

FOURTH 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 (“Grantee”), and the County of Santa Clara, a political subdivision of the State of California (“County”), effective May 8, 2018 (“Funding Agreement” or “Agreement”), as previously amended, 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 in the amount of one-million seven hundred thousand dollars (\$1,700,000.00);

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, on October 10, 2022, due to the prolonged duration of the Covid-19 pandemic, resulting in additional unforeseeable delays, the Parties entered into the Third Amendment to the Funding Agreement to extend the grant performance period by an additional twelve (12) months, such that the grant performance period would total six (6) years and run from May 8, 2018 through May 8, 2024;

WHEREAS, due to additional project delays, the Project is not expected to be fully completed and open to the public by the end of the six-year grant performance period in May 2024, and is instead expected to be fully completed and open to the public in October 2024;

WHEREAS, to accommodate this additional delay, Grantee has requested a further extension of the grant performance period;

WHEREAS, County agrees to extend the deadline for Grantee to fully complete the project or return all County grant funds to October 31, 2024, but does not agree to extend the time period during which Grantee can receive reimbursement for its work toward the Project under the Funding Agreement beyond May 8, 2024;

WHEREAS, the Parties have prepared a revised Appendix G Grant Scope/Cost Estimate form to reflect the portion of the Project that Grantee aims to complete and submit for grant fund reimbursement under the Funding Agreement prior to the end of the reimbursement eligibility period on May 8, 2024;

Approved: 02/06/2024

WHEREAS, the revisions to Appendix G are only for purposes of adjusting the portions of the Project to which Grantee seeks to apply the awarded grant funding when submitting for reimbursement under the Funding Agreement, based on the portions of the Project that Grantee currently expects to complete and submit for reimbursement prior to the expiration of the reimbursement eligibility period on May 8, 2024;

WHEREAS, the revisions to Appendix G do not change the previously agreed scope of the full Project, the amount (\$1,700,000.00) of awarded grant funding, or the dollar-for-dollar Grantee match requirement;

WHEREAS, Grantee remains committed to completing the full scope of the Magical Bridge all-inclusive playground Project set forth in Exhibit B to the Funding Agreement;

WHEREAS, Grantee's total cash contribution still meets or exceeds the All-Inclusive Playground Grant Program's dollar-for-dollar match requirement, and has in fact increased because the total Project cost has risen to over six million dollars; and

WHEREAS, the Parties wish to enter into this Fourth Amendment to establish the terms of the Agreement with the extension of the deadline for Grantee to complete the full project or return County grant funds to October 31, 2024, and the revised Appendix G: Grant Scope/Cost Estimate to reflect the portion of the Project to be completed and submitted for reimbursement during the reimbursement eligibility period that expires on May 8, 2024.

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, as last amended by the Third Amendment, shall be deleted: "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."

This language shall be replaced with the following: "The GRANTEE may utilize the Grant Funds specified in SECTION 4 of this Agreement toward work on the Project during the period ending 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, as last amended by the Third Amendment, 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 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..."

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 by October 31, 2024, 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, as last amended by the Third Amendment, 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 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.”

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 October 31, 2024), then GRANTEE shall immediately refund to the COUNTY all the Grant Funds, even if such funds have already been expended for the Project.”

- d. Appendix G: Grant Scope/Cost Estimate Form, which is included in Attachment 1 of the First Amendment, is hereby replaced with the revised Appendix G: Grant Scope/Cost Estimate Form for Portion of Project to Be Completed During Reimbursement Eligibility Period of May 8, 2018 to May 8, 2024, attached hereto as Attachment 1.

2. **Counterparts.** This Fourth 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 Fourth 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, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the

County (i.e., Docusign).

- 4. Full Force and Effect.** Except as modified by this Fourth Amendment, all terms and provisions of the Funding Agreement shall remain in full force and effect. In the event of a conflict between the Funding Agreement and this Fourth Amendment, the Fourth Amendment shall control. This Fourth Amendment shall be construed to be part of the Funding Agreement and shall be deemed incorporated into the Funding Agreement by this reference.

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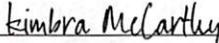
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5. **Authority.** By signing below, each signatory warrants and represents that they executed this Fourth Amendment in their authorized capacity, and that they have the authority to bind the entity listed below to contractual obligations.

IN WITNESS WHEREOF, the Parties hereto have executed this Fourth 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

1/4/2024

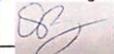
Date

APPROVED AS TO FORM:

DocuSigned by:


Mitesh Bhakta
Senior Assistant City Attorney

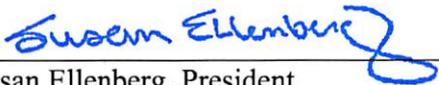
FINANCIAL APPROVAL:

DocuSigned by:


Derek Rampone
Finance & Administrative Services Director

1/4/2024

COUNTY OF SANTA CLARA



Susan Ellenberg, President
Board of Supervisors

FEB 06 2024

Date

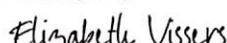
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:



Curtis Boone
Acting Clerk of the Board of Supervisors

APPROVED AS TO FORM & LEGALITY:

DocuSigned by:


Elizabeth Vissers
Deputy County Counsel

Attachment 1

APPENDIX G: GRANT SCOPE/COST ESTIMATE FORM For Portion of Project to Be Completed During Reimbursement Eligibility Period of May 8, 2018 to May 8, 2024

Applicant: City of Mountain View	Project Name: Magical Bridge Playground in Mountain View (Rengstorff Park)		
WORK TO BE PERFORMED	GRANTEE MATCH	AIPG GRANT REQUEST	TOTAL (Match + Request)
1: SITE PREPARATION - mobilization, fencing and security, SWPPP preparation & BMP Installation, tree protection, hazmat remediation, demolition of all existing on and off-site structures, tree removal, site rough and fine grading, earthwork, and related items.	\$819,827	\$1,108,597	\$1,928,424
2: SITE PAVING, SURFACING, WALLS - progress payments for compacted earth slide mount and surfacing, excavation, and installation of foundations for concrete walls, seat walls, curbs, and related items.	\$83,850	\$83,850	\$167,700
3: SITE FENCING & RAILS - progress payments for initiation of fabrication for full enclosure of play area plus handrails where needed to ensure secure play.	\$45,410	\$45,410	\$90,820
4: CUSTOM CONSTRUCTION - progress payments for elevated walks and ramps, and shop drawings and initiation of fabrication for restroom building (i.e. "tennis" bldg.), custom overhead sign, Ava's Bridge, and related structures.	\$107,417	\$107,417	\$214,834

5: PLAY EQUIPMENT - progress payments for initiation of fabrication and procurement of a variety of equipment that suits all ages/sizes/abilities for different play zones. 20 items including spinners (carousel, net, small and large disks), swings (buckets w/ harness, tandem swing, rocker), slides (double, parallel bars), climbing structures (loop climbers, hillside loops, hillside poles), roller-table, manipulation tables.	\$46,176	\$46,176	\$92,352
6: FITNESS EQUIPMENT - progress payments for initiation of fabrication and procurement of 4 items including swing equipment (sway platform, disk), slides (double, group slide, roller) to encourage self-propulsion and exercise major muscle groups of users of all ages.	\$21,587	\$21,587	\$43,174
7: MUSIC & INNOVATION - progress payments for initiation of fabrication and procurement, and related foundations & pavement for Playhouse used for musical performances and plays and Retreat Huts used for innovative sensory experiences.	\$45,532	\$45,532	\$91,064
8: SIGNAGE - progress payments for including braille throughout the park and kindness corner signage.	\$499	\$499	\$998
9: SITE LANDSCAPING - progress payments for trees and other plantings, irrigation system, and related items.	\$23,824	\$23,824	\$47,648
10: UTILITIES - progress payments for water and lighting infrastructure and fixtures, trash and recycling, storm drains, and related items.	\$207,413	\$207,413	\$414,826
11: SITE FURNISHINGS - progress payments for initiation of fabrication for shade structures, benches, picnic tables, bike racks, park relief map & description, picnic tables, and related.	\$2,613	\$2,613	\$5,226
12: SITE ENTRY - progress payments for the archway, donor wall, and entry pilaster.	\$7,082	\$7,082	\$14,164

13: DESIGN - architectural design and engineering necessary to incorporate local features, develop detailed construction documents.	\$300,000	\$0	\$300,000
TOTAL AMOUNT	\$1,711,230	\$1,700,000	\$3,411,230
Contingency Funding (Optional)	\$		