

ALL-INCLUSIVE PLAYGROUND GRANT PROGRAM

PROGRAM TWO

Procedural Guide

September 11, 2018

County of Santa Clara



Application due date: Friday, October 12, 2018 by 5:00 PM

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ALL-INCLUSIVE PLAYGROUND GRANT PROGRAM

Purpose and Funding

The Board of Supervisors of the County of Santa Clara established the All-Inclusive Playground Grant Program (AIPG) in 2017 to provide grants to local cities, school districts, non-profits and/or other governmental entities interested in building all-inclusive playgrounds in their communities located within Santa Clara County. This funding opportunity serves as a catalyst to communities within the County to provide facilities of regional significance for seniors, children and parents with disabilities.

For AIPG Program Two, a cumulative total of up to \$10 million in matching funds is available Countywide, allocated among supervisorial districts. Up to \$2 million in matching funds is available in each supervisorial district. One or more grant projects may be awarded per district.

The Board of Supervisors awards grants on a competitive basis following staff review and the All-Inclusive Playground Grant Review Committee (Review Committee) recommendation. The Board of Supervisors is not obligated to fund any AIPG projects, even if the project has been deemed eligible for funding by the Review Committee or County staff.

The program is governed by any existing or future policies and procedures that may be approved or amended from time to time by the Board of Supervisors. See Appendix C.

The Board of Supervisors, by approving this program, hereby designates the Director of the Parks and Recreation Department as the administrator and manager of the All-Inclusive Playground Grant Program, using funds other than Park Charter funds.

Applicant Eligibility

Local public agencies and non-profit corporations with 501(c)(3) certification are eligible to apply for grant funds for projects that will be constructed within the geographical limits of Santa Clara County.

Project Eligibility Criteria

1. The project must be located within the geographical limits of Santa Clara County.
2. The playground must be accessible to the public on a non-discriminatory basis.
3. The project must conform with the US Access Board Play Guide (Appendix A).
4. The project must comply with ASTM Policies, its equivalent or better (see Appendix B, section 105.2.3).

5. The project must be for a regionally serving playground that includes elements that make the playground accessible not only to the 10% of those with disabilities in wheelchairs, but also to the 90% of those with disabilities who are not in wheelchairs. The design must include elements to address the needs of people with Autism Spectrum Disorder, Sensory Challenges, Visual and Auditory Impairments, Cognitive, Developmental and Physical Disabilities.
6. The Project must include a design that goes above and beyond minimum standards set by the Americans with Disabilities Act, to ensure that seniors, children and parents with disabilities can truly make use of the playground.
7. The Project must include a plan for long-term playground maintenance and upkeep that is funded by sources other than the grant funds.

Available Grant Funds

A cumulative total of up to \$10 million is available Countywide, allocated among supervisorial districts -- \$2 million in each supervisorial district. One or more grant projects may be awarded per district. These are matching funds only. A Grant award may fund up to fifty percent of actual project expenditures incurred, but such award shall not exceed the funding limits per District. Applicants may request different amounts, but no more than \$2 million may be awarded to any single project.

Grantee Match

The Match is one Applicant dollar to one AIPG dollar for all AIPG grants. This is a reimbursement program. Up to fifty percent of the actual project expenditures, not to exceed the Grant award amount, may be reimbursed in accordance with the ***Reimbursements*** section of this Procedural Guide. If actual Project costs exceed the Grantee's original estimate of Project costs stated in the Grant Application, these excess costs will not be reimbursed. The basis for the County's matching fund contribution will be solely determined by the Project cost estimate presented in the Grant Application. However, if the final costs are less than this estimate, Grantee may receive less than the full grant award amount (as solely determined by the County).

There may be an exception to the cash match requirement for school districts and/or individual schools serving predominately lower income families as defined by having 50% or more students eligible for free and reduced-priced meals.

What can I use to match an AIPG grant?

The Applicant may include cash and other non-County grant funds to cover their Project costs.

In-Kind Contributions

In-kind contributions and services (such as volunteer labor, administration staff time devoted to managing the project, etc.) shall not be counted as matching contributions from the Grantee. Applicants may discuss any in-kind contributions to their Project in the budget section of the Project Proposal (Appendix F), but it will not be counted.

Only items which are funded by Grantee cash or other non-County grant funds are eligible to be considered as 'hard costs' for purposes of determining grant award budget qualification and must be listed in the Grant Scope/Cost Estimate Form (Appendix D).

Project Savings

The basis for the County's matching fund contribution will be solely determined by the Project cost estimate presented in the Grant Application. However, if the final costs are less than this estimate, Grantee may receive less than the full grant award amount (as solely determined by the County).

Property Owner Approval

Where Projects are located on property not owned by the Grantee, then Grantee must submit as a part of their/its application, a copy of a signed written approval from the property owner granting a license or lease for the playground Project intended and such agreement shall provide a minimum term of 20 years in duration. The property owner will be required to sign the Grant Agreement if grant funds are awarded.

Grant Scope/Cost Estimate

The Grant Scope/Cost Estimate Form (Appendix G) establishes the expected deliverables for project completion if a grant is awarded. To be eligible for reimbursement, work items funded by the grant must be listed on the Grant Scope/Cost Estimate Form. Describe each work item listed on the Grant Scope/Cost Estimate Form using phrases such as

"Construct a new"

"Purchase and install"

Provide a cost estimate for each work item listed on the Grant Scope/Cost Estimate Form. The estimated total project cost on the Grant Scope/Cost Estimate Form must equal the estimated total project cost listed on the AIPG Application Form.

Application Packet Submittal

This process does not commit the County to fund, nor does it commit the County to pay any cost incurred in the submission of an application, or in making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies.

Furthermore, no reimbursable cost may be incurred in anticipation of grant funding. All costs associated with the application preparation are solely the responsibility and liability of the submitting applicant.

- Complete the AIPG Application Form (Appendix E) and prepare a project proposal addressing the questions in Appendix F. Do not make any modifications to the order, format, font size, or content of the AIPG Application Form. If modifications are made, the grant application will not be considered.

- The applicant must designate an authorized representative to sign the AIPG Application Form. This person will be responsible for executing all documents, including the Grant Agreement, and has the authority to legally bind the applicant.
- The application packet should be presented in the order indicated in Appendix D: Application Packet Requirements and Checklist and keyed to a table of contents. If a Checklist item does not apply, note "N/A" and provide a brief explanation why the item is not applicable. The application Checklist should be submitted as part of the grant application packet to assist staff in determining the completeness of the application.
- Submit only the items shown in the Checklist. Do not submit supplementary materials, such as PowerPoint presentations, videos, or letters of support.
- Application packets may be stapled, but not bound (e.g. coil or ring binding) or placed in folders. Number all pages. Hand numbered pages are acceptable.
- Applicants may submit an application for more than one playground site, but not multiple applications for the same playground. A separate application packet must accompany each project.
- **Submit one (1) unbound original paper copy with wet ink signatures and one (1) electronic copy on a USB Flash drive of the complete application packet including scanned signatures (see Appendix A: Application Packet Requirements and Checklist).**

Application packets may be mailed or hand delivered to the address below. FAX or electronic (email) submissions will **not** be accepted.

Application packets must be received by 5:00 p.m. on October 12, 2018, directed to:

**Christian Elliott, Grants Management Analyst
County of Santa Clara, Parks and Recreation Department
298 Garden Hill Drive
Los Gatos, CA 95032**

The County expects to announce grant awards (intent to award) in December 2018.

Reservations

The County reserves the right to make changes to this process without liability, obligation or requirement to pay any costs incurred by any applicant in applying for grant funding, including but not limited to:

1. Reject all applications without any reason for the rejection.
2. Ask the applicant to revise or modify its application.
3. Modify, in the final Grant Agreement, any terms and/or conditions described in this Procedural Guide.
4. Terminate this process at any time for the convenience of the County.
5. Change any of the procedures or process described in this Manual

Execution of Grant Agreement

Prior to funding, Grantee shall execute the legally binding Grant Agreement, without Grantee modification, which includes the Grant Scope /Cost Estimate for the project, a sample of which is attached herein as Appendix J. The scope of work cannot be materially changed once the grant is awarded and the Grant Agreement is executed.

Grant applicants should carefully review the terms of the Grant Agreement before completing the application packet.

The Grant Agreement includes any special conditions imposed during the grant approval process that must be completed in order to close out the Grant Agreement and receive reimbursement funds.

Once Applicant has been given a Grant Agreement, it must be signed and returned to the County's Grant Program Administrator, for County execution. Only the Board of Supervisors can approve the Grant Agreement. Funds are not committed until the Grant Agreement is fully executed by the County.

CEQA

Grant projects require compliance with the California Environmental Quality Act (CEQA). Check with your local city or county planning agency for more information on how to complete CEQA. Although CEQA does not need to be completed prior to submitting a grant application, prior to construction or any grant funds being disbursed, CEQA must be completed. If you have completed CEQA, please submit one of the documents listed below with your application. If CEQA is not completed, the applicant shall describe any steps taken to comply with CEQA.

1. Notice of Exemption filed with, and stamped by, the county clerk, *or*
2. Initial Study with a Negative Declaration and a copy of the Notice of Determination filed with, and stamped by the county clerk, *or*
3. Initial Study and an Environmental Impact Report and a copy of the Notice of Determination filed with and stamped by the county clerk.

Multi-Lingual Signage

Projects must include publicly accessible/viewable multi-lingual signage appropriate to the diverse community where the project is located. This could include providing

information regarding playground usage, as well as wayfinding or directional signage, including for play areas that may be located away from the street.

Insurance

Grantees must comply with all insurance and indemnity requirements set out herein and in Appendix J.

Prevailing Wages

All agreements with third parties for work or services needed to complete the grant project must include an obligation of the contractor to meet and comply with applicable state of California prevailing wage laws. For more information on prevailing wage, Grantees should visit the State of California Department of Industrial Relations website at: <https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>

Timeline for Project Completion

Grant projects cannot commence until the Funding Agreement has been fully executed. Grant projects must be completed within three (3) years from the date of execution of the Grant Agreement. If the project cannot be completed within the required timeframe, the grantee forfeits all right or entitlement to receive any reimbursement of costs from the County under this grant program and the Grant Agreement.

Progress Reports

Grantees may be required, at County's sole option, to submit written progress reports to the designated County Parks and Recreation Department Grants Program Administrator, which may be on a semi-annual or annual basis during the Term of the Grant Agreement. At the request of the County, Grantees may also be required to present progress reports in open session at regularly scheduled Board of Supervisors meetings.

Changes to Grant Agreement Term

Within three years from the date of execution of the Grant Agreement, Grantee must complete the project and demonstrate the project to be fully usable for its intended purpose as an all-inclusive playground. The County, without the obligation to do so, may approve an extension of the term of the Grant Agreement for reasonable delays not within the control of the grantee. The grantee must request the extension within the first 32 months from the date of Grant Agreement execution.

Operation and Maintenance

Upon completion of the grant project, the grantee must open the All-Inclusive Playground to the public, and continuously operate and maintain the Playground for the benefit of the public for a period of at least twenty (20) years. On-going maintenance, operation, management, repair and improvement of the Playground is solely the responsibility of the grantee.

Funding Assistance Acknowledgement

Grantees are required to publicly acknowledge the County of Santa Clara funding assistance. The primary recognition will be a plaque permanently affixed at a prominent location on the project site, visible to the public. The County must approve the sign design prior to installation. Additionally, grantees must give credit to the County in project-related materials including newsletters, brochures, and internet messages regarding the project for which AIPG funds were used. The acknowledgement credit shall read: "This project made possible in part by a grant from the County of Santa Clara's All-Inclusive Playground Grant Program." The Grantee must notify the County of any public dedication events at least 30 days in advance and must give the County the opportunity to participate. The Grantee must also provide the County with a copy of any project related press/media release.

Reimbursements

Grantees must keep accurate accounting records of all AIPG project expenditures in accordance with Generally Acceptable Accounting Practices ("GAAP") or GAAP equivalent. Grant funds are issued on a reimbursement basis only, based upon completion of the Grant funding agreement requirements. No advanced funds are issued. Reimbursement is limited to actual expenditures paid by Grantees for work approved in the "Grant Scope" of the Grant funding agreement and listed in the Grant Scope/Cost Estimate Form included with the application packet. These claimable expenditures must be incurred within the contract performance period.

When to make your first reimbursement request. Grantee shall only request reimbursement after first having constructed at least 30 percent of the Project. Documentation substantiating construction and claimable expenditures must be provided with the first reimbursement request.

Reimbursements on a bi-annual basis. Grantees may submit requests for reimbursement to the County on a bi-annual basis when the Project has accrued claimable expenditures exceeding \$1,000 during the previous six-month period. The submittal dates are January 1st and July 1st. Grantees must provide:

1. Itemized invoice(s) requesting reimbursement of eligible costs. Itemizations must clearly show the relationship between the expenditures and the grant scope of work in the Grant funding agreement.
2. Clear copies of grant project invoices directed to the grantee.
3. Evidence that all invoices have been paid. For example, a clear copy of both sides of a check or warrant issued to pay said invoices, or a receipt evidencing such payment. Bank account statements will not be accepted.

If the reimbursement request is satisfactory, the County will endeavor to provide payment to the grantee within sixty days of a complete submittal.

Final Reimbursement

Upon Project completion, the Grantee must submit a final reimbursement request that includes all the items required in a standard reimbursement request and at least four photographs of the completed project and additional photographs of the permanently installed AIPG funding acknowledgement sign.

Final reimbursement requests must be submitted at least thirty (30) days prior to the expiration of the three-year time period required for completion of the project. It is the responsibility of the grantee to be knowledgeable of the deadlines for completing the project and for timely submitting information, documents, and invoices to County.

Accounting Requirements

Using GAAP or GAAP equivalent, Grantees are responsible for maintaining fiscal controls and fund accounting procedures that will show the following:

1. The disposition of the funds used to complete the project.
2. The total costs of the grant project or undertaking in connection with which such funds are given or used.
3. The amount and nature of that portion of the grant project cost supplied by other sources.
4. Any other records and controls that will facilitate an effective audit by the County or any third parties.

The fiscal controls and accounting procedures used to record grant project costs and fund receipts should, at a minimum, be based on generally accepted accounting standards and principles. County may require additional accounting or controls.

Record Retention

The grantee must maintain grant project records (including paper and electronic media, as appropriate) showing compliance with all aspects of the Grant Agreement and these Guidelines for three (3) years after completion of the grant project or until all claims are settled, whichever occurs last.

All grant project records must be made available to the County within five (5) working days of the County's reasonable notice. If the County determines that the grantee used the grant for ineligible costs, or other terms of the Grant Agreement were breached, the County may take any action permitted under the law or authorized actions under the Grant Agreement, including but not limited to requiring the grantee to repay the grant, with interest at the rate earned on County's investments, and the cost of the audit.

All applications and documentation submitted with the applications (including any and all information contained therein) become the exclusive and sole property of the County. The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents submitted to County, and Applicant claims that such information falls within one or more CPRA exemptions, Applicant must clearly mark such information "CONFIDENTIAL AND PROPRIETARY" and identify the specific lines containing the information, prior to

submitting such documents or information to the County. In the event of a request for such information, the County will make reasonable efforts to provide notice to Applicant prior to such disclosure. Applicant shall have no more than three (3) calendar days from the date of County's notice to inform County that applicant believes such information to be exempt from disclosure under the CPRA and to thereafter immediately file and obtain approval of a motion in a court of law within Santa Clara County for a temporary restraining order or injunction to prevent County from releasing said information or documents; otherwise, the information/documents will be released. Applicant further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Applicant.

APPENDIX A: Accessible Play Areas
**A Summary of Accessibility Guidelines for Play Areas by the
U.S. Access Board**

These guidelines are found online at:

<https://www.access-board.gov/attachments/article/1369/play-guide.pdf>

APPENDIX B: ASTM POLICIES

ADA Standards , Chapter 105 Referenced Standards, Section 2. 3

<https://www.access-board.gov/guidelines-and-standards/transportation/facilities/about-the-ada-standards-for-transportation-facilities/ada-standards-for-transportation-facilities-single-file>

APPENDIX C: All-Inclusive Playground Grant Program Policies

County of Santa Clara

ALL-INCLUSIVE PLAYGROUND GRANT PROGRAM POLICIES

Policy 1

The All-Inclusive Playground Grant Program will provide matching funds to assist cities, non-profits, school districts and other governmental entities located and operating in Santa Clara County in building all-inclusive playgrounds in their communities.

Policy 2

After review and screening by the Parks and Recreation Department, qualifying applications will be forwarded to the Review Committee. Prospective grantees will be recommended to the Board of Supervisors by the Review Committee.

Policy 3

A Grant award may fund up to fifty percent of actual project expenditures incurred, but such award shall not exceed the funding limits per District, as set out in the All-Inclusive Playground Grant Program Procedural Guide.

Policy 4

Grant proposals must include a plan for long-term playground maintenance and upkeep that is funded beyond the scope of the grant. All incurred costs related to upkeep and maintenance is the responsibility of the grantee.

Policy 5

The capacity of an organization to complete the grant project within the designated period is weighed in the evaluation process.

Policy 6

The Review Committee will consider the staff recommendations in evaluating the grant proposals.

Policy 7

All-Inclusive Playground Grant Program Project Agreements will have a three-year term. Funds are not committed until the Project Agreement is executed.

Policy 8

Grant funds will be issued on a reimbursement basis only in accordance with the All-Inclusive Playground Grant Program Procedural Guide, and based upon completion of the Project Agreement funding requirements. No advanced funds will be issued.

Policy 9

Applicants must submit annual progress report(s) outlining progress made towards the completion of the grant project.

Policy 10

One (1) All-Inclusive Playground Grant Program project agreement extension for a term no longer than three (3) years may be granted only under special circumstances. If the project cannot be completed within the required timeframe, unused grant funds will be returned to the All-Inclusive Playground Grant Program Funds

Policy 11

Annually in June, grant administration staff will report to the Board of Supervisors on the status of the program, and formally rollover any unallocated funding to the next fiscal year.

APPENDIX D: APPLICATION PACKET REQUIREMENTS AND CHECKLIST

1. ☐ AIPG Application Form. See Appendix E. The Master Application Form must be completed and signed by the applicant's authorized representative.
2. ☐ Project Proposal. See Appendix F. In conjunction with the AIPG Application Form (Appendix E), attach a written description of the project proposal. Provide a written response to each of the evaluation factors in the order in which they appear.
3. ☐ Grant Scope/Cost Estimate. See Appendix G. The Grant Scope should be detailed enough to itemize each project work item and must be consistent with the cost estimate.
4. ☐ Property Owner Approval. Attach lease, license, or agreement executed by property owner and applicant committing the use of the property for a minimum of 20 years for use as an all-inclusive playground on a continuous uninterrupted basis.
5. ☐ Funding Sources Form. See Appendix H. List the funding sources that will be used to finance the grant project.
6. ☐ CEQA. Grant projects require compliance with the California Environmental Quality Act (CEQA). Prior to any grant funds being disbursed, CEQA must be completed. If you have completed CEQA, please submit one of the documents listed below with your application. If CEQA is not completed, please describe any steps taken to comply with CEQA.
 - Notice of Exemption filed with, and stamped by, the county clerk, *or*
 - Initial Study with a Negative Declaration and a copy of the Notice of Determination filed with, and stamped by the county clerk, *or*
 - Initial Study and an Environmental Impact Report and a copy of the Notice of Determination filed with and stamped by the county clerk.
7. ☐ 501(c)(3) Certification. Attach copy of 501(c)(3) certification.
8. ☐ Photos of Project Site. Attach a minimum of four (4) color photographs in 4" x 6" format of the project site and site context presented in 8.5" x 11" format. No more than two photographs per page. Include descriptions of each photograph.
9. ☐ Required Regulatory Permits. Attach a list of existing and additional permits required to complete the grant project, if applicable, the status of each, and indicate when permit approval would occur.
10. ☐ Public Access Schedule. Attach a schedule of public accessibility, including hours of operation.
11. ☐ Project Use Diagram. Provide floor plan of the Project area and proposed uses of each area, specifically designated public access areas and proposed use of other areas. _
12. ☐ Timeline. Attach a timeline indicating the key milestones (such as design, engineering, construction) for project completion.
13. ☐ Resolution/Certification. A Certification Letter authorizing the "Authorized Representative" to apply for grant funding must be submitted if a governing body Resolution cannot be obtained prior to the application submittal. A governing body Resolution authorizing the "Authorized Representative" to execute a grant agreement must be submitted prior to the execution of a grant agreement, if an award is made (Reference Appendix E).

APPENDIX E: ALL-INCLUSIVE PLAYGROUND APPLICATION FORM

County of Santa Clara
ALL-INCLUSIVE PLAYGROUND GRANT PROGRAM

PROJECT NAME	Requested GRANT Amount \$	
	Grantee Cash Contribution \$	
	Other Funding Sources \$	
PROJECT PHYSICAL ADDRESS (including zip code)	TOTAL PROJECT COST \$	
	Nearest Cross Street	
GRANT APPLICANT (entity applying for the grant)	GRANT APPLICANT'S Mailing Address	
AUTHORIZED REPRESENTATIVE AS SHOWN IN RESOLUTION OR CERTIFICATION LETTER		
_____ Name (<i>typed or printed</i>) and Title	_____ Email address	_____ Phone
DIRECTOR/PRESIDENT/CEO		
_____ Name (<i>typed or printed</i>) and Title	_____ Email address	_____ Phone
DAY-TO-DAY CONTACT for ADMINISTRATION of the GRANT (<i>if different from AUTHORIZED REPRESENTATIVE</i>)		
_____ Name (<i>typed or printed</i>) and Title	_____ Email address	_____ Phone

GRANT SCOPE: I/we represent and warrant that this Application Package describes the intended use of the requested grant to complete the project items listed in the attached Cost Estimate Form and if such grant is awarded I/we fully intend and shall comply with all terms and conditions of the All-Inclusive Playground Grant Application and Procedural Guide including the Grant Agreement attached as Appendix J. I declare under penalty of perjury, under the laws of the State of California, that the information contained in this Application Package, including required attachments, is accurate.

Signature AUTHORIZED REPRESENTATIVE as shown in **Resolution**

Date

Print Name _____

Title _____

APPENDIX F: PROJECT PROPOSAL

In conjunction with the All-Inclusive Playground Grant Application Form (Appendix E), the information contained in the project proposal will serve as the project application. Please provide a written response to each of the following evaluation factors in the order in which they appear and cite any studies, reports, or other data that support the responses.

The project proposal should be no more than ten pages (without attachments) printed double-sided on 8 ½" x 11" paper in 12-point Arial font.

1. Project Description

- Describe the proposed project and the specific work items to be funded by the grant.
- Who will be responsible for performing what activities (work items)?

2. All-Inclusive Playground Issues/Need/Public Purpose

- How does the project address the need for accessible spaces for seniors, children and parents with physical or cognitive disabilities within Santa Clara County?
- Describe how the design goes above and beyond minimum standards set by the Americans with Disabilities Act, to ensure that seniors, children and parents with disabilities can truly make use of the playground
- Describe what elements of this project make the playground accessible not only to those with disabilities in wheelchairs, but also those with disabilities who are not in wheelchairs. These should include elements to address the needs of people with Autism Spectrum Disorder, Sensory Challenges, Visual and Auditorium Impairments, medically fragile individuals, Cognitive, Developmental and Physical Disabilities. Specifically identify which elements of your proposed design address which disability. As an example, understanding playground users with autism may get overstimulated with ramps and connected play equipment, what is included in your design to address this?
- How will the project benefit the community and make a regionally significant, long- term contribution to Santa Clara County?

3. Public Access

- Explain how the finished project will be publicly accessible as defined in the eligibility criteria. Explain the general availability of access of this project to the public, including year-round hours of operation.
- Describe how the project includes multi-lingual signage appropriate to the diverse community where the project is located, including providing information regarding playground usage, and wayfinding or directional signage, including for play areas that may be located away from the street.

4. Budget

- Describe the total project cost, and how it was determined, e.g. is the project budget based on concept level estimates, detailed design level estimates, or formal engineers estimate based on construction plans and specifications.
- Summarize the total project costs on the Grant Scope / Cost Estimate Form (Appendix G – page 21). Supplemental information may be provided.
- If the project is part of a long-range project (multi-phased), how many phases are required to complete the project?

5. Project Readiness

- Describe the funds currently available to complete the project. While not all funding must be in place to apply for the grant, a funding plan must be in place to secure all funds necessary to complete the project. If sufficient funds are not currently available to complete the project, please describe how much is committed from what source(s) and provide a detailed plan for fund raising that includes your organizations track record and internal or external expertise in fundraising. Please attach a copy of outside funding commitment letters or agreements.
- Summarize the total funding sources on the Funding Sources Form (Appendix H, page 22). List the date funds were committed from an entity other than the applicant, if funding has not been formally approved, note TBD under date.
- Describe what permits and entitlements are required for the project, and your progress and plan, if applicable, toward attaining them.
- Provide a project timeline with detailed schedule of project activities enumerated.

6. Long-Term Maintenance and Operation

- Describe the plan for long-term maintenance and upkeep that is funded beyond the scope of the grant.
- What funding sources or other resources will be used to maintain and operate the property in the future?
- Who will be responsible for the maintenance and operation of the property and ensuring its on-going availability for public use?
- Provide an example of your organizations maintenance practices and program for a comparable project.

7. Project Administration/Professional Capability/Schedule

- Describe the personnel and methods to be utilized to carry out the project.
- What individual or team will manage the project from the time the grant is awarded until project completion?
- What experience does this individual or management team have which qualifies them to manage the project?
- Is the proposed project schedule realistic and achievable?
- Describe the status of needed agreements/permits towards the completion of the project.

8. Land Tenure

If the grant applicant is a tenant or operator, provide the lease or agreement executed by the property owner and the tenant/operator that adequately safeguards the twenty-year use requirement and commitment.

APPENDIX G: GRANT SCOPE/COST ESTIMATE FORM

APPLICANT _____ PROJECT NAME _____

WORK TO BE PERFORMED*	GRANTEE MATCH	AIPG GRANT	TOTAL
TOTAL PROJECT AMOUNT			
Contingency (Optional)		XXXXXXXXXX	XXXXXXXXXX

*Only items which are funded by grantee cash/match or AIPG grant funds and are readily auditable 'hard costs' may be listed in the Grant Scope/Cost Estimate. Do not list In-Kind Contributions.

The APPLICANT understands that this form establishes the expected GRANT deliverables.

Signature _____
APPLICANT'S AUTHORIZED REPRESENTATIVE

Date _____

APPENDIX H: FUNDING SOURCES FORM

APPLICANT _____ PROJECT NAME _____

FUNDING SOURCE	DATE COMMITTED (If applicable)	AMOUNT
AIPG Funding	TBD	\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
TOTAL FUNDING SOURCES Must Equal Estimated Total PROJECT Cost		\$
CONTINGENCY		\$

List the amount and source of funds currently available to complete the project. While not all funding must be in place to apply for the grant, a funding plan must be in place to secure all funds necessary to complete the project. If sufficient funds are not currently available to complete the project, please list other anticipated sources of funding. List the date funds were committed from an entity other than the applicant; if funding has not been formally approved, note TBD. On a separate sheet, provide a detailed plan for fund raising that includes your organizations track record and internal or external expertise in fundraising.

Signature _____
APPLICANT'S AUTHORIZED REPRESENTATIVE

Date _____

APPENDIX I: EVALUATION FACTORS

Review Committee will rank the applications according to the following evaluation factors. A score sheet will be used to assign point values for each evaluation factor. Assigned point values should be based on the following scales:

<u>Points Possible</u>	<u>Not At All True</u>	<u>Not Adequately</u>	<u>Generally True</u>	<u>Mostly True</u>	<u>Absolutely True</u>
5	0	1	2-3	4	5
10	0	1-3	4-6	7-9	10
15	0	1-5	6-8	10-13	15
20	0	1-6	7-12	13-19	20

PROJECT DESIGN (50 points)

- How well does the project incorporate elements to address the full spectrum of access to address the need for accessible spaces for children and parents with cognitive and physical disabilities within Santa Clara County, not only to the 10% of those with disabilities in wheelchairs, but also to the 90% of those with disabilities who are not in wheelchairs? (0-40 points)
- Quality, functionality and attractiveness of the design (0-10 points)

LOCATION AND ACCESS OF PLAYGROUND (20 points)

- Days and hours of operation throughout the year. (outside of school hours versus a park being open all the time during park hours, for example). (0-10)
- How publicly accessible is the site? For example, is it in a school which restricts access? Convenient location of the playground within the facility? (0-10)

MAINTENANCE PROGRAM (10 points)

- How well developed is the maintenance program?
- Has applicant demonstrated responsible maintenance practices in comparable projects?

PROJECT READINESS/PROFESSIONAL CAPABILITY (20 points)

- Progress towards attaining permits/entitlements. (0-5 points)
- Feasibility of the funding plan. (0-5 points).
- Is a manageable timeline proposed with a detailed schedule of project activities enumerated? Schedule should be realistic and achievable. (0-5 points)
- How well does the application describe the personnel and methods that will be used to achieve the project objectives? (0-5 points)

The above evaluation factors total 100 possible points.

APPENDIX J: SAMPLE GRANT FUNDING AGREEMENT

The Grant Agreement sample document begins on the next page.

FUNDING AGREEMENT BY AND BETWEEN THE GRANTEE and THE COUNTY OF SANTA CLARA

This Funding Agreement (“Agreement”) is made and entered into by and between the COUNTY of SANTA CLARA, a political subdivision of the State of California (hereinafter referred to as the “COUNTY”), and _____ (hereinafter referred to as “GRANTEE”).

RECITALS

WHEREAS, the GRANTEE signed and submitted an all-inclusive playground application (“Application”) to the COUNTY requesting grant funding to assist with the construction and development of an all-inclusive playground, which is incorporated herein and made a part of this Agreement by this reference (Exhibit B). COUNTY materially relies upon the statements and documentation submitted by GRANTEE in said Application in its entirety and based upon this material reliance COUNTY is willing to enter into this Agreement with GRANTEE; and,

WHEREAS, the all-inclusive playground (the Project) is located at _____ (the Premises), in the city of _____, County of Santa Clara, and will be open to the general public on a continuous non-interrupted basis for no less than twenty years from the date of Project completion; and,

WHEREAS, GRANTEE represents and warrants to COUNTY that GRANTEE, by itself and through its contractors and consultants, has experience, expertise, financial capability and ability to complete the Project contemplated herein and to fully perform all obligations and responsibilities under this Agreement to completion; and,

WHEREAS, the Board of Supervisors, wishes to assist the GRANTEE in completing the Project which serves as an all-inclusive playground on a continuous uninterrupted basis for at least 20 years (collectively, the “Public Purpose”); and,

WHEREAS, the Board of Supervisors has approved the award of Grant Funds (as defined herein below) to GRANTEE provided GRANTEE complies with all terms and conditions of this Agreement and has found that the Project will serve a public purpose of general COUNTY interest as an all-inclusive playground; and,

WHEREAS, the award of the Grant Funds is contingent upon GRANTEE complying with all terms and conditions of this Agreement, which includes GRANTEE satisfying all of the Grant Scope/Cost Estimate Form representations contained in Appendix G of GRANTEE’s Application, which is included within Exhibit B herein below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficient of which are hereby acknowledge, COUNTY and GRANTEE agree to the foregoing and as follows:

1. All Recitals contained herein above are incorporated into and made a part of this Agreement as terms and conditions.
2. The GRANTEE may utilize the Grant Funds specified in SECTION 4 of this Agreement to complete the Project within three years from the Effective Date of this Agreement and shall

return any unspent funds at the end of this three-year period.

3. The GRANTEE shall acknowledge the COUNTY's contribution to the Project by placing a plaque in public view within (project place) identifying the County of Santa Clara as a sponsor of the Project; The plaque shall first be reviewed and approved by COUNTY before it is installed; and,
4. The GRANTEE warrants and represents that it shall expend all Grant Funds in accordance with the terms of this AGREEMENT and the All-Inclusive Playground Grant Program Procedural Guide (the "Guide") (Exhibit A) attached and incorporated herein by this reference.

SECTION 1. PUBLIC PURPOSES

GRANTEE represents and warrants that it will use best efforts to secure all the requisite rights and entitlements from public agencies, local government and the property owner (if any) to construct the Project. GRANTEE further represents and warrants that it will ensure that at all times the subject Project is open and available to the public on an equal basis, and accessible by all members of the public, as an all-inclusive playground free of charge.

SECTION 2. GRANTEE RESPONSIBILITIES

COUNTY funding is subject to the following conditions:

(1) **Responsibility of the GRANTEE.** The GRANTEE will ensure that the Project is completed and operated in compliance with all requirements of the All-Inclusive Playground Grant Program Procedural Guide, and fully constructed and operational within three-years from the date of execution of this Agreement, and GRANTEE shall act promptly and without delay with respect to such matters in relation to the Project in accordance with the following:

- a. Comply with all laws and Guide requirements, including but not limited to all environmental, health and safety laws and all provisions of the public contracts code, where applicable.
- b. Comply with best industry practices and manufacturer design and construction specifications for the Project.
- c. Prepare plans and specifications for the Project and construction of the Project using qualified persons with the requisite skills and expertise to complete the Project.
- d. Prepare all environmental documents required for completion of the Project pursuant to the California Environmental Quality Act, National Environmental Policy Act, and any rules and/or regulations promulgated thereunder, where applicable. No funds will be dispersed until these environmental requirements have been fully met.
- e. Secure all approvals, permits, and certifications by government agencies required for completion of the Project, where applicable.
- f. Secure performance and payment bonds in 100% of the amount of the construction contract to assure satisfactory completion of the Project, and the payment of laborers and suppliers

of material.

g. Each year, during construction of the Project, GRANTEE shall cause a report to be made to the County Board of Supervisors showing progress made towards completion of the Project.

(2) Capital Contributions by Parties to AGREEMENT

a. GRANTEE shall ensure that any funds in excess of the Grant Funds needed to complete the Project are secured by GRANTEE and not by COUNTY.

b. No Grant Funds may be used for office space, salary, or administrative expenses incidental to the Project, or for professional planning or architectural design fees, or pre-construction services.

(3) Budget Contingency. Performance and/or payment by the COUNTY pursuant to this Agreement is contingent upon the appropriation of sufficient funds by the COUNTY for the work covered by this Agreement. If funding is reduced or deleted by the COUNTY for the work covered by this Agreement, the COUNTY may, at its option and without penalty or liability, terminate this Agreement or offer an amendment to this Agreement indicating the reduced amount.

SECTION 3. OPERATION AND MAINTENANCE

Upon completion of PROJECT construction, the GRANTEE warrants, represents and agrees that it, or its authorized representatives, will operate, manage, and maintain the PROJECT for a period of at least 20 consecutive years from the effective date of this AGREEMENT, for Public purposes, open to the public and for the benefit of the general public. Ongoing operation, management, and maintenance is solely the responsibility of the GRANTEE acting by itself or through its authorized representatives.

SECTION 4. COMPENSATION

(1) The COUNTY will provide the GRANTEE (\$.00) (“Grant Funds”) only in accordance with the reimbursement provisions of the All-Inclusive Playground Grant Program Procedural Guide. GRANTEE shall thoroughly review and develop an understanding of the obligations set out in the All-Inclusive Playground Grant Program Procedural Guide, including but not limited to the “Reimbursements” and “Final Reimbursement” sections.

(2) Any Grant Funds not expended pursuant to the terms and conditions of this Agreement shall be returned to the COUNTY immediately. In addition, if, for whatever reason, the GRANTEE is unable to ensure the completion of the construction of the Project or is unable to ensure that the all-inclusive playground is operated, managed, and maintained for twenty (20) consecutive years from the date of Project completion (which date must be no later than 3 years from the effective date of this Agreement), then GRANTEE shall immediately refund to the COUNTY all the Grant Funds, even if such funds have already been expended for the Project.

SECTION 5. RECORDS RETENTION AND AUDIT

(1) GRANTEE will maintain Project records for audit purposes for three (3) years after completion of the PROJECT or until all claims are settled, whichever occurs last. All records and data shall be available to COUNTY upon reasonable notice within five (5) working days of a request by

COUNTY. GRANTEE shall repay COUNTY with interest at the rate earned on COUNTY's investments for any unauthorized activities disclosed by audit or inspection, including the cost of the audit, within thirty (30) days of demand by COUNTY.

(2) Audits may be conducted at the discretion of the Santa Clara County Parks and Recreation Department. The audits may take two forms; a walk through inspection of the Project and informal review of the Project records by Parks and Recreation Department staff, and/or a formal financial audit conducted by either COUNTY staff or a consultant. GRANTEE should be prepared for either or both types of audits. A walk through inspection may occur at the beginning of a Project, prior to approval of the final reimbursement request, or at periodic intervals throughout the Project. A formal financial audit may occur as deemed necessary by the Santa Clara County Parks and Recreation Department.

SECTION 6. INDEMNIFICATION.

GRANTEE covenants, warrants, represents and agrees that it shall indemnify, defend, save and hold harmless the COUNTY and all of its employees, officers, directors, attorneys, agents, contractors, successors and assigns in accordance with the indemnification provisions of Exhibit C_, which is incorporated herein and made a part of this agreement by this reference.

SECTION 7. TERM OF AGREEMENT

This Agreement is effective as of the date of its full execution and shall terminate twenty years from the date of Project completion, unless otherwise terminated earlier pursuant to the terms of this Agreement.

SECTION 8. NOTICES

Any notices provided herein shall be deemed received when mailed or delivered to the respective parties addressed as follows:

<u>COUNTY OF SANTA CLARA</u>	<u>GRANTEE</u>
Don Rocha, Interim Director Parks and Recreation Department 298 Garden Hill Drive Los Gatos, CA 95032 Phone. (408) 355-2220	NAME, TITLE DEPARTMENT ADDRESS CITY, STATE, ZIP Phone.

SECTION 9. MISCELLANEOUS

(1) **Entire Agreement.** This document represents the entire agreement between the parties in relation to the subject matter contained herein. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of the agreement are merged into this Agreement.

(2) **Amendments.** This Agreement may only be amended by a written instrument signed by authorized representatives of both parties.

(3) **Conflict of Interest.** GRANTEE shall comply, and require its contractors, employees, agents, representatives, subcontractors and consultants to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of

interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the COUNTY.

a. In accepting this Agreement, GRANTEE covenants, warrants, represents, and agrees that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. GRANTEE further covenants that, in the performance of this Agreement, it will not employ any contractor, consultant or person having such an interest. GRANTEE, including but not limited to GRANTEE's employees, contractors, subcontractors and consultants, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

b. If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, GRANTEE shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other applicable laws and regulations including, as required, filing of Statements of Economic Interests within 30 days of commencing any work pursuant to this Agreement, annually by April 1, and within 30 days of their termination or cessation of work pursuant to this Agreement.

(4) **Governing Law, Venue.** This Agreement, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transaction(s) contemplated by it, shall be governed by, construed, and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this Agreement, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

(5) **Assignment.** No assignment of this Agreement or of any of the rights or obligations hereunder shall be valid without the prior written consent of COUNTY.

(6) **Waiver.** No delay or omission by either party hereto to exercise any right occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

(7) **Non-Discrimination.** GRANTEE represents, warrants and agrees that it and its contractors, consultants and representatives shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. GRANTEE represents,

warrants and agrees that it shall not discriminate against any contractor, subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. GRANTEE also represents, warrants, and agrees that it shall not discriminate in provision of work performed in relation to this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(8) **COUNTY No-Smoking Policy.** GRANTEE and its employees, agents, contractors, subcontractors and consultants, shall comply with the COUNTY's No-Smoking Policy, as set forth in the Board of

Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all COUNTY-owned and operated health facilities, (2) within 30 feet surrounding COUNTY-owned buildings and leased buildings where the COUNTY is the sole occupant, and (3) in all COUNTY vehicles.

(9) **Food and Beverage Standards.** Except in the event of an emergency or medical necessity, COUNTY's nutritional standards shall apply to any foods and/or beverages purchased by GRANTEE with Grant Funds for COUNTY-sponsored meetings or events.

(10) **California Public Records Act.** All documents and records provided to or made available to COUNTY under this Agreement become the property of the COUNTY, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If GRANTEE proprietary information is contained in documents submitted to COUNTY, and CITY claims that such information falls within one or more CPRA exemptions, GRANTEE must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the COUNTY will make reasonable efforts to provide notice to GRANTEE prior to such disclosure. If GRANTEE contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability, and expense to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in Santa Clara County before the COUNTY responds to the CPRA request. If GRANTEE fails to obtain such a remedy before the COUNTY responds to the CPRA request, COUNTY may disclose the requested information and shall not be liable or responsible for such disclosure.

a. GRANTEE further warrants, represents and agrees that it shall defend, indemnify, and hold COUNTY harmless against any and all claims, actions or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by COUNTY of a CPRA request for any information arising from any representation, or any action (or inaction), by the GRANTEE, its contractors, consultants, employees, agents, or representatives.

(11) **No Third Party Beneficiaries.** This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties signing this Agreement. Subcontractors, sponsors and affiliates shall have no right or claim attaching to this Agreement or to the Grant Funds and are not third party beneficiaries of or to this Agreement.

(12) **Relationship of the Parties.** The Parties acknowledge and agree that nothing set forth in this Agreement shall be deemed or construed to render the parties as joint venturers, partners, agents, a joint enterprise, employer-employee, or lender-borrower. GRANTEE shall have no authority to

employ any person as employee or agent on behalf of COUNTY for any purpose. Neither GRANTEE nor any person using or involved in or participating in the Project or in the use of the Grant Funds shall be deemed a third party beneficiary to this Agreement nor an employee or agent of COUNTY, nor shall any such person represent himself or herself to others as a third party beneficiary to this Agreement or as an employee or agent of COUNTY.

(13) **No Indemnification and Insurance by COUNTY.** Nothing contained in this Agreement is to be construed as an indemnification by COUNTY for any loss, damage, injury or death arising out of or caused, in whole or in part, by the COUNTY or its Board of Supervisors, officers, executives, attorneys, employees, agents, representatives, contractors or subcontractors. Nothing contained herein shall be construed to, and nothing shall, obligate the COUNTY to provide any insurance, indemnity or protection for or on behalf of any third party, the Project or the property owner.

(14) **Subcontractors.** If any obligation is performed for or on behalf of GRANTEE through a consultant, contractor or subcontractor, GRANTEE will remain fully responsible for the performance of all obligations under this Agreement and GRANTEE will be solely responsible for all payments due to its contractors, consultants, or subcontractors. No contract, subcontract or other agreement entered into by GRANTEE with any third party in connection with this Agreement, or for or in relation to the use of the Grant Funds, will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, COUNTY with respect to such arrangement. No contractor, consultant or subcontractor will be deemed a third party beneficiary for any purposes under or to this Agreement.

(15) **Nonexclusive Agreement.** GRANTEE agrees that this Agreement is non-exclusive and COUNTY may at any time, in its sole discretion, enter into agreements with other parties for any purpose deemed to be in the best interest of the COUNTY.

(16) **Paragraph Headings.** The headings and captions of the various paragraphs and subparagraphs hereof are for convenience only, and they shall not limit, expand or otherwise affect the construction or interpretation of this Agreement.

(17) **Cumulative Remedies.** The rights and remedies of the parties to this Agreement, whether pursuant to this Agreement or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

(18) **Counterparts.** This Agreement may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both parties.

(19) **Construction/Severability.** This Agreement shall not be construed more strongly against either party regardless of who is more responsible for its preparation. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other part of this Agreement, but the Agreement shall be construed as not containing the particular provision or provisions held to be invalid or unenforceable.

(20) **Authority.** Each party represents and warrants that it has executed this Agreement freely, fully intending to be bound by the terms and provisions contained in this Agreement and that the persons signing below are authorized to sign on each party's behalf.

(21) **Office of Foreign Assets Control Compliance.** GRANTEE represents to COUNTY that: (a) GRANTEE and each of the GRANTEE Representatives are not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (b) GRANTEE, and the GRANTEE Representatives, are not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

(22) **COUNTY Regulatory Authority.** GRANTEE acknowledges and agrees that COUNTY, acting not as landlord but in its governmental regulatory capacity, has certain governmental regulatory authority over the Premises and that nothing in this Agreement binds the COUNTY to exercise or refrain from exercising this discretionary governmental authority in any particular manner.

(23) **Bribery Clause.** GRANTEE certifies, represents and warrants that GRANTEE and the GRANTEE Representatives have not been convicted of bribery or attempting to bribe an officer or employee of the COUNTY or any other municipality or state entity nor has GRANTEE or any of the GRANTEE Representatives made an admission of guilt of such conduct which is a matter of record.

(24) **Wage Theft Prevention.**

a. **Compliance with Wage and Hour Laws.** GRANTEE, and any the GRANTEE Representatives it employs or contracts with to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

b. **Final Judgments, Decisions, and Orders.** For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.

c. **Prior Judgments against GRANTEE.** BY SIGNING THIS AGREEMENT, GRANTEE AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT—THAT GRANTEE HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS.

GRANTEE FURTHER AFFIRMS THAT IT HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.

d. **Judgments During Term of Contract.** If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that GRANTEE or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or GRANTEE learns of such a judgment, decision, or order that was not previously disclosed, GRANTEE must inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. GRANTEE and its subcontractors

shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-OCCM with documentary evidence of compliance with the final judgment, decision, or order within 5 days of satisfying the final judgment, decision, or order. The COUNTY reserves the right to require GRANTEE to enter into an agreement with the COUNTY regarding the manner in which any such final judgment, decision, or order will be satisfied.

e. COUNTY's Right to Withhold Payment. Where GRANTEE has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the COUNTY reserves the right to withhold payment to GRANTEE until such judgment, decision, or order has been satisfied in full.

f. Material Breach. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for termination of this Agreement and/or any other remedies available under this Agreement and/or law.

g. Notice to COUNTY Related to Wage Theft Prevention. Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—OCCM; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

(25) **Prevailing Wage.** GRANTEE acknowledges and agrees that work performed under this Agreement may be considered a public work within the meaning of California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public work. GRANTEE has included (and will include) consideration for this obligation in calculating compensation under this Agreement, if such prevailing wage requirements are applicable. GRANTEE is solely responsible and liable for ensuring compliance with all applicable prevailing wage laws. COUNTY may at any time, without obligation to do so, audit GRANTEE to verify whether GRANTEE is in compliance with prevailing wage laws. GRANTEE shall cooperate with all such audits, including making available and providing copies, during the period 9:00am to 5:00pm, Monday through Friday, any and all records requested by COUNTY to verify compliance promptly upon request, but not later than seventy-two hours after such request.

(26) **Insurance.** GRANTEE shall provide insurance and comply with all insurance and other terms and conditions set out in the attached Exhibit C.

(27) **Exhibits.** The following exhibits are attached to this Agreement and are incorporated herein by this reference.

Exhibit A -- All-Inclusive Playground Grant Program Procedural Guide

Exhibit B -- Grant Application

Exhibit C – Insurance Requirements and Proof of Insurance

(28) **Survival.** All terms and conditions that by their nature should survive termination or expiration of this Agreement, shall so survive including but not limited to Sections 1, 2, 5, 6, 8, and 9 inclusive.

//

//////SIGNATURES FOLLOW ON NEXT PAGE////

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as provided below, effective as of the last date signed by all the Parties (“Effective Date”).

GRANTEE:

Authorized Signer, Title
Grantee

Dated: _____

Approved as to form:

Name:
Title:

////SIGNATURES FOLLOW ON NEXT PAGE////

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as provided below, effective as of the last date signed by all the Parties (“Effective Date”).

COUNTY OF SANTA CLARA:

S. Joseph Simitian, President,
Board of Supervisors

Date: _____

ATTEST:

Megan Doyle, Clerk
of the Board of Supervisors

Date: _____

Approved as to form and legality:

Shirley R. Edwards,
Deputy County Counsel

EXHIBIT C

INSURANCE REQUIREMENTS FOR GRANT AGREEMENT

Indemnity

The Grantee shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Grantee and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Grantee shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Grantee contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Grantee's indemnification of the County, the Grantee shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Grantee shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Grantee upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Grantee shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Grantee.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$1,000,000
 - c. Products/Completed Operations aggregate - \$1,000,000
 - d. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

additional insured endorsement as applicable and the Grantee shall be notified by the contracting department of these requirements.

4. Fidelity Bond

Before receiving any reimbursement under this Agreement, Grantee will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Grantee will notify County immediately, and County may withhold further payment to Grantee until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Grantee and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Grantee pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Grantee. However, this shall not in any way limit liabilities assumed by the Grantee under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Grantees obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Grantee shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Grantee may insure subcontractors under its own policies.