

**PURCHASE AND INSTALLATION AGREEMENT
FOR PLAYGROUND EQUIPMENT ENHANCEMENT
AND SAFETY SURFACING (REDHAWK PARK)**

THIS PURCHASE AND INSTALLATION AGREEMENT ("Agreement") is made and entered into as of **April 25, 2023** ("Effective Date") by and between the City of Temecula, a California municipal corporation ("City"), and PLAYCORE WISCONSIN, INC. DBA GAMETIME, a CORPORATION ("Contractor").

RECITALS

- A. City desires to engage Contractor to provide and install the following PLAYGROUND EQUIPMENT ENHANCEMENT AND SAFETY SURFACING INSTALLATION SERVICES, as more fully described herein ("Project").
- B. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by the City for the Project, is familiar with all conditions relevant to the performance of services and is committed to perform all work as required by this Agreement.
- C. Contractor represents that Contractor is fully qualified, possesses all required licenses and certifications, and has the experience necessary, to perform the work necessary to complete the Project. City selected Contractor for this Project in substantial reliance on such representations by the Contractor.
- D. Contractor is a registered dealer of PLAYGROUND AND SAFETY SURFACING and has full access to the equipment and special pricing under the OMNIA Contract Agreement **2017001134** ("Cooperative Contract") and all applicable provisions are incorporated herein.
- E. The City is a member of OMNIA (Member no. **1148668**) and is authorized to use the Cooperative Contract.
- F. City and Contractor enter this Agreement in order to set forth terms and conditions governing each party's performance of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants herein contained, the Parties agree as follows:

1. Scope of Work.

1.1 In consideration of the payment of the purchase price and subject to all the terms and conditions hereof, including applicable provisions of the Cooperative Agreement, Contractor shall provide all tangible items and products, and perform all services, described in the Scope of Services and Fee Schedule attached hereto as Exhibit "A" and incorporated herein by reference ("Products" and "Services", respectively).

Contractor covenants that: (i) it will perform all Services in a manner commensurate with all applicable, professional standards and degree of skill and care; and (ii) all Products will be new and of the highest quality available.

1.2 Contractor shall perform all work set forth in Exhibit A, and shall provide and furnish all the labor, materials, necessary tools, equipment and all utility and transportation services necessary to complete the Project as required herein.

1.3 The Products shall be delivered to the location designated in writing by the City. Title to and the risk of loss, damage, and destruction of the Products shall remain with the Contractor until inspection and acceptance of the Products by City. Such inspection may include reasonable tests and use of the Products by City. City may, at its option, (i) reject any or all of the Products found to be defective or otherwise not in compliance with the requirements of this Agreement; or, (ii) accept substitute Product(s) satisfactory to the City. Contractor shall be responsible for any and all costs of transportation and replacement of any rejected Products.

1.4 If the total Contract amount exceeds \$25,000, then Contractor shall provide a payment bond in an amount equal to 100% of the Contract price. If required by the City prior to commencing work, Contractor shall provide a performance bond in an amount equal to 100% of the Contract price. The bond forms required to be executed are attached hereto and incorporated by reference herein. The performance bond, if required, shall remain in force until written acceptance of the Work and the end of the one (1) year warranty period.

2. Time of Performance. Time is of the essence in the performance of the Services and Contractor shall complete the Project installation, implementation and acceptance testing within the times set forth in Exhibit A. The failure by Contractor to meet this schedule may result in termination of this Agreement by City.

3. Term. Unless earlier terminated in accordance with Section 18 of this Agreement, this Agreement shall continue in full force and effect until satisfactory completion of the Services.

4. Compensation.

4.1 City shall pay Contractor for the Services on a fixed fee, not-to-exceed basis, in accordance with the provisions of this Section and Exhibit A. Contractor's total and complete compensation for all Services satisfactorily performed and Products properly provided, shall not exceed **Five Hundred Thirty-One Thousand, Seven Hundred Two Dollars and Fifty-Eight Cents (\$531,702.58)**, unless otherwise agreed upon in writing.

4.2 Contractor shall submit invoices to City describing the Services performed and/or the specific task in the Scope of Services to which it relates, and the date the Services were performed. City shall pay Contractor no later than thirty (30) calendar days after City approval of the invoice.

4.3 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit A to this Agreement or specifically approved in writing in advance by City.

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary when this Agreement was executed. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit A, or otherwise as agreed upon in writing.

4.5 Unless otherwise agreed upon in writing, Contractor shall provide City with a minimum fourteen (14) days' notice of its date(s) of installation to enable the City to ready the installation site(s) for installation the Products in accordance with the instructions of Contractor, if any. The City shall complete any required site preparation prior to the date installation of the Products begins.

5. Project Manager. Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the term of the Agreement. Contractor has designated **Myles Harvey** to be its Project Manager. Contractor shall not remove or reassign the Project Manager without the prior written consent of City. City's approval shall not be unreasonably withheld.

6. Administration. This Agreement will be administered by the City Manager or designee, who shall be the Project Administrator and shall have the authority to act for City under this Agreement.

7. Type and Installation of Materials/Standard of Care.

7.1 Contractor shall use only the only materials and Products described in Exhibit A in performing the Services. Any deviation from the materials or Products described in Exhibit A shall not be permitted unless approved in advance in writing by the Project Administrator.

7.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with industry-wide professional standards. All Services shall be performed by qualified and experienced personnel.

7.3 At all times during the term of this Agreement, Contractor shall possess a valid and current Class B, C-61/D34, and C-61/D12 California Contractor's License to perform the work. Contractor hereby certifies that it holds the required license(s), License No. 855664.

8. Indemnification.

8.1 To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, defend, hold harmless and indemnify the City, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Contractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Contractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' passive negligence, except for Liabilities arising from the active or sole negligence or willful misconduct of the Indemnitees, as determined by judicial decision or by the agreement of the parties. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Contractor shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

Upon completion of the installation, this indemnification is not intended to cover, and the Contractor is not responsible for, any damages resulting from any lack of maintenance; inadequate supervision; negligence; intentional acts of anyone other than the Contractor or their affiliates; inadequate surfacing; or vandalism. Regarding product liability, this indemnification and any insurance provided by Contractor is intended to indemnify for claims arising solely from the negligent design or manufacture of the Playground Equipment. This clarification of the indemnification section of this contract supersedes any other section of this contract, regarding indemnification, which might be interpreted in any other way.

8.2 For liabilities arising out of "design professional services", and in accordance with Civil Code § 2782.8(a), in no event shall the cost to defend the Indemnitees that is charged to Contractor, exceed Contractor's proportionate percentage of fault.

8.3 Contractor shall perform all Project work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall perform work as specified in Exhibit A to limit impacts to traffic during the installation period. Contractor shall be liable for any private or public property damaged during the performance of the Project work.

8.4 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

9. Independent Contractor. City has retained Contractor as an independent contractor and neither Contractor nor its employees, nor any of its subcontractors, are to be considered employees of the City. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service statutes or other right of employment shall accrue to Contractor or its employees.

10. Cooperation. Contractor agrees to work closely and cooperate fully with City's Project Administrator and any other agencies that may have jurisdiction or interest in the work to be performed. City agrees to cooperate with the Contractor on the Project.

11. Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit B, and incorporated herein by reference.

12. Prevailing Wages.

12.1 This Agreement calls for work to be performed constituting public works. Contractor and all subcontractors shall pay the general prevailing rate of per diem wages as determined and as published by the State Director of the Department of Industrial Relations pursuant to Article 2 of Chapter 1 of Part 7, of Division 2 of the California Labor Code, including, but not limited to, Sections 1770, 1771, 1773, 1773.2 and 1774. In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes only under Labor Code Section 1771.1(a)] If the Agreement price exceeds \$25,000, Contractor shall be registered with DIR. Unless exempt, Contractor's DIR Registration number is 1000015526.

12.2 Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Agreement, by him or by any subcontractor under him, in violation of the provisions of this Agreement. Pursuant to Labor Code Section 1771.4, the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

12.3 Contractor's attention is directed to the provisions in Sections 1774, 1775, 1776, 1777.5 and 1777.6 of the Labor Code. Contractor shall comply with the requirements of these Sections. The statutory provisions for penalties for failure to comply with the State's wage and hours laws will be enforced. Section 1776 requires the Contractor and all subcontractors to keep accurate payroll records, specifies the contents thereof, their inspection and duplication procedures and certain notices required of the Contractor pertaining to their location. Eight hours' labor constitutes a legal day's work, as set forth in Labor Code Section 1810. The statutory provisions for penalties for failure to comply with the State's wage and hour laws will be enforced as set forth in Labor Code Section 1813.

13. Subcontracting. The subcontractors authorized by City, if any, to perform work on this Project are identified in Exhibit A. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

14. Conflicts of Interest. Contractor agrees not to accept any employment or representation during the term of this Contract or within twelve (12) months after completion of the work under this Contract wherein Contractor is or may likely become "financially interested," as provided in Government Code Section 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to this Contract.

15. Notices. All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, to City by Contractor and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Contractor to City shall be addressed as follows:

To the City:

City of Temecula
41000 Main Street
Temecula, CA 92590
Attn: Stacy Fox

To the Contractor:

Playcore Wisconsin, Inc. dba GameTime
PO Box 680121
Fort Payne, AL 35968
Attn: Myles Harvey

16. TERMINATION

16.1 Termination with Cause. In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of five (5) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof. In the event that the default cannot be cured within five (5) days, no such failure will be deemed to exist if the defaulting party has given the non-defaulting party adequate assurance of due performance and commenced to cure such default within such period, such cure efforts are prosecuted to completion with reasonable diligence, and in any event are completed with thirty (30) days.

16.2 Termination Without Cause. Notwithstanding the above provisions, City shall have the right, at its sole discretion and without cause, of terminating this Agreement at any time by giving seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred in the performance of such Services up to the effective date of termination for which Contractor has not previously been paid. In the event of termination under this Section, City shall also pay Contractor for all Products, associated materials, and hardware manufactured or delivered to City site under this Agreement.

17. Contractor's Knowledge of Conditions. By executing this Agreement, Contractor warrants that Contractor has visited or has been provided the opportunity to visit the Project site(s), has become familiar with the local conditions under which the work is to be performed, and has taken into consideration these factors in submitting its Project proposal and Scope of Services.

18. Warranty. For all Products provided to the City as part of this Agreement, Contractor warrants as follows: Contractor possesses good title to the Products and the right to transfer ownership of the Products to the City; the product shall be delivered to the City free from any security interest or other lien; the Products meet all specifications contained herein and are fit for their intended purpose(s); and, the Products and the Services shall be free from material defects in materials and workmanship under normal use for a period of not less than one (1) year from the date of delivery and completion of the work. The foregoing warranty is in addition to any and all manufacturers' warranties. All other warranties applicable to the equipment and materials purchased by City pursuant to this Agreement shall be as specified in Exhibit A.

19. Representations. Each party represents as follows: (a) that it has full power and authority to execute, deliver and perform its obligations under this Agreement; (b) that there are no actions, proceedings or investigations, pending or, to the best of each party's knowledge, threatened against such party which may in any manner whatsoever materially affect the enforceability of this Agreement or the rights, duties and obligations of the parties hereunder; and (c) that the execution, delivery and performance of this

Agreement will not constitute a breach or default under any agreement, law or court order under which such party is a party or may be bound or affected by or which may affect the rights, duties and obligations hereunder.

20. Assignment. Contractor may not assign or transfer this Agreement without the City's prior, written consent.

21. Force Majeure. Neither party shall be responsible for delays in performance caused by unforeseeable events beyond the control and without the fault or negligence of the parties, including but not limited to acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, and/or freight embargoes. Contractor's lack of funding for any reason shall not be a force majeure. If Contractor claims force majeure, City shall ascertain the facts and extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City such delay is justified. In no event shall Contractor be entitled to recover damages against City for any delay in performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

22. Miscellaneous Provisions.

22.1 Recitals. City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

22.2 Compliance with all Laws. Contractor shall at its sole cost and expense comply with all applicable statutes, ordinances, codes, and regulations throughout the term of this Agreement.

22.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

22.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

22.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments or exhibits hereto, the terms of this Agreement shall govern.

22.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

22.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

22.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

22.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Riverside, State of California.

22.10 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

22.11 Attorneys' Fees. In any litigation or other proceeding by which a party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that party may be entitled.

22.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written above.

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

Date: _____

By: _____

Name: Peter M. Thorson

Title: City Attorney

CITY OF TEMECULA,
a municipal corporation

Date: _____

By: _____

Name: Zak Schwank

Title: Mayor

ATTEST:

Date: _____

By: _____

Name: Randi Johl

Title: City Clerk

CONTRACTOR:

Playcore Wisconsin, Inc. dba Gametime,
a Corporation

By: 

Name: Clint Whiteside

Title: Director of Sales Administration

Date: March 29, 2023

Attachments:

Exhibit A - Scope of Services and Fee Schedule

Exhibit B - Insurance Requirements

Bond Forms

Finance:
12/4/23

EXHIBIT A

SCOPE OF SERVICES AND FEE SCHEDULE



GameTime C/O Great Western Recreation
 P.O. Box 680121
 Fort Payne, AL 35967
 Office: 435-245-5055 Fax: 435-245-5057
 www.gwpark.com

01/20/2023
 Quote #
 107880-02-03

Redhawk Community Park Playground Option 3A

City of Temecula
 Attn: Stacy Fox
 41000 Main Street
 Temecula, CA 92590
 Phone: 951-308-6306
 stacy.fox@temeculaCA.gov

Ship to Zip 92867

Quantity	Part #	Description	Unit Price	Amount
1	RDU	GameTime - Custom 5-12 Playground- <ul style="list-style-type: none"> • Reference Drawing 107880-02-Opt 3 	\$232,081.00	\$232,081.00
9	39012	GameTime - Tot'S Leaf	\$511.00	\$4,599.00
1	14928	GameTime - NDS Inclusive Play Sign Package		
1	5179	GameTime - Welcome Sign (5-12)	\$713.00	\$713.00
1	RDU	GameTime - Custom 2-5 Playground- <ul style="list-style-type: none"> • Reference Drawing 107880-02-Opt 3 	\$37,557.00	\$37,557.00
1	5178	GameTime - Welcome Sign (2-5)	\$713.00	\$713.00
1	14927	GameTime - NDS Play On Sign Package		
5	6232	GameTime - Pod (1'-0")	\$483.00	\$2,415.00
1	7031	GameTime - Whale	\$19,078.00	\$19,078.00
1	18778	GameTime - Schooner Bow	\$3,931.00	\$3,931.00
1	81754	GameTime - Music Time	\$2,228.00	\$2,228.00
1	3274	GameTime - Sensory Wave Seat	\$2,539.00	\$2,539.00
1	RDU	GameTime - Swing Seats	\$5,651.00	\$5,651.00
1	5192	GT-Shade - Double Bay Swing Shade	\$12,090.00	\$12,090.00
165	INSTALL	Turboscape - 165 Cubic Yards of Engineered Wood Fiber- Blown In- Prevailing Wages	\$62.20	\$10,263.00
1999	PIP	GT-Impax - 1,999 SF of PIP- **List Price \$51,291.41, discounted per Omnia Contract 1999 Total Sq Ft, 8' CFH (1826 sf PLUS 115 if t.down x 1.5) Includes 50/50 std epdm and black - tbd No Design, No TTA pads Aromatic Binder Prevailing Wages Based on good job access, No Design	\$21.04	\$42,058.96
1	SECURITY	GT-Impax - Site Security- Prevailing Wages	\$925.00	\$925.00



GameTime C/O Great Western Recreation
 P.O. Box 680121
 Fort Payne, AL 35967
 Office: 435-245-5055 Fax: 435-245-5057
 www.gwpark.com

01/20/2023
 Quote #
 107880-02-03

Redhawk Community Park Playground Option 3A

Quantity	Part #	Description	Unit Price	Amount
1	INSTALL	Install - Site Work- • Demo/remove equipment, sand, PIP and PIP sub-base. • Provide/install 1,999 sqft of concrete subbase for 4" depth includes 115'LF of tumdown. • Provide/install (3) sumps drains; 3'DIA x 5' DEEP (Lined with filter fabric and +/- ½" rock) • Excavate/remove sand for 1,999 sqft at 7.5" depth • Excavate/remove 3,435 sqft of existing sand 12" depth. • Remove and dispose spoils. • Prevailing wages. • Price includes one (1) move-on only	\$56,035.00	\$56,035.00
1	INSTALL	Install - Playground Equipment- • Installation only of (1) Gametime Structure #107880-01-Opt 3 • Provide/install filter Fabric for 3,435 sqft only • Footings excavation, and concrete. • Equipment assembly. • Removal of spoils. • Prevailing wages. • Price includes one (1) move-on only.	\$123,165.00	\$123,165.00
1	BOND	GameTime - Payment and Performance Bond	\$8,000.00	\$8,000.00
Contract: OMNIA #2017001134			Sub Total	\$564,041.96
			Discount	(\$69,003.40)
			Freight	\$14,387.26
			Tax	\$22,276.76
			Total	\$531,702.58

Comments

Your Sales Rep is Myles Harvey. Please reach out to Myles at 805-320-9007 if you should have any questions regarding this quote.

Due to the volatility of freight costs, the freight pricing is subject to change at the time of order.

Pricing is subject to change. Request updated pricing when purchasing from quotes more than 30 days old.

Shipping to:
 Installer
 1009 N Batavia
 Orange, CA 92867

Site Address:
 Redhawk Community Park
 44747 Redhawk Pkwy,
 Temecula, CA 92592

*Freight charges are based on listed zip code and are subject to change if shipping information changes.

*Deposit may be required.

Customer is responsible for offloading.

Prevailing wage

City of Temecula OMNIA # 1148668

**Redhawk Community Park Playground- Project 107880-02-Opt 2
Temecula, CA**



**Redhawk Community Park Playground- Project 107880-02-Opt 2
Temecula, CA**



**Redhawk Community Park Playground- Project 107880-02-Opt 2
Temecula, CA**



EXHIBIT B

INSURANCE REQUIREMENTS

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Services, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

3. Coverage Requirements.

- A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000).

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

- B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.
- C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
 - A. Waiver of Subrogation. Excepting professional liability insurance, all insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
 - B. Additional Insured Status. Commercial general and auto liability policies shall provide or be endorsed to provide that City, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency and their officers, officials, employees, agents and volunteers shall be named as additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.
 - C. Primary and Non Contributory. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
 - D. Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
 - A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, in response to a verified claim.

- B. City's Right to Revise Requirements. City reserves the right, but only with reasonable cause, at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor a ninety (90)-day advance written notice of such change. If such change results in substantial additional cost to Contractor, the City and Contractor may renegotiate Contractor's compensation. Contractor has the right to reject such request if the increase or change is deemed unnecessary or frivolous.
- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees.
- D. Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by acceptable security. Self-insurance will not be considered to comply with these requirements unless approved by City.
- G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's

performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

- I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Services.

Bond No. _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Temecula ("City"), has awarded to _____

(Name and address of Contractor) ("Principal")

a contract (the "Contract") for the Work described as follows:

(Project name)

WHEREAS, Principal is required under the terms of the Contract to furnish a Bond for the faithful performance of the Contract.

NOW, THEREFORE, we, the undersigned Principal, and _____

(Name and address of Surety)

("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of _____

Dollars (\$ _____), this amount being not less than the total Contract Price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, provisions, and warranties in the Contract and any alteration thereof made as therein provided, on the Principal's part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. Surety hereby waives any statute of limitations as it applies to an action on this Bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or of the Work to be performed thereunder or the specifications

accompanying the same shall in anywise affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the specifications. Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City is the principal beneficiary of this Bond and has all rights of a party hereto.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____
Its

By: _____
Its

By: _____
Its

By: _____
Its

(Seal)

(Seal)

*Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. **DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT.** Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*

Section 1771.2, if the condition of this Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the Specifications accompanying the same shall in any manner affect its obligations on this Bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____
Its

By: _____
Its

By: _____
Its

By: _____
Its

(Seal)

(Seal)

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

