



Issue: Pool Play Structures for Pool Renovation

Date: February 13, 2024

Submitted By: Matt Crouse, Director of Parks and Recreation

Background

Our pool engineers worked with staff to determine a pool play structure to be in the zero-depth area of the pool. This play structure uses a space within the pool pump house that had previously been slated to supply water to a possible new feature. This play structure will use that space and a pump to supply water to the play structure. This amazing new play structure will be a very new and exciting element to the pool for our community to play on when at the pool.

Analysis

As we prepare for construction to begin for the pool leak repairs there are some items, we will provide to the construction company for this project. The pool play structure and the fixtures for the splash pad are items we will provide for this project. The primary reasons in supplying these items is our ability to use co-op pricing to save monies, and to help in the expedited ordering of the fixtures that will be needed for the project. By ordering this equipment now, we are able to ensure it arrives as soon as possible to be installed by the construction contractor once it arrives. This will save several weeks in possible delays.

Recommendation

With an approving vote tonight the city administrator will be able to execute the agreement and a purchase order will be created for the purchase of the pool play structures and features for the splash pad. We will then get these elements ordered for installation during the pool renovation. Please note that funds for these elements will be split between the pool leak repair CIP for the play structure and Park impact fees will be used for the splash pad water features.

Respectfully,

Matt Crouse
Director, Parks and Recreation

RESOLUTION NO. 2024-12

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH WATERPLAY FOR THE PURCHASE OF POOL PLAY STRUCTURES AND FIXTURES.

WHEREAS the Nixa City Code authorizes the City to participate in cooperative purchasing arrangements provided that, when a cooperative purchase exceeds \$10,000.00, the purchase must be submitted to City Council for approval; and

WHEREAS City staff have been made aware of the services provided by Waterplay, ("Contractor") and desires to enter into a contract with same; and

WHEREAS City Council desires to enter into a contract with same and to authorize the City Administrator to execute the Contract attached hereto as "Resolution Exhibit A."

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:

SECTION 1: City Council hereby authorizes the City Administrator, or designee, to enter into a contract with the Contractor. Said contract to be in substantially similar form as the document attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A."

SECTION 2: The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

SECTION 3: This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

[Remainder of page intentionally left blank. Signatures follow on next page.]

RESOLUTION NO. 2024-12

47 **ADOPTED BY THE COUNCIL THIS 19th DAY OF February, 2024.**

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ATTEST:

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PRESIDING OFFICER

CITY CLERK

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55 **APPROVED BY THE MAYOR THIS ____ DAY OF _____, 2024.**

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ATTEST:

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MAYOR

CITY CLERK

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63 APPROVED AS TO FORM:

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CITY ATTORNEY

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QUOTE



QUO-10632

Quote Date: 2/7/2024 **Expiry Date:** 5/7/2024
Revision: 1 **Prepared For:** Matt Crouse
Quote Title: Nixa Splash Pad Sourcewell Quote
Sales Rep: Shaun Goodyer **Email:** shaun.goodyer@makrgroup.com

CUSTOMER INFORMATION

Customer: City of Nixa, MO **Bill To:**
Telephone: 417-725-5486 Nixa MO
Payment Terms: 100% Net 30 USA
Currency: USD
Freight Terms: DAP-Delivered at Place
Project Name: Nixa Aquatic Center and Splash Pad
PO Number:

Notes City of Nixa Sourcewell Account #29134
 Waterplay Sourcewell Account #010521-WTR

Preship: City of Nixa, MO **Main Ship:** City of Nixa, MO
 701 North Taylor Way 701 North Taylor Way
 Nixa MO Nixa MO
 USA 65714 USA 65714

LINE ITEMS				
Product Code	Name	Quantity	MSRP	Extended Price
0010-6343	Discovery Series 100 Graphics Nixa Parks & Rec Kite logo	1.00	\$5,570.00	\$5,570.00
0010-4590	FS Waterfall 1 Column & arm fern RAL 6018, Orange acrylic, swivel wheel yellow, flipper wheel orange	1.00	\$8,810.00	\$8,810.00
EST-11292	AT4-MINI-GL-1-9 Slide orange RAL 2011, Pod support columns & stair stringers orange RAL 2011, All columns fern RAL 6018, 2 x AT PS Leaf column fern RAL 6018, green acrylic, AT Sparx column fern RAL 6018, body royal blue RAL 5005, clear tail acrylic, green wing acrylic. AT Bernoulli column fern RAL 6018, red acrylic, AT Flutter column fern RAL 6018, red and yellow wings, AT Cannon 2 column fern RAL 6018, yellow acrylic,	1.00	\$149,150.00	\$149,150.00

QUOTE



LINE ITEMS				
Product Code	Name	Quantity	MSRP	Extended Price
	AT PS Splasher column fern RAL 6108, clear acrylic bucket & handle			
0010-0403	FS Splash Blaster 1 x upper and lower column red RAL 3001, 1 x upper and lower column yellow RAL 1018	2.00	\$3,805.00	\$7,610.00
0010-1498	FS Sneaky Spin Soaker 3 Upper and lower column orange RAL 2011, 1 x bucket & lid yellow, 1 x bucket & lid blue, 1 x bucket & lid red.	1.00	\$11,355.00	\$11,355.00
0011-0872	FS USO Top blue RAL 5015, lower column orange RAL 2011, clear acrylic.	1.00	\$7,060.00	\$7,060.00
0010-0485	FS Fun-Brella Fern RAL 6018	1.00	\$2,510.00	\$2,510.00
0010-0637	FS Aqua Arch 1 x red RAL 3001, 1 x fern RAL 6018, 1 x yellow RAL 1018, 1 x blue RAL 5015	4.00	\$4,840.00	\$19,360.00
0010-1590	FS Misty Twisty Red acrylic, column red RAL 3001, Mountains graphic	1.00	\$11,135.00	\$11,135.00
0010-7491	GS Lily Pad 7 x RAL 4008 background with Nixa Park & Rec Kite logo 4 x GS Solo Spurt 3 x GS Split Spurt	7.00	\$1,190.00	\$8,330.00
0010-7489	GS Tulip	2.00	\$825.00	\$1,650.00
0010-7481	GS Solo Spurt	3.00	\$825.00	\$2,475.00
0010-7466	GS Puddle 1 2 x light blue	2.00	\$4,380.00	\$8,760.00
0010-0507	playPHASE Base	16.00	\$645.00	\$10,320.00
0010-7482	GS Split Spurt	4.00	\$825.00	\$3,300.00
0010-1854	Activator Power Post Column grey (RAL 7040), red acrylic	1.00	\$2,670.00	\$2,670.00
0010-1972	Jig Emb Install 142.50 CC	4.00	\$250.00	\$1,000.00
0010-2244	16 Output Expansion Add On	1.00	\$1,590.00	\$1,590.00
0010-1954	Controller Potable 12 Outputs	1.00	\$6,875.00	\$6,875.00
C06-BG018	Cabinet 18 Valve BGU	1.00	\$22,605.00	\$22,605.00
0010-4133	Drain Circular Stainless Steel	1.00	\$2,765.00	\$2,765.00
FREIGHT-USA	Freight USA (Price will be re-quoted at time of order)	1.00	\$7,350.00	\$7,350.00

QUOTE



LINE ITEMS				
Product Code	Name	Quantity	MSRP	Extended Price
FREIGHT-USA	Freight USA (Price will be re-quoted at time of order)	1.00	\$1,160.00	\$1,160.00
VIP-LILYPADS	Promotion - Lily Pads	1.00	\$-416.50	\$-416.50
			Subtotal	\$294,483.50
			Contract Discount	\$35,338.02
			Freight	\$8,510.00
			Total	\$267,655.48
			Deposit Required	\$0.00

INITIAL TO ACKNOWLEDGE ACCEPTANCE

FINANCE OPTION

Waterplay has partnered with Marlin Capital Solutions to provide flexible product financing options to our customers, moving your project from a capital cost to an operational expense.

If interested in financing your aquatic play project, please visit our website at www.waterplay.com/en/marlin-financing-options/ and click the "Calculate a Finance Quote" button to view quote estimates and submit a preliminary application. Our financing expert will get in touch with you to discuss financing details and next steps. Once approved, Marlin will provide the documentation for you to sign with the agreed-upon monthly payment and term. It's really that easy!

WATERPLAY EQUIPMENT DOES NOT INCLUDE

Unless otherwise specified, Waterplay equipment DOES NOT include the following:

- Engineered drawings;
- Installation of equipment or other site amenities;
- Specialty fittings, flex couplers or other similar types of joining;
- Field piping/plumbing, double check valves, in-line strainer;
- Power supply, electrical conduit, wiring, connection fittings;
- Electronic solenoid valves (only included with the purchase of a Waterplay manifold).

COMPLIANCE WITH CODES AND STANDARDS

Waterplay Solutions Corp. is an equipment manufacturer. We participate in ASTM panels for the aquatics industry and make every effort to ensure that our product will meet or exceed the ASTM standards. Waterplay also aims to ensure that most of our features are ADA compliant but some structures will fall outside of this compliance. It is the Customer's responsibility to ensure that any requirements to meet ADA compliance are duly noted prior to placing the order.

Waterplay products are purchased and installed all over the world; unfortunately it is not possible for Waterplay to know all local standards, codes and/or municipal by-laws that may apply to the equipment we provide. Waterplay will work with our Customers to ensure compliance with applicable codes and standards but it is the Customer's responsibility to identify those requirements prior to the signed purchase contract. Failure to do so may result in additional charges to the Customer should modifications be required after the order is placed.

TERMS AND CONDITIONS – WATERPLAY SOLUTIONS CORP

PURCHASE CONTRACT TERMS & CONDITIONS OF SALE:

The following terms and conditions (the “Terms and Conditions”) form part of the Waterplay purchase contract (the “Purchase Contract”) between yourself (the “Customer”) and Waterplay Solutions Corp. (“Waterplay”). The Customer’s acceptance and understanding of these Terms and Conditions and all other supporting documentation provided as part of this package is evidenced by signing of the Purchase Contract.

1. PAYMENT TERMS AND FINANCIAL CONSIDERATIONS:

- 1.1) Unless otherwise specified in the Purchase Contract, payment by the Customer of the purchase price specified in the Purchase Contract (together with all applicable taxes, the “Purchase Price”) shall be on the following terms: 50% of the Purchase Price to be paid prior to Waterplay commencing production on the Customer’s order and the balance of the Purchase Price to be paid prior to Waterplay shipping the order (or any part thereof) to the Customer. Any overdue balances are subject to interest charges of 2% per month.

- 1.2) Payments due prior to order shipping must be received not later than 5 business days prior to the currently stated scheduled ship date. If payment, as required, is not received within this time frame, the shipment may be rescheduled at the discretion of Waterplay. Waterplay reserves the right to invoice the order in full, per the terms of the contract, on the currently stated shipment date. Additionally, Waterplay reserves the right to request, and the customer agrees to pay, storage fees equivalent to 1% of the MSRP value of the order/week OR \$500/week whichever is greater, beginning on the currently scheduled date of shipment.

- 1.3) Unless otherwise specifically stated, all sales taxes or any other personal property taxes, use taxes, duties, excises, levies or tariffs imposed by any government authority and incurred by Waterplay through performance of the Purchase Contract will be the Customer’s responsibility and are not included in the Purchase Price. Without limiting the generality of the foregoing, applicable Canadian taxes will be applied to all taxable goods and services included in the Purchase Contract based on the Canada Revenue Agency’s GST/HST Place of Supply rules and/or provincial requirements if applicable, as amended from time to time.

- 1.4) Customers are advised to consult with their financial and tax advisors to obtain further information regarding taxes applicable to their purchase.

- 1.5) Waterplay maintains a no return policy and asks all Customers to determine feature and colour selection carefully. If the Customer cancels the order after production has commenced, Waterplay reserves the right to charge (and the Customer agrees to pay) a 20% re-stocking fee.

- 1.6) Cheque, Wire Transfer, Irrevocable Letter of Credit or Credit Card (note: an administrative fee of 3.5% may apply to payments made via Credit Card) are considered acceptable payment methods.

2. TITLE:

- 2.1) Except where title to the products contained in the Customer's order is explicitly transferred by Waterplay to the Customer and the Purchase Price is paid in full, property in, title to and right to possession of such products shall remain in Waterplay until the Purchase Price and all sums due or to become due from the Customer are fully paid.
- 2.2) Should the goods comprising the Customer's order be connected with the ground or real property or buildings because of foundations or mechanical parts, then this connection is to be considered as transitory in nature until payment in full of the Purchase Price.
- 2.3) Unless otherwise agreed, for projects where Waterplay is supplying goods without installation, risk of loss of the goods, or any part of the goods, shall pass to the Customer when the goods or any part of the goods is delivered to the Customer or its agent or to a carrier for delivery to the Customer or its agent, which ever event shall first occur.
- 2.4) In the event of a "turnkey" projects (where Waterplay is supplying and installing goods), risk of loss of the goods shall pass to the Customer upon completion of the project

3. DESIGN CHANGES:

- 3.1) If the Customer requests any changes in the design specifications, or if changes in such specifications are either required by an authority having jurisdiction or necessitated by material differences between the physical conditions upon which the specifications are based and actual on-site physical conditions, the Purchase Price shall be adjusted accordingly.

4. LEAD TIMES & ORDER PROCESSING FOR RELEASE TO PROCUREMENT/PRODUCTION:

- 4.1) Waterplay strives to complete orders within the Customer's requested timeline and/or the timelines provided to the Customer at time of confirmation of order processing. However, production lead times can be impacted by multiple factors, some of which are beyond Waterplay's control, including, but not limited to, product mix and plant capacity at the time of order, availability of third party materials, parts, or services required for order completion.
- 4.2) Expected timing for order completion and shipment from the Waterplay factory will be communicated to the Customer at the time an executed Purchase Contract is accepted by Waterplay. Any revisions to the order completion and shipping timelines will be communicated to the Customer in writing (via email) at the time of revision.
- 4.3) In order to facilitate stated production and shipping lead times, colour and graphic selections, any other outstanding details specific to the project that are required for order finalization, and initial deposit per the payment terms of the project must be provided to Waterplay within 5 business days of signing of the Purchase

Contract. Details regarding any outstanding information or payments required for order processing will be communicated in writing (via email) at the time of order confirmation.

- 4.3)1. Any delay in provision of the required details by The Customer will result in potential delays to shipping/delivery of the product.
- 4.4) The expiry date of the originally executed quote/purchase contract shall remain in effect until all information is received and the order is released for procurement and production. Should the stated quote expiry date pass, while information required from the Customer for order release is still outstanding, Waterplay reserves the right to refresh the quote and freight charges. Any applicable variances to the originally stated pricing will be applied.

5. INSTALLATION SCHEDULING, CUSTOMER TIMELINES, & ASSOCIATED PENALTIES OR DAMAGES

- 5.1)1. The Customer will advise Waterplay in writing (via email) of any schedule constraints and provide full details surrounding any potential for penalties or damages associated with the installation schedule and/or customer timelines.
- 5.1)2. Waterplay reserves the right to request documentation supporting any stated penalties or damages that may be incurred.
- 5.1)3. Waterplay will not be held liable for any expense associated with claimed penalties or damages in the event of a failure to provide relevant details as outlined under this agreement AND an explicit acknowledgement/acceptance of the same being provided in writing by Waterplay
- 5.2) If Waterplay has been contracted for installation services:
 - 5.2)1. Once production and delivery timelines have been confirmed, Waterplay will work with the customer to confirm arrangements for installation scheduling
 - 5.2)2. Any changes to the confirmed installation schedule will be coordinated and confirmed between Waterplay and the Customer.
 - 5.2)3. Changes to the installation schedule will be contingent on contractor/installer availability.

6. LOGISTICS AND SHIPPING

- 6.1) Transit time from Waterplay's warehouse, or other warehouse should product be direct shipping from another location to destination is in ADDITION to the estimated production/shipping lead times indicated by Waterplay at the time of confirmation of order processing.

- 6.2) Waterplay shall not be held liable for any costs incurred by the Customer as a result of transit times from Waterplay's warehouse, or other warehouse, to destination.
- 6.3) Unless otherwise stated in the Purchase Contract or other confirmed communication between Waterplay and the Customer, delivery of Waterplay product shall be either FCA Origin for all domestic/North American deliveries, or CIF Destination Port, or air cargo terminal, for all international/overseas shipments.
- 6.4) All products will be carefully wrapped, packaged, and secured to mitigate loss or damage during shipment and meet local regulations for import. Charges for any extraordinary packaging requests on the part of the Customer shall be applied.
- 6.5) All shipments must be inspected upon delivery and any damage, errors, or omissions on parts or components of the order must be reported to Waterplay and the transport company within 48 hours of receipt of goods.
- 6.6) Where transportation costs are included in the Purchase Price, if the Customer requests a transportation method other than the most economical one, the excess transportation cost shall be paid by the Customer. No credit or deduction shall be allowed to the Customer for any transportation charges beyond any point at which the Customer accepts delivery.
- 6.7) If required, Waterplay shall communicate the delivery shipment date with the general contractor (the "Contractor") identified by the Customer in this Purchase Contract to permit on site material unloading and handling preparations by the Contractor.
- 6.8) In the event that changes are made, as a result of the customer's request or action, to the delivery schedule after the Customer's order is confirmed and the expected shipping date and delivery date have been determined, Waterplay reserves the right to request payment of (and the Customer agrees to pay) the outstanding balance of the Purchase Price, effective the initially determined shipping date. Waterplay also reserves the right to request payment of, and the Customer agrees to pay, a storage fee equivalent to 1% of the MSRP value of order/week or \$500/week, whichever is greater, beginning on the originally scheduled date of shipment.

7. FEATURE ACCEPTANCE:

- 7.1) The Customer has reviewed local codes/standards as they may apply to the products contained in this order and has noted its acceptance of the design and related product specifications, by signing the Purchase Contract.
- 7.2) Where custom features have been included, the Customer has indicated acceptance of the custom feature by initialing the enclosed custom product specification pages.


- 7.3) For orders including Water Treatment Systems (“WTS”), the Customer is responsible for ensuring the accepted system meets local standards and codes and that all appropriate approvals are obtained. The Customer has reviewed the WTS drawings and accepts the design by initialing each page of the drawing package.

8. SERVICE & SUPPORT:

- 8.1) Waterplay is responsible for providing telephone product technical assistance and system start-up support to ensure the proper operation of the Waterplay park systems. Operations and maintenance manuals will be provided at the completion of the project installation.
- 8.2) In the event that the Purchase Contract includes a provision for on-site service from Waterplay, the Customer is responsible for arranging such services at least 14 calendar days prior to the date a Waterplay representative is first required to be on site. Waterplay reserves the right to bill the Customer for (and the Customer agrees to pay) any additional expenses incurred if travel must be booked with shorter notice.
- 8.3) Waterplay is responsible for communicating on-site service requirements to the Customer in advance of commencing a service trip.
- 8.4) The Customer is responsible for coordinating installation schedules with Waterplay to ensure that the site is ready for Waterplay’s services upon arrival.
- 8.5) Waterplay reserves the right to bill the Customer for (and the Customer agrees to pay) any additional time on site and any additional expenses incurred as a result of the site not being ready for the planned services.
- 8.6) The Customer is responsible for ensuring a safe working environment for any on-site Waterplay or Waterplay contracted service technicians.
- 8.7) Waterplay contractors and staff have the right to discontinue work if a work environment is deemed by them (in their sole discretion) to be unsafe until such time as the safety concern(s) has been resolved to Waterplay’s satisfaction.
- 8.8) Waterplay reserves the right to bill the Customer for (and the Customer agrees to pay) any additional time on site as well as any additional expenses incurred as a result of waiting to rectify an unsafe work condition.

9. GENERAL TERMS & CONDITIONS:

- 9.1) Relative to the Project identified within this agreement and the commitments between The Customer and Waterplay, the terms and conditions of this Purchase Contract shall supersede those contained in any other purchase order, contract, or agreement, unless expressly agreed to in writing by both parties.
- 9.2) Acceptance of Order: Waterplay may refuse to accept any order for any reason whatsoever without incurring any liability from the Customer. Change Orders: No change to this Agreement will be enforceable unless the customer has provided an executed Waterplay Change Order.

- 9.3) Collection Costs: The Customer agrees to pay on demand the amount of all expenses reasonably incurred by Waterplay in efforts to collect the Purchase Price. The Customer shall pay reasonable legal costs (fees and disbursements) on a solicitor and own client basis, including fees incurred in both trial and appellate courts or fees incurred without suit and all court costs.
- 9.4) 
- 9.5) Limitation of Liability: The aggregate liability of Waterplay, its affiliates, and their respective employees, directors, officers, agents and contractors (collectively, the "MAKR Group") for any claim, whether in contract, tort (including negligence) or otherwise, for any loss or damage arising out of, connected with, or resulting from the manufacture, sale, delivery, installation, resale, repair, replacement or use of any product will in no case exceed the actual portion of the Purchase Price paid by the Customer for that product, or part thereof, which gives rise to the claim. In no event will the Waterplay Group be liable for special, indirect or consequential damages.
- 9.6) The limitation of liability contained herein shall survive the termination or expiration of the Purchase Contract.
- 9.7) Governing Law: This Purchase Contract and all amendments, modifications, alterations or supplements to this Purchase Contract shall be governed by the laws of the Province of British Columbia, as to the nature, validity and interpretation of the Purchase Contract. Acceptance of the Customer's order is subject to the condition that Waterplay's obligation under any laws or government orders, rules or regulations issued thereunder whether now in force or hereafter made effective, shall be no greater as a result of such accepted order and no greater than required by such laws, and Waterplay expressly disclaims assumption of any of the Customer's obligations under such laws.
- 9.8) Time: Time shall be of the essence of this Agreement and of each and every part hereof.
- 9.9) Dispute Resolution: All disputes arising out of, or in connection with, this Agreement shall be referred to and finally resolved by a single arbitrator (the "Arbitrator") pursuant to the Arbitration Act, R.S.B.C. 1996, c. 55, as amended from time to time or any successor statutes, with such arbitration being held in Kelowna, British Columbia. The decision of the Arbitrator on all issues or matters submitted to the Arbitrator for resolution shall be conclusive, final and binding on all of the parties. The Arbitrator shall determine who shall bear the costs of arbitration.

QUOTE



- 9.10) Enurement: This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective executors, administrators, successors and assigns.

- 9.11) Force Majeure: Neither the Customer nor Waterplay shall be liable for any failure to perform its obligations where such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), government imposed restrictions in response to a public crisis, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labour dispute, strike, lockout, interruption or failure of electricity or telephone service, and no other party will have a right to terminate the agreement evidenced by the Purchase Contract in such circumstances. Any party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

I, the undersigned, hereby acknowledge and agree to all pricing and terms and conditions as explicitly stated on all pages of QUO-10632

----- Date

----- Signature

----- Printed Name & Title

Please return all pages to Waterplay via fax, email or mail with confirmation of deposit (if applicable).

Thank you for your order!