

**SECOND AMENDMENT TO THE ALL-INCLUSIVE PLAYGROUND FUNDING  
AGREEMENT BY AND BETWEEN THE CITY OF SUNNYVALE  
AND THE COUNTY OF SANTA CLARA**

The All-Inclusive Playground Funding Agreement By and Between the City of Sunnyvale, 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 Sunnyvale 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 Sunnyvale at Fair Oaks Park, 540 Fair Oaks Avenue;

**WHEREAS**, on October 2, 2019 the Parties entered into the First Amendment to the Agreement, which revised the Appendix G: Grant Scope/Cost Estimate Form;

**WHEREAS**, the County Board of Supervisors subsequently allocated additional funds for this Project in the amount of \$500,000, for a total amount of \$1,500,000;

**WHEREAS**, the City of Sunnyvale has revised its application to reflect this additional funding, and has submitted the revised application to the County; and,

**WHEREAS**, due to unforeseeable project delays related to Covid-19, the City of Sunnyvale requests a twenty-four (24) month extension to the three (3) year grant performance period of May 8, 2018, through May 8, 2021;

**WHEREAS**, the Parties wish to enter into this Second Amendment to establish the terms of the Agreement with this additional funding and amended application, and this twenty-four (24) 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 three years from the Effective Date of this Agreement and shall return any unspent funds at the end of this three-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 five years from the Effective Date of this Agreement and shall return any unspent funds at the end of this five-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 three-years from the date of execution of this Agreement, and GRANTEE shall act promptly and without delay with respect to such matters in relation to the Project in accordance with the following...”

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 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...”

- 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 3 years from the effective date of this Agreement), then GRANTEE shall immediately refund to the COUNTY all the Grant Funds, even if such funds have already been expended for the Project.”

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 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.”

- 2. The grant award amount as shown in Section 4.1 of the agreement is amended from one-million dollars (\$1,000,000.00) to one-million five-hundred thousand dollars (\$1,500,000.00).

3. 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 attached hereto as Attachment 1.
4. **Counterparts.** This Agreement 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 Agreement.
5. **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.

Except as provided herein, all other provisions of the Funding Agreement shall remain in full force and effect. In the event of a conflict between the Funding Agreement and this Second Amendment, the Second Amendment shall control.

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By signing below, each signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, and that he/she has the authority to bind the entity listed below to contractual obligations.


**SIGNATORIES:**

**CITY OF SUNNYVALE**

DocuSigned by:  
  
D0AAB3485033481...  
Kent Steffens  
City Manager

3/30/2021  
Date

**APPROVED AS TO FORM:**

DocuSigned by:  
  
A788EEF2ABFA4E6...  
Robert Boco  
Sr. Assistant City Attorney

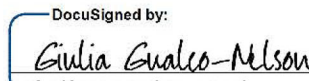
**COUNTY OF SANTA CLARA**

**APPROVED BY:**

DocuSigned by:  
  
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Sylvia Gallegos  
Deputy County Executive

4/1/2021  
Date

**APPROVED AS TO FORM  
& LEGALITY:**

DocuSigned by:  
  
Giulia Gualco-Nelson  
Deputy County Counsel

**Attachment 1****APPENDIX G: GRANT SCOPE/COST ESTIMATE FORM****APPLICANT: City of Sunnyvale****PROJECT NAME: Magical Bridge Playground in Sunnyvale**

<b>WORK TO BE PERFORMED*</b>	<b>GRANTEE MATCH</b>	<b>AIPG GRANT</b>	<b>TOTAL</b>
1. CONSTRUCT THE PLAYGROUND SITE, INCLUDING SITE PREPARATION, SITE PAVING, SURFACING, WALLS	\$720,000	\$240,000	\$960,000
2. CUSTOM CONSTRUCTION of Playhouse, Elevated Walks, huts, stage, and related	\$787,500	\$332,500	\$1,120,000
3. PURCHASE AND INSTALL PLAY EQUIPMENT 24+ spinners, swings, slides; 3 stationary bikes, and Tot lot structure	\$633,750	\$312,750	\$946,500
4. PURCHASE AND INSTALL INNOVATION UNIVERSALLY ACCESSIBLE WATER PLAY FEATURES	\$243,750	\$231,500	\$475,250
5. PURCHASE AND INSTALLATION OF SITE FIXTURES, FENCING, RAILS, Magic Map, 10 chairs, 3 benches, 3 game tables	\$281,250	\$190,000	\$471,250
6. SITE LANDSCAPING – Trees and other plantings, irrigation system, and related items.	\$171,000	\$117,000	\$288,000
7. CONSTRUCTION OF SITE ENTRY – archway, donor wall, pilaster, etc. includes Braille at pilasters and donor wall	\$62,750	\$76,250	\$139,000
8. CREATION OF DESIGN AND CONSTRUCTION DRAWINGS	\$300,000	\$0	\$300,000
<b>TOTAL:</b>	<b>\$3,200,000</b>	<b>\$1,500,000</b>	<b>\$4,700,000</b>