

**AGREEMENT FOR SERVICES BETWEEN
THE CITY OF SALINAS AND MIRACLE PLAYSYSTEMS**

Natividad Neighborhood Park Playground Replacement

THIS AGREEMENT is executed this ____ day of _____, 20__, (“Agreement” or “Contract”) between the City of Salinas, a California Charter city and municipal corporation (hereinafter “City”) and Miracle Playsystems Inc. a California corporation (hereinafter “Contractor”).

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

1. **Scope.** Contractor hereby agrees to provide to the City, as the scope of services under this Agreement, the following services: Replacement for Natividad Neighborhood Park. Scope of work is further discussed in the Contractor’s Proposal dated 3/13/2023, Attachment B.
2. **Timeliness.** Contractor shall perform all tasks in a timely fashion, as set forth more specifically in Section 3 below. Failure to so perform is hereby deemed a material breach of this Agreement, and City may terminate this Agreement with no further liability hereunder, or the city may agree in writing with Contractor to an extension of time.
3. **Term.** The work under this Agreement shall commence [**date of start of work**] and shall be completed by [**date of end of work**] unless City grants a written extension of time as set forth in Section 2 above.
4. **Payment.** City agrees to pay and Contractor agrees to accept as full and fair consideration for the performance of this Agreement, Two Hundred Twenty-Seven Thousand Six Hundred Seventy-Five And Forty-One Hundredths Dollars (\$227,675.41) as more fully described in title of Contractors fee schedule, Attachment B. Contractor has no right of reimbursement for expenses under this Agreement. Compensation shall become due and payable 30 days after City’s approval of Contractor’s submission of monthly written invoices to the City. The payment of any compensation shall be contingent upon performance of the terms and conditions of this Agreement to the satisfaction of the City. If City determines that the work set forth in the written invoice has not been performed in accordance with the terms of this Agreement, City shall not be responsible for payment until such time as the work has been satisfactorily performed.
5. **Meet & Confer.** Contractor agrees to meet and confer with City or its agents or employees with regard to services as set forth herein as may be required by City to insure timely and adequate performance of this Agreement.
6. **Insurance.** Contractor shall procure and maintain for the duration of this Agreement insurance meeting the requirements specified in Attachment A hereto.
7. **Indemnification.** Contractor shall hold harmless, defend at its own expense, and

indemnify City and its officers, officials, employees, agents, and volunteers from and against all liability, claims, damages, losses, and/or expenses including reasonable City attorney fees arising from all acts or omissions of Contractor or its officers, agents, or employees arising out of the performance of the work under this Contract, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the City.

8. **Licensing.** Contractor warrants that it is properly licensed to perform the work specified under this Agreement, including but not limited to possession of a current City business license.

9. **Termination.** City may terminate this Agreement upon ten days' written notice. The amount of damages, if any, as a result of such termination may be decided by negotiations between the parties or before a court of competent jurisdiction.

10. **Agency.** In performing the services specified under this Agreement, Contractor is hereby deemed to be an independent contractor and not an agent or employee of City.

11. **Non-Assignability.** The rights and obligations of Contractor hereunder are not assignable and cannot be delegated without written consent of City.

12. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes any and all prior agreements, whether oral or written, relating to the subject matter thereof. Any modification of the Agreement will be effective only if it is in writing signed by both parties hereto.

13. **Validity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

14. **Counterparts.** This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

15. **Laws.** Contractor agrees that in the performance of this Agreement it will comply with all applicable State, Federal and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California, County of Monterey, and City of Salinas.

IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto on the day and year first written above.

CITY OF SALINAS

Steve Carrigan
City Manager

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney, or
Rhonda Combs, Assistant City Attorney

CONTRACTOR

By (Printed Name):_____

Its (Title):_____

Insurance Requirements

Contractor shall procure and maintain for the duration of the contract, and for three years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his/her/its officers, agents, representatives, employees, and/or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (“CGL”): Insurance Services Office (“ISO”) Form CG 00 01 covering CGL on an occurrence basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: ISO Form CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation**: as required by the State of California, with Statutory Limits, and Employers’ Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Contractors’ Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions** (if project involves environmental hazards): with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate, on an annual basis.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Contractor requires and shall be entitled to the broader coverage and/or 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.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. At the option of the City, either: the Contractor shall cause the insurer shall to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by

or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City.

4. A copy of the claims reporting requirements must be submitted by Contractor to the City.

5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractor's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the City with original Certificates of Insurance including an additional insured endorsement and all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Maintenance of Insurance

Maintenance of insurance by Contractor as specified shall in no way be interpreted as relieving

Contractor of its indemnification obligations or any responsibility whatsoever and the Contractor may carry, at its own expense, such additional insurance as it deems necessary.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Attachment B

Job Number: 22-0611
Job: Natividad Creek Park
Quote Name: Quote-22-0611-Natividad Creek Park_002
Quote Number: Q-05119



Prepared by:
JeanTyan
jean@miracleplaygroup.com

Terms: Net 30
Remit to: Miracle Playsystems, Inc.
1276 S Main St., Salinas, CA 93901

Sub Total: \$205,463.60
Freight: \$11,623.00
Estimated Tax: \$10,588.81
Total: \$227,675.41

Miracle- Sourcewell Discount Applied

Product Code	Description	Qty	Rate	Total	Estimated Tax (if applicable)
MREC EQUIP	Miracle Play Equipment Per Plan_22_0611_Natividad Creek Park_002_2-5_BOM	1	\$71,007.00	\$56,805.60	\$5,254.52
MREC EQUIP	Miracle Play Equipment Per Plan_22_0611_Natividad Creek Park_002_5-12_BOM	1	\$72,085.00	\$57,668.00	\$5,334.29

Installation Services- State Prevailing Wages Applied Trucking and Bobcat Access Required

Product Code	Description	Qty	Rate	Total	Estimated Tax (if applicable)
B24	Provide labor and equipment to stockpile adjacent to work site approx. 195 CY playground wood chips figured at 12" depth, area 4056 SF.	1	\$7,908.00	\$7,908.00	\$0.00
B11	Removal and disposal of 2-5 & 5-12 steel white/teal/yellow play structures and 2-bay arch swings to include footings.	1	\$11,523.00	\$11,523.00	\$0.00
B15	Installation only of owner provided MREC 2-5 & 5-12 Play Structures and 2-Bay Arch Swings per plan 22_0611_Natividad Creek Park_002 dated 03/13/2023 to manufacturer recommendations through soil. Footing spoils disposed off-site.	1	\$50,210.00	\$50,210.00	\$0.00

B24	Provide labor and equipment to re-install approx. 195 CY wood chips to be spread evenly. Additional wood chips by others if required.	1	\$7,908.00	\$7,908.00	\$0.00
B13	Provide labor and trucking to Pick & Pull MREC components from City Corp Yard as needed, disposal of shipping packaging included. Offload and storage of MREC shipment by others.	1	\$6,809.00	\$6,809.00	\$0.00

Performance Bond

Product Code	Description	Qty	Rate	Total	Estimated Tax (if applicable)
BONDING	Bonding Fees	1	\$6,632.00	\$6,632.00	\$0.00

Sub Total: \$205,463.60
Total Freight: \$11,623.00
Total Estimated Tax: \$10,588.81
Grand Total: \$227,675.41

Company: _____

Signature: _____

Name: _____

Date: _____

Please confirm or edit order information below.

End User Company:

City of Salinas

End User Contact:

End User Email:

Delivery Contact:

Delivery Email:

Delivery Phone:

Delivery Address:

Site Address:

1450 Lassen Ave,
Salinas

Bill To Email:

Bill To:

City of Salinas
320 Lincoln Avenue
Salinas, CA 93901

Customer Reference #:

INDEMNITY

Client/Owner shall defend, indemnify and hold harmless Miracle Playsystems, Inc., its officers, directors, board of trustees, agents, or employees and each of them, from any and all claims, demands, causes of action in law or in equity, damages, penalties, costs, expenses, reasonable attorneys' fees, reasonable experts' fees, reasonable consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever arising out of or in any way connected with or incidental to, the performance of the services under this Agreement or any of the obligations contained in this Agreement ("Claim").