

Contract

This public works contract ("Contract") is entered into by and between the City of Cupertino ("City") and QLM, Inc. ("Contractor"), for work on the All-Inclusive Playground at Jollyman Park Project ("Project").

The parties agree as follows:

- 1. Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On June 4, 2024, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below. City has elected to include the following Project alternate(s) in the Contract:

Deductive Alternate #2: Raised Sand Table

For base bid, Contractor to supply and install Raised Sand Table. For Bid Alternative, Raised Sand Table is removed from project.

Deduct: \$70,000.00

Deductive Alternate #3: Vine Trellis at Discovery Path

For base bid, Contractor to supply and install Vine Trellis at Discovery Path. For Bid Alternative, Vine Trellis is removed from project.

Deduct: \$65,000.00

Deductive Alternate #4: Drums

For base bid, Contractor to supply and install drums. For Bid Alternative, drums are removed from project.

Deduct: \$10,000.00

Deductive Alternate #5: Chimes, Concrete Seatwall, and associated Pedestrian Concrete Paving

For base bid, Contractor to supply and install Pedestrian Concrete Paving with Concrete Seatwall in the almost circular node off the Upper Sloped Path, and the Chimes. For Bid Alternative, this area is removed from the project and replaced with planting and irrigation; planting to be a continuation of adjacent treatment – Phormium tenax 'Yellow Wave', Lomandra longifolia 'Breeze', and Arctostaphylos x "Pacific Mist".

Deduct: \$22,000.00

Deductive Alternate #6: Picnic Area North of Spinner with ADA Picnic Table, Picnic Table, and Buffet Table

For base bid, Contractor to supply and install picnic area and tables as indicated. For Bid Alternative, Owner will supply tables and Contractor to build picnic area and install Owner-provided tables.

Deduct: \$20,000.00

Deductive Alternate #7: Central Picnic Area

For base bid, Contractor to supply and install picnic area and tables as indicated. For Bid Alternative, Owner will supply picnic tables and Contractor to build picnic area and install Owner-provided tables.

Deduct: \$25,000.00

Deductive Alternate #8: Bike Parking by Restroom

For base bid, Contractor to supply and install bike parking area and racks as indicated. For Bid Alternative, this area will be removed from project and just cleared.

Deduct: \$2,000.00

2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.

- 2.1 Notice Inviting Bids;
- 2.2 Instructions to Bidders;
- 2.3 Addenda, if any;
- 2.4 Bid Proposal and attachments thereto;
- 2.5 Contract;
- 2.6 Payment and Performance Bonds;
- 2.7 General Conditions;
- 2.8 Special Conditions;
- 2.9 Project Plans and Specifications;
- 2.10 Change Orders, if any;
- 2.11 Notice of Potential Award; and
- 2.12 Notice to Proceed.

3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently

prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor **\$3,863,430.00** ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within **270** calendar days from the start date set forth in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of **\$1200.00** per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.

8. **Workers' Compensation Certification.** Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."
9. **Conflicts of Interest.** Contractor, its employees, Subcontractors and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
10. **Independent Contractor.** Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
11. **Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

Public Works, CIP Division
10300 Torre Avenue
Cupertino, CA 95014
(408)777-3354
Attn: Susan Michael, CIP Manager
susanm@cupertino.gov

Contractor:

Name: QLM, Inc.
Address: 94 Umbarger Road
City/State/Zip: San Jose, CA 95111
Phone: 408-640-0336
Attn: Darrell Qualls
Email: Darrell.qualls@qlm-inc.com
Copy to:
Hector.deanda@qlm-inc.com

12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written

consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.

- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Santa Clara County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 12.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CITY:

Approved as to form:

s/ _____ s/ _____

Name, Title

Name, Title

Date: _____

Date: _____

Attest:

s/ _____

Name, Title

Date: _____

CONTRACTOR: _____
Business Name

s/ _____

Seal:

Darrell Oualls, President
Name, Title

Date: _____

Second Signature (See Section 12.8):

s/ _____

Yen Nguyen, Accountant
Name, Title

Date: _____

#560651, 06/30/24
Contractor's California License Number(s) and Expiration Date(s)

END OF CONTRACT