

**THIRD AMENDMENT TO THE ALL-INCLUSIVE PLAYGROUND FUNDING
AGREEMENT BY AND BETWEEN THE CITY OF MOUNTAIN VIEW
AND THE COUNTY OF SANTA CLARA**

The All-Inclusive Playground Funding Agreement By and Between the City of Mountain View, a municipal corporation, and the County of Santa Clara, a political subdivision of the State of California (“County”), effective May 8, 2018 (“Funding Agreement” or “Agreement”), is amended as set forth below, effective on the date of the last signature below. The County of Santa Clara and the City of Mountain View are sometimes referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, on May 8, 2018, the Parties entered into a Funding Agreement for the purpose of providing the terms of the grant funding for the construction and development of the Magical Bridge all-inclusive playground (“Project”), located in Mountain View at 201 S. Rengstorff Avenue;

WHEREAS, on January 15, 2021, the Parties entered into the Second Amendment to the Funding Agreement to extend the three (3) year grant performance period by twenty-four (24) months, to May 8, 2023, due to unforeseeable project delays related to Covid-19;

WHEREAS, due to the prolonged duration of the Covid-19 pandemic, resulting in additional unforeseeable delays, the City of Mountain View requests an additional twelve (12) month extension to the grant performance period, such that the grant performance period would total six (6) years and run from May 8, 2018 through May 8, 2024;

WHEREAS, the Parties wish to enter into this Third Amendment to establish the terms of the Agreement with this additional twelve (12) month extension of the grant performance period.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the foregoing and as follows:

1. Amendments:

- a. The following language on page 2 of the Agreement shall be deleted: “The GRANTEE may utilize the Grant Funds specified in SECTION 4 of this Agreement to complete the Project within five years from the Effective Date of this Agreement and shall return any unspent funds at the end of this five-year period.”

This language shall be replaced with the following: “The GRANTEE may utilize the Grant Funds specified in SECTION 4 of this Agreement to complete the Project within six years from the Effective Date of this Agreement and shall return any unspent funds at the end of this six-year period.”

- b. The following language in Section 2.1 of the Agreement shall be deleted: “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 five 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...”

This language shall be replaced with the following “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 six 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...”

- c. The following language in Section 4.2 of the Agreement shall be deleted: “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 5 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.”

This language shall be replaced with the following “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 6 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.”

2. **Counterparts.** This Third Amendment may be executed in any number of 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 provided all of the Parties have fully executed the Third Amendment.
3. **Contract Execution.** Unless otherwise prohibited by law or County policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile,

- 5. **Authority.** By signing below, each signatory warrants and represents that they executed this Third Amendment in their authorized capacity, and that they have the authority to bind the entity listed below to contractual obligations.

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

CITY OF MOUNTAIN VIEW

DocuSigned by:


 Kimbra McCarthy
 City Manager

10/6/2022

 Date

APPROVED AS TO FORM:

DocuSigned by:


 Nicole Wright
 City Attorney

FINANCIAL APPROVAL:

DocuSigned by:


 Jesse Takahashi
 Finance & Administrative Services Director

COUNTY OF SANTA CLARA

APPROVED BY:

DocuSigned by:


 Sylvia Gallegos
 Deputy County Executive

10/10/2022

 Date

APPROVED AS TO FORM & LEGALITY:

DocuSigned by:


 Elizabeth Vissers
 Deputy County Counsel