#### 12. Disclaimer of Warranties

- a. Except as expressly provided in this Agreement, Bienenstock disclaims all warranties, legal, expressed or implied, including but not limited to any expressed or implied warranty of merchantability, of fitness for the intended use thereof or non-infringement all of which are hereby expressly excluded shall Bienenstock be liable for any indirect or consequential damages.

#### 13. Force Majeure

- a. The parties agree to use their best efforts to carry out their obligations under this Agreement, but in the event of strike, lock-out, accident, fire, delay in manufacturing, delay of carriers, acts of God, government action, state of war, epidemic, pandemic (including but not limited to COVID-19) or any other causes beyond their control ( a "force majeure"), neither party shall incur liability to the other due to the delay in performance or inability to perform, other than the Client's obligations to pay Bienenstock as provided in this Agreement which must be completed as provided. The parties shall

complete performance of their obligations after the cause delaying or preventing performance has been eliminated or limited to such extent as to allow performance of their obligations.

#### 14. Governing Law

- a. This Agreement is governed by the laws of the Province of Ontario, Canada and, each of the parties hereto irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario without regard to conflicts of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and its application is strictly excluded.

#### 15. Counterparts and Electronic Execution

- a. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original upon receipt, and all of which taken together will be deemed to constitute one and the same instrument. This Agreement may be executed by electronic signature and/or transmitted in electronic form and the parties to this proposal consent thereto. Execution and/or transmission in electronic form shall be binding to the same extent as an original signed signature page.

16. The client understands that Bienenstock will be scheduling private and/or public locates as well as a site visit prior to construction. Based on information gathered from the locates and the site visit, decisions may have to be made that will affect the layout and Bienenstock's scope of work in which case, Bienenstock will issue an updated layout and change order. Bienenstock will not proceed without a signed confirmation from the client that changes to the layout and Bienenstock scope have been approved.

## ANNEX 1.0 ~ Construction Estimate

### Site Prep and Travel

Items	Description	Qty/Unit	Unit Price	Price
Mobb/Demob, Site Prep/Clean Up, Staging/Compound, Layout	Mobb/Demob, Site Prep/Clean Up, Staging/Compound, Layout	1 ALLOW	\$11,557.00	\$11,557.00
Travel And Accommodations	Travel And Accommodations	1 LS	\$5,843.00	\$5,843.00
Rough Grading	Rough Grading	42 CU.YD	\$57.90	\$2,431.84
Remove & Disposal: Grubbing and Sod	Remove & Disposal: Grubbing and Sod	770 SQ.FT	\$1.96	\$1,509.18
Remove & Disposal: Sandbox	Remove & Disposal: Sandbox	70 SQ.FT	\$4.52	\$316.40
Remove & Disposal: Pea Gravel	Remove & Disposal: Pea Gravel	120 SQ.FT	\$3.88	\$465.60

**Site Prep and Travel Total:**

**\$22,123.02**

### Surface and Planting

Items	Description	Qty/Unit	Unit Price	Price
Mulch	Mulch	275 SQ.FT	\$5.15	\$1,416.23
2x8 Cedar Edge (between mulch and chainlink fence)	2x8 Cedar Edge (between mulch and chainlink fence)	30 LN.FT	\$19.93	\$597.91
Sod RTF w Topsoil	Sod RTF w Topsoil	1,634 SQ.FT	\$5.37	\$8,774.44

Items	Description	Qty/Unit	Unit Price	Price
Durolawn Mat - Mat Only, Installed	Durolawn Mat - Mat Only, Installed	945 SQ.FT	\$16.33	\$15,431.47

**Surface and Planting Total:****\$26,220.05****Custom Pod**

Items	Description	Qty/Unit	Unit Price	Price
Log Cluster 5 Piece	NI-PG-606-15 - Log Cluster 5 Piece	4 EA.	\$1,104.26	\$4,417.03
Log Cluster 5 Piece - INSTALL	NI-PG-606-15 - Log Cluster 5 Piece - INSTALL	4 EA.	\$827.48	\$3,309.91
French Drain: clear gravel drainage bed	French Drain: clear gravel drainage bed	150 CU.FT	\$17.01	\$2,551.57
OC Pods Horizontal Log Border Milled 4 ft. 18" Dia	NI-PG-612-01 OC Horizontal Log Border Milled 4 ft. 18" Dia	2 EA.	\$665.84	\$1,331.67
OC Pods Horizontal Log Border Milled 4 ft. 18" Dia - INSTALL	NI-PG-612.01.IN OC Horizontal Log Border Milled 4 ft. 18" Dia - INSTALL	2 EA.	\$496.14	\$992.27
Sand Surface	Sand Surface	75 SQ.FT	\$17.37	\$1,302.78
OC Pods Horizontal Log Border Milled 8ft 18" dia	NI-PG-612-02 OC Horizontal Log Border Milled 8ft 18" dia	2 EA.	\$1,331.63	\$2,663.26
OC Pods Horizontal Log Border Milled 8ft 18" dia - INSTALL	NI-PG-612-02.IN OC Pods Horizontal Log Border Milled 8ft 18" dia - INSTALL	2 EA.	\$496.08	\$992.15

**Custom Pod Total:****\$17,560.64****Components**

Items	Description	Qty/Unit	Unit Price	Price
Log Tunnel	NI-PG-609-01 Log Tunnel	1 EA.	\$8,775.27	\$8,775.27
Log Tunnel - INSTALL	NI-PG-609-01.IN Log Tunnel - INSTALL	1 EA.	\$1,493.50	\$1,493.50
Wacky Post: 300mm [12"] dia. softwood	NI-PG-601-01 - Wacky Post: 300mm [12"] dia. softwood	4 EA.	\$161.66	\$646.62
NI-PG-601-0X.IN Wacky Post: 300mm [12"] dia. softwood/hardwood - INSTALL	NI-PG-601-0X.IN Wacky Post: 300mm [12"] dia. softwood/hardwood - INSTALL	4 EA.	\$344.72	\$1,378.88
Curriculum Cabinet (empty)	NI-PG-707-01 Curriculum Cabinet (empty)	1 EA.	\$2,205.09	\$2,205.09
Curriculum Cabinet Base: for loose fill areas	NI-PG-707-04 Curriculum Cabinet Base: for loose fill areas	1 EA.	\$521.91	\$521.91

**Components Total:****\$15,021.27**

### Shipping

Items	Description	Qty/Unit	Unit Price	Price
Shipping and Handling	Shipping and Handling	1 LS	\$1,667.00	\$1,667.00

**Shipping Total: \$1,667.00**

### Design Fees

Items	Description	Qty/Unit	Unit Price	Price
Design Fees	Design Fees	1 ALLOW	\$500.00	\$500.00

**Design Fees Total: \$500.00**

**Total Price: \$83,091.98**

## ANNEX 2.0 ~ Payment Details

Please note applicable **sales taxes are extra** and will be applied on all invoices.

*Please note that due to the major fluctuations in the marketplace, if the deposit payment/payment for your order is not received by BNP within two weeks of signing this contract, this contract becomes null and void and a new contract with updated pricing will be provided to the client.*

*All invoices issued after the deposit is received must be paid within 2 weeks or a 15% late fee will be applied.*

### Payment Details:

<b>Deposit Payment:</b>	40%:	Received:
<b>Payment 1:</b>	25%:	Received:
<b>Payment 2:</b>	25%:	Received:
<b>Final Payment:</b>	10%:	Received:

*\*Pricing is in Canadian Dollars*

## ANNEX 3.0 ~ Form 7003 - Substantial Performance

Date: \_\_\_\_\_

This document has been issued to indicate that on the date above, the installation of

\_\_\_\_\_, project has reached substantial performance. The final payment (30 Day Hold Back Payment) of this contract is due on \_\_\_\_\_.

**Note:** *As per the Playground Construction Agreement, Substantial Performance is reached when the installation is at least 97% complete (This is based upon the contract value in Annex 1.0 and the value of all completed work.) or the Client is able to/is using the playground.*

**Bienenstock Natural Playgrounds Inc.**

Per:

Bienenstock Playgrounds Rep. (Name) \_\_\_\_\_

Bienenstock Rep. Signature \_\_\_\_\_

(I have authority to bind the corporation)

**ANNEX 4.0 ~ Rate Sheet**

If the Client requests changes to the scope of work the following rates will be used to determine the Contract Amendment Pricing.

Labour	\$95/hr
Heavy Equipment Operator	\$120/hr
Design	\$125/hr
Administration	\$75/hr

**ANNEX 5.0 ~ 2D Layout Plan**

By signing this proposal, the client agrees to the 2D layout plan designed by Bienenstock Natural Playgrounds. The client understand that on site adjustments may be needed depending on locates or unforseen site conditions upon construction.

**Dated** this \_\_\_\_ day of \_\_\_\_\_, 2023

Bienenstock Natural Playgrounds Inc.

Per: \_\_\_\_\_

*John El-Raheb, CEO*

By signing this Agreement, the Client agrees to all its terms and conditions including such terms and conditions as set out in the Annexes attached to this Agreement.

Accepted and Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2023

**Approval Deadline:** Nov 1, 2023

I confirm that my action here represents my electronic signature and is binding.

**Signature:**

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**Date:**

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**Print Name:**

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