



## PUBLIC WORKS CONTRACT

### 1. **PARTIES**

This public works contract ("Contract") is made by and between the City of Cupertino ("City"), and Miracle Playsystems, a Corporation ("Contractor") for Playground Equipment Replacement Project Number 2021-02, and is effective on the last date signed below ("Effective Date").

### 2. **SCOPE OF WORK**

Contractor will perform and provide all labor, materials, equipment, supplies, transportation and any other items or work necessary to perform and complete the work required for the Project ("Work"), as required in the Scope of Work, attached here and incorporated as **Exhibit A**, and in accordance with the terms and conditions of this Contract. Contractor further agrees to carry out its work in compliance with any applicable local, State, or Federal order regarding COVID-19.

### 3. **TIME FOR COMPLETION**

**3.1 Term.** This Contract begins on the Effective Date and ends on June 30, 2022 ("Contract Time") unless terminated earlier as provided herein. Contractor's Work shall begin on the date shown on a written Notice to Proceed ("NTP") and must be fully completed within the Contract Time or on the date specifically provided in the Notice to Proceed. The City Engineer will not issue a NTP until the Contract is fully executed by both parties and City has received satisfactory proof of insurance and any performance and payment bonds that may be required. The Director of Public Works may authorize the extension of the Contract Time by up to sixty (60) calendar days through a written amendment to this Agreement, provided such extension does not include additional contract funds.

**3.2 Time is of the essence** for Contractor's performance and completion of the Work. Contractor must have sufficient time, resources, and qualified staff to deliver the work on time.

**3.3 Liquidated damages** of \$200.00 will be charged for each day of unexcused delay, or City may deduct the amount from Contractor's payments. Liquidated damages are based on reasonably foreseeable consequences of delay and may include intangible losses which the Parties agree may be difficult to ascertain, such as loss of public confidence in City and its contractors, interference or loss of use of public facilities, and extended disruption to the public.

### 4. **COMPENSATION**

**4.1 Maximum Compensation.** City will pay Contractor for satisfactory performance of the Work an amount that will be based on actual costs but that will be capped so as not to exceed

\$222,194.96 ("Contract Price"), for all of Contractor's direct and indirect costs, including all labor, materials, supplies, equipment, taxes, insurance, bonds, and all overhead costs.

**4.2 Invoices and Payments.** Contractor must submit an invoice on the first day of each month, describing the Work performed during the preceding month, itemizing labor, materials, equipment and any incidental costs incurred. Contractor will be paid ninety-five percent (95%) of the undisputed amounts billed within thirty (30) days after City receives a properly submitted invoice. Any retained amounts will be included with Contractor's final payment within sixty (60) days of City's acceptance of the Work as complete.

## **5. INDEPENDENT CONTRACTOR**

**5.1 Status.** Contractor is an independent contractor and not an employee of City. Contractor is solely responsible for the means and methods of performing the Work and for the persons under this employment. Contractor is not entitled to worker's compensation or any other City benefits.

**5.2 Contractor's Qualifications.** Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Work in a competent and professional manner and according to the highest standards and best practices in the industry.

**5.3 Permits and Licenses.** Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Work as required by law, and have procured a City Business License, if required by the Cupertino Municipal Code. Contractor shall possess a California Contractor's License in good standing for the following classification(s): B - General Building, which must remain valid for the entire Contract Time.

**5.4 Subcontractors.** Only Contractor's employees are authorized to work under this Contract. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Contract will apply to any approved subcontractor.

**5.5 Tools, Materials, and Equipment.** Contractor will supply all tools, materials and equipment required to perform the Work under this Contract.

**5.6 Payment of Benefits and Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a

result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

## **6. CHANGE ORDERS**

Amendments and change orders must be in writing and signed by City and Contractor. Contractor's request for a change order must specify the proposed changes in the Work, Contract Price, and Contract Time. Each request must include all the supporting documentation, including but not limited to plans/drawings, detailed cost estimates, and impacts on schedule and completion date.

## **7. ASSIGNMENTS; SUCCESSORS**

Contractor shall not assign, hypothecate, or transfer this Contract or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity is considered an assignment of the Contract and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity. This Contract is binding on Contractor, its heirs, successors, and permitted assigns.

## **8. PUBLICITY / SIGNS**

Any publicity generated by Contractor for the Project during the Contract Time, and for one (1) year thereafter must credit City contributions to the Project. The words "City of Cupertino" must be displayed in all pieces of publicity, flyers, press releases, posters, brochures, interviews, public service announcements, and newspaper articles. No signs may be posted or displayed on or about City property, except signage required by law or this Contract, without prior written approval from the City.

## **9. SUBCONTRACTORS**

**9.1** Contractor must perform all the Work with its own forces, except that Contractor may hire qualified subcontractors to perform up to 0% of the Work, provided that each subcontractor is required by contract to be bound by the provisions of this Contract. Contractor must provide City with written proof of compliance with this provision upon request.

**9.2** City may reject any subcontractor of any tier and bar a subcontractor from performing Work on the Project, if City in its sole discretion determines that subcontractor's Work falls short of the requirements of this Contract or constitutes grounds for rejection under the Public Contract Code. If City rejects a subcontractor, Contractor at its own expense must perform the subcontractor's Work or hire a new subcontractor that is acceptable to City. A Notice of Completion must be recorded within fifteen (15) days after City accepts the Work if the Contract involves work by subcontractors.

## **10. RECORDS AND DAILY REPORTS**

**10.1** Contractor must maintain daily reports of the Work and submit them to City upon request and at completion of Project. The reports must describe the Work and specific tasks performed, the number of workers, the hours, the equipment, the weather conditions, and any circumstances affecting performance. City will have ownership of the reports, but Contractor will be permitted to retain copies.

**10.2** If applicable, Contractor must keep a separate set of as-built drawings showing changes and updates to the Scope of Work or the original drawings as changes occur. Actual locations to scale must be identified for all major components of the Work, including mechanical, electrical and plumbing work; HVAC systems; utilities and utility connections; and any other components City determines should be included in the final drawings of the Project. Deviations from the original drawings must be shown in detail, and the location of all main runs, piping, conduit, ductwork, and drain lines must be shown by dimension and elevation.

**10.3** Contractor must maintain complete and accurate accounting records of its Work, in accordance with generally accepted accounting principles, which must be available for City review and audit, kept separate from other records, and maintained for four (4) years from the date of City's final payment.

## **11. INDEMNIFICATION**

**11.1** To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers and consultants ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, stop notices, actions, causes of action, demands, charges, losses and expenses (including attorney fees, legal costs, and expenses related to litigation and dispute resolution proceedings), of every nature arising directly or indirectly from this Contract or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations or warranties;
- (b) Performance or nonperformance of the Work or of any obligations under the Contract by Contractor, its employees, agents, servants, subcontractors or sub-subcontractors;
- (c) Payment or nonpayment by Contractor or its subcontractors or sub-subcontractors for Work performed on or off the Project Site; and
- (d) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors.

**11.2** Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept a tender of defense upon receiving notice from City of a third-party claim, in accordance with California Public Contract Code Section 9201. At City's request, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Contract.

**11.3** Contractor's duties under this entire Section 11 are not limited to Contract Price, Workers' Compensation, or other employee benefits, or the insurance and bond coverage required in this Contract. Nothing in the Contract shall be construed to give rise to any implied right of indemnity in favor of Contractor against City or any other Indemnitee.

**11.4** Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Contract, a purchase order or other transaction.

**11.5** Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor, or any other person or



entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

**11.6** This Section 11 shall survive termination of the Contract.

## **12. INSURANCE**

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit B**. Contractor must provide satisfactory proof of insurance and maintain it for the Contract Time or longer as required by City. City will not execute the Contract until City has approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance at Contractor's expense, deducting the costs from Contractor's compensation, or terminating the Contract.

## **13. COMPLIANCE WITH LAWS**

**13.1 General Laws.** Contractor shall comply with all laws and regulations applicable to this Contract. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment status of employees performing the Work, as required by the Immigration Reform and Control Act

### **13.2 Labor Laws.**

(a) The following provisions apply to contracts of \$1,000 or more:

- (i) **In General.** For purposes of California labor law, this is a public works contract subject to the provisions of Part 7 of Division 2 of the California Labor Code (Sections 1720 et seq.). In accordance with Labor Code Section 1771, Contractor and all subcontractors shall pay not less than current prevailing wage rates as determined by the California Department of Industrial Relations ("DIR") to all workers employed on this project. In accordance with Labor Code Section 1815, Contractor and all subcontractors shall pay all workers employed on this project 1 ½ the basic rate of pay for work performed in excess specified hour limitations. The work performed pursuant to this Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- (ii) **Registration.** Contractor and all subcontractors shall not engage in the performance of any work under this Contract unless currently registered and qualified to perform public work pursuant to section 1725.5 of the California Labor Code. Contractor represents and warrants that it is registered and qualified to perform public work pursuant to section 1725.5 of the Labor Code and will provide its DIR registration number, along with the registration numbers of any subcontractors as required, to the City.

- (iii) **Posting.** Contractor shall post at the job site the determination of the DIR director of the prevailing rate of per diem wages together with all job notices that are required by regulations of the DIR.
- (iv) **Reporting.** Contractor and any subcontractors shall keep accurate payroll records in accordance with Section 1776 of the Labor Code and shall furnish the payroll records directly to the Labor Commissioner in accordance with the law.
- (v) **Report on Prevailing Rate of Wages.** The City has obtained the general prevailing rate of per diem wages in the vicinity of the project for each type of worker needed, a copy of which is on file at the City of Cupertino City Hall, and shall be made available to any interested party upon request.
- (vi) **Employment of Apprentices.** Contractor's attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor. It shall be the responsibility of the Contractor to effectuate compliance on the part of itself and any subcontractors with the requirements of said sections in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- (vii) **Penalties.** Contractor's attention is directed to provisions in Labor Code Sections 1775 and 1813. In accordance with Labor Code Section 1775, Contractor and subcontractors may be subject to penalties for Contractor's and subcontractors' failure to pay prevailing wage rates. In accordance with Labor Code Section 1813, Contractor or subcontractors may be subject to penalties for Contractor's or subcontractors' failure to pay overtime pay rates for hours worked by workers employed on this project in excess specified hour limitations.

- (b) Contractor must compensate workers who are paid less than prevailing wages or required to work more than a legal day's work. Contractor will also be required to pay City a penalty of \$200.00 per worker for each day of violation.
- (c) As required by Labor Code Section 1861, by signing this Contract Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code 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 work of this contract."

**13.3 Discrimination Laws.** Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5.

Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or Contractor's employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

**13.4 Conflicts of Interest.** Contractor, its employees, subcontractors, servants and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of law, including Government Code section 1090 and Government Code section 81000 and their accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Contract, as that term is defined by state law, or in violation of a City ordinance or policy while serving as a City Representative or for one year thereafter. Contractor, its employees, subcontractors, servants, and agents warrant they are not employees of City nor do they have any relationship with City officials, officers, or employees that creates a conflict of interest. Contractor may be required to file a conflict of interest form if it makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by City rules governing gifts to public officials and employees.

**13.5 Remedies.** Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating the Contract. City reserves all rights and remedies under the law and this Contract, including seeking indemnification.

#### **14. BONDS**

For contracts of \$25,000 or more, Contractor must obtain a payment bond and a performance bond, each in the penal sum of 100% of the Contract Price, using the Bond Forms attached and incorporated here as **Exhibit C**. Each bond must be issued by a surety admitted in California, with a financial rating from A.M. Best Company of Class A- or higher, or as otherwise acceptable to City. If an issuing surety cancels a bond or becomes insolvent, Contractor must provide a substitute bond from a surety acceptable to City within seven (7) calendar days after written notice from City. If Contractor fails to do so, City may in its sole discretion and without prior notice, purchase bonds at Contractor's expense, deduct the cost from payments due Contractor, or terminate the Contract. City will not execute the Contract nor issue the NTP until the required bonds are submitted.

#### **15. UTILITIES, TRENCHING, AND EXCAVATION**

**15.1** Contractor must call the Underground Service Alert ("USA") 811 hotline and request marking of utility locations before digging or commencing Work. For underground service alerts for street lighting and traffic signal conduits, City's Service Center must be called at (408) 777-3269. Government Code Section 4215 requires Contractor to notify City and Utility in writing if it discovers utilities or utility facilities not identified in the Contract.

**15.2** Pursuant to Government Code Section 7104, Contractor must stop work, notify City in writing, and wait for instructions if one of the conditions below is found at the worksite. City will work with Contractor to amend the Contract or issue a change order if the discovered conditions materially change the Work/Performance, Contract Time or Contract Price.



- (a) Material believed to be hazardous waste under Health and Safety Code Section 25117, and which requires removal to a Class I, Class II, or Class III disposal site pursuant to law;
- (b) Subsurface or latent physical conditions at the Project worksite differing from those indicated by information about the worksite made available to Contractor; and
- (c) Unknown physical conditions at the Project worksite of any unusual nature, materially different from those ordinarily encountered and from those generally recognized as inherent in the character of the Work.

**15.3** For contracts \$25,000 or higher that require excavation or involve trenches five feet or more in depth, Contractor must submit a detailed plan for City approval, per Labor Code Section 6705, prior to commencing work. The plan must show the design of shoring, bracing, sloping, and other provisions for worker protection from caving ground and other hazards. The protective system must comply with all Construction Safety Orders. If the plan varies from shoring system standards, it must be prepared by a registered civil or structural engineer.

## **16. URBAN RUNOFF MANAGEMENT**

**16.1** All Work must fully comply with federal, state, and local laws and regulations concerning storm water management. Contractor must avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, Contractor will use only the amount of water necessary to dampen the dust. Contractor will take all steps necessary to keep wash water out of the streets, gutters, and storm drains. Prior to the start of the Work, Contractor will implement erosion and sediment controls to prevent pollution of storm drains, and must upgrade and maintain these controls based on weather conditions or as otherwise required by City. These controls must be in place during the entire Contract Time and must be removed at the end of construction and completion of the Work. Such controls must include, but will not be limited to, the following requirements:

- (a) Install storm drain inlet protection devices such as sand bag barriers, filter fabric fences, and block and gravel filters at all drain inlets impacted by construction. During the annual rainy season, October 15 through June 15, storm drain inlets impacted by construction work must be filter-protected from onsite de-watering activities and saw-cutting activities. Shovel or vacuum saw-cut slurry and remove from the Work site;
- (b) Cover exposed piles of soil or construction material with plastic sheeting. Store all construction materials in containers;
- (c) Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain and at the end of each work day. When the Work is completed, wash the streets, collect and dispose of the wash water offsite in lawful manner;
- (d) After breaking old pavement, remove debris to avoid contact with rainfall/runoff;
- (e) Maintain a clean work area by removing trash, litter, and debris at the end of each work day and when Work is completed. Clean up any leaks, drips, and other spills as they occur.

**16.2** These requirements must be used in conjunction with the California Stormwater Quality Association and California Best Management Practices Municipal and Construction Handbooks, local program guidance materials from municipalities, and any other applicable documents on stormwater quality controls for construction. Contractor's failure to comply with this Section will result in the issuance of noncompliance notices, citations, Work stop orders and regulatory fines.



## **17. PROJECT COORDINATION**

**City Project Manager.** City assigns Evelyn Moran as the City representative for all purposes under this Contract, with authority to require compliance with the Scope of Work. City may substitute Project Managers at any time and without prior notice to Contractor.

**Contractor Project Manager.** Subject to City approval, Contractor assigns Kit Steven as its single representative for all purposes under this Contract, with the responsibility to ensure progress with the Work. Contractor's Project Manager is responsible for coordinating and scheduling the Work and must regularly update the City Project Manager about the status and any delays with the Work, consistent with the Scope of Work. Any substitutions must be approved in writing by City.

## **18. ABANDONMENT AND TERMINATION**

**18.1** City may abandon or postpone the Project or parts therefor at any time. Contractor will be compensated for satisfactory Work performed through the date of abandonment and will be given reasonable time to close out the Work. With City's pre-approval in writing, the time spent in closing out the Work will be compensated up to ten percent (10%) of the total time expended in performing the Work.

**18.2** City may terminate the Contract for cause or without cause at any time. Contractor will be paid for satisfactory Work rendered through the termination date and will be given reasonable time to close out the Work.

**18.3** Final payment will not be made until Contractor delivers the Work and provides records documenting the Work, products and deliverables completed. Nothing in the Section below is intended to delay, abridge or bar City's right under this Section.

## **19. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION**

This Contract is governed by the laws of State of California. Venue for any legal action shall be the Superior Court of the County of Santa Clara, California. The dispute resolution procedures of Public Contract Code Section 20104, et seq., incorporated here by reference, apply to this Contract and Contractor is required to continue the Work pending resolution of any dispute. Prior to filing a lawsuit, Contractor must comply with the claim filing requirements of the California Government Code. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

## **20. ATTORNEY FEES**

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Contract, the prevailing party will be entitled to reasonable attorney fees and costs.

**21. SIGNS/ADVERTISEMENT**

No signs may be displayed on or about City's property, except signage which is required by law or by the Contract, without City's prior written approval as to size, design and location.

**22. THIRD PARTY BENEFICIARIES**

There are no intended third party beneficiaries of this Contract.

**23. WAIVER**

Neither acceptance of the Work nor payment thereof shall constitute a waiver of any contract provision. City waiver of any breach shall not constitute waiver of another provision or breach.

**24. WARRANTY**

Contractor warrants that materials and equipment used will be new, of good quality, and free from defective workmanship and materials, and that the Work will be free from material defects not intrinsic in the design or materials. All Work, materials and equipment should pass to City free of claims, liens or encumbrances. Contractor warrants the Work and materials for one year from the date of City's acceptance of the Work as complete ("Warranty Period"), except when a longer guarantee is provided by a supplier, manufacturer or is required by this Contract. During the Warranty Period, Contractor will repair or replace any Work defects or materials, including damage that arises from Contractor's Warranty Work, except any wear and tear or damage resulting from improper use or maintenance.

**25. ENTIRE CONTRACT**

This Contract and the attachments, documents, and statutes attached, referenced, or expressly incorporated herein, including authorized amendments or change orders constitute the final and complete contract between City and Contractor with respect to the Work and the Project. No oral contract or implied covenant will be enforceable against City. If there is any inconsistency between any term, clause, or provision of the main Contract and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Contract shall prevail and be controlling.

**26. SEVERABILITY/PARTIAL INVALIDITY**

If a court finds any term or provision of this Contract to be illegal, invalid, or unenforceable, the legal portion of said provision and all other contract provisions will remain in full force and effect.

**27. SURVIVAL**

The contract provisions which by their nature should survive the Contract or Completion of Project, including without limitation all provisions regarding warranties, indemnities, payment obligations, insurance, and bonds, shall remain in full force and effect after the Work is completed or Contract ends.

**28. INSERTED PROVISIONS**

Each provision and clause required by law to be inserted in this Contract will be deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions.

**29. CAPTIONS**

The captions, titles, and headings in this Contract are for convenience only and may not be used in the construction or interpretation of the Contract or for any other purpose.

**30. COUNTERPARTS**

This Contract may be executed in counterparts, each of which is an original and all of which taken together shall form one single document.

**31. NOTICES**

All notices, requests, and approvals must be sent in writing to the persons below and will be considered effective on the date of personal delivery, the date confirmed by a reputable overnight delivery service, on the fifth (5th) calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

<b>To City of Cupertino:</b> Office of the City Manager 10300 Torre Ave. Cupertino, CA 95014  cc: Representative/Coordinator: Evelyn Moran Email: evelynm@cupertino.org	<b>To Contractor:</b> Miracle Playsystems PO Box 263 Alamo, CA 94507  cc: Representative/Coordinator: Kit Steven Email: kit@miracleplaygroup.com
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**32. EXECUTION**

The persons signing below warrant they have the authority to enter into this Contract and to legally bind their respective Parties. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code Section 313.

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the Execution Date first above written.

<b>CITY OF CUPERTINO,</b> a Municipal Corporation	<b>Miracle Playsystems</b>
By: _____	By: <u>Kit Stevan</u>
Title: _____	Title: <u>President</u>
Signature Date: _____	Signature Date: <u>Sep 14, 2021</u>

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
CHRISTOPHER D. JENSEN  
Cupertino City Attorney

**ATTEST:**

By: \_\_\_\_\_  
KIRSTEN SQUARCIA  
City Clerk

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