

PROFESSIONAL SERVICES AGREEMENT

CONTRACT SUMMARY

Name of Contractor:	Progressive Design Playgrounds DBA PD Play
City Department in charge of Contract:	Community Services
Contact Person for City Department:	Erica Green
Period of Performance for Contract:	November 10, 2023 - November 10, 2024
Not to Exceed Amount of Contract:	\$175,000
Scope of Work for Contract:	Play structure replacement at Freedom Park

Insurance Requirements for Contract:

yes no - Is General Liability insurance required in this contract?

If yes, please provide coverage amounts:

yes no - Is Auto insurance required in this contract?

If yes, please provide coverage amounts:

yes no - Is Professional insurance required in this contract?

If yes, please provide coverage amounts:

California requires Worker’s Compensation insurance. If the vendor has no employees, a Worker’s Compensation Affidavit is required.

Other:

Proper documentation is required and must be attached.

**PROFESSIONAL SERVICES AGREEMENT
Providing for Payment of Prevailing Wages**

(City of Calabasas /Progressive Design Playgrounds DBA PD Play)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Calabasas a California Municipal Agency (“City”), and Progressive Design Playgrounds DBA PD Play, a California Corporation (“Contractor”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a Contractor: Play structure replacement at Freedom Park
- 2.2 Contractor represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Contractor further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Contractor agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services”: Such professional services as are set forth in Contractor’s October 18, 2023 bid to City, attached hereto as Exhibit A, and as further specified in the Freedom Park Proposal Dated October 18, 2023, including all project specifications and requirements, and all referenced documents, stated therein, attached hereto as Exhibit B. All of the provisions of the Scope of Services are made a part hereof as though fully set forth herein.
- 3.2 “Commencement Date”: November 10, 2023
- 3.3 “Expiration Date”: November 10, 2024

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 (“Termination”) below.

5. CONTRACTOR’S SERVICES

Initials: (City) _____ (Contractor) _____

- 5.1 Contractor shall perform the services identified in the Scope of Services, as further specified in the Freedom Park Proposal Dated 10.18.23, including all project specifications stated therein. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Contractor under this Agreement exceed the sum of **One Hundred Seventy-Five Thousand Dollars (\$175,000)** unless specifically approved in advance and in writing by City.
- 5.2 Contractor shall perform all work to the highest professional standards of Contractor's profession and in a manner reasonably satisfactory to City. Contractor shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.3 During the term of this Agreement, Contractor shall not perform any work for another person or entity for whom Contractor was not working at the Commencement Date if both (i) such work would require Contractor to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Contractor's performance of such work.
- 5.4 Contractor represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. **Kathy Wiggins** shall be Contractor's project administrator and shall have direct responsibility for management of Contractor's performance under this Agreement. No change shall be made in Contractor's project administrator without City's prior written consent.
- 5.5 To the extent that the Scope of Services involves trenches deeper than 4', Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in § 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized

as inherent in work of the character provided for in the contract.

- 5.6 The Contractor shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in the contract. In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided in the Agreement but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.
- 5.7 In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (Section 16700, et seq.) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgment by the parties.

6. COMPENSATION

- 6.1 City agrees to compensate Contractor for the services provided under this Agreement, and Contractor agrees to accept in full satisfaction for such services, payment in accordance with the Scope of Services. Such compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid Contract Documents; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work. Such unforeseen difficulties or obstructions includes any act of God, the elements, strike, walkout, or any other cause beyond Contractor's reasonable control that occurs before City accepts the work as complete.
- 6.2 Contractor expressly agrees that it shall look solely to City for payment under this Agreement.
- 6.3 Contractor shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within thirty

calendar days of receipt of each invoice, City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Contractor.

- 6.4 This Agreement is further subject to the provisions of Article 1.7 (commencing at Section 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.
- 6.5 To the extent applicable, at any time during the term of the Agreement, the Contractor may at its own expense, substitute securities equivalent to the amount withheld as retention (or the retained percentage) in accordance with Public Contract Code section 22300. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the Contractor. Upon satisfactory completion of the contract, the securities shall be returned to the Contractor.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material (“written products” herein) developed by Contractor in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Contractor may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Contractor.

8. RELATIONSHIP OF PARTIES

Contractor is, and shall at all times remain as to City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Contractor or any of Contractor’s employees, except as set forth in this Agreement. Contractor shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Contractor without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

Initials: (City) _____ (Contractor) _____

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Contractor acknowledges that City would not enter into this Agreement in the absence of Contractor's commitment to indemnify and protect City as set forth herein.
- 10.2 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice.
- 10.3 To the fullest extent permitted by law, Contractor shall also indemnify, hold harmless and defend the Cities of Agoura Hills and Calabasas, and their officers, agents, employees, and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees due to counsel of either Cities' choice.
- 10.4 City shall have the right to offset against the amount of any compensation due Contractor under this Agreement any amount due City from Contractor as a result of Contractor's failure to pay City promptly any indemnification arising under this Section 10 and related to Contractor's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.5 The obligations of Contractor under this Section 10 will not be limited by the provisions of any workers' compensation act or similar act. Contractor expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.6 Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to

obtain such indemnity obligations from others as required herein, Contractor agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Contractor's subcontractors or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.7 City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Contractor shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Contractor's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent Contractors, personal injury, underground hazard, and explosion and collapse hazard where applicable.

11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.

11.1.3 Worker's Compensation insurance as required by the laws of the State of California, including but not limited to California Labor Code § 1860 and 1861 as follows:

Contractor shall take out and maintain, during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of improvement; and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by Contractor. Contractor and any of Contractor's subcontractors shall be required to

provide City with a written statement acknowledging its obligation to secure payment of Worker's Compensation Insurance as required by Labor Code § 1861; to wit: 'I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.' If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker's Compensation law, Contractor shall provide and shall cause each subcontractor to provide adequate insurance for the protection of employees not otherwise protected. Contractor shall indemnify and hold harmless City for any damage resulting from failure of either Contractor or any subcontractor to take out or maintain such insurance.

- 11.2 Contractor shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Contractor's expense, the premium thereon.
- 11.5 At all times during the term of this Agreement, Contractor shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Contractor shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 11.6 Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The General Liability Policy of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. The General Liability Policy required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Contractor agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. If this contract provides service to a Homeowners

Association, that Homeowners Association must be listed as an additional insured in addition to the City.

- 11.8 The insurance provided by Contractor shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Contractor's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Contractor, and Contractor's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Contractor shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond or other security acceptable to the City guaranteeing payment of losses and expenses.
- 11.11 Procurement of insurance by Contractor shall not be construed as a limitation of Contractor's liability or as full performance of Contractor's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Contractor with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Contractor's services under this Agreement.
- 12.2 In the event any claim or action is brought against City relating to Contractor's performance in connection with this Agreement, Contractor shall render any reasonable assistance that City may require.

13. RECORDS AND INSPECTIONS

Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities with respect to this Agreement.

14. PERMITS AND APPROVALS

Contractor shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary in the performance of this Agreement. This includes, but shall not be limited to, encroachment permits and building and safety permits and inspections.

Initials: (City) _____ (Contractor) _____

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during the addressee’s regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

City of Calabasas
100 Civic Center Way
Attn: Erica Green
Telephone: (818) 224-1654
Egreen@cityofcalabasas.com

If to Contractor:

Progressive Design Playgrounds DBA PD
Play
Kathy Wiggins
2235 Meyers Ave.
Escondido, Ca 92029
760-597-5990
Kathy.Wiggins@playandpark.com

With courtesy copy to:

Matthew T. Summers
Colantuono, Highsmith & Whatley, PC
City Attorney
790 E. Colorado Blvd., Suite 850
Pasadena, CA 91101
Telephone: (213) 542-5700
Facsimile: (213) 542-5710

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days’ written notice to Contractor. Contractor shall have the right to terminate this Agreement for any reason on sixty calendar days’ written notice to City. Contractor agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2 If City terminates this Agreement due to no fault or failure of performance by Contractor, then Contractor shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Contractor be entitled to receive more than the amount that would be paid to Contractor for the full

Initials: (City) _____ (Contractor) _____

performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1. Contractor shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City’s prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Contractor.

- 18.2. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.

- 18.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

- 18.4. The waiver by City or Contractor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Contractor unless in writing.

- 18.5. Contractor shall not be liable for any failure to perform if Contractor presents acceptable evidence, in City’s sole judgment that such failure was due to causes beyond the control and without the fault or negligence of Contractor.

- 18.6. Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable and actual court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California.
- 18.7. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8. This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Contractor with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Contractor.

- 18.10. This Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public agency, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.
- 18.11. This Agreement is further subject to the provisions of California Public Contracts Code § 6109 which prohibits the Contractor from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to §§ 1777.1 or 1777.7 of the Labor Code.
- 18.12. Pursuant to § 9550 of the California Civil Code, a payment bond is required to be submitted for all projects estimated in excess of \$25,000
- 18.13. Contractor shall execute a performance bond for the total amount of the Agreement as specified in the format attached to this Agreement.

19. PREVAILING WAGES

19.1 City and Contractor acknowledge that this Agreement is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and public agencies and agree to be bound by all the provisions thereof as though set forth fully herein. Full compensation for conforming to the requirements of the Labor Code and with other Federal, State and local laws related to labor, and rules, regulations and ordinances which apply to any work performed pursuant to this Agreement is included in the price for all contract items of work involved. This Agreement is subject to prevailing wage law, including, but not limited to, the following:

19.1.1 The Contractor shall pay the prevailing wage rates for all work performed under the Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Contractor shall pay the wage rate of the craft or classification most closely related to the omitted classification. The Contractor shall forfeit as a penalty to City \$200.00 or any greater penalty provided in the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under the Agreement employed in the execution of the work by Contractor or by any subcontractor of Contractor in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which

each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor.

19.1.2 Contractor shall comply with the provisions of Labor Code Section 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Contractor is responsible for compliance with Section 1777.5 by all of its subcontractors.

19.1.3 Pursuant to Labor Code § 1725.5, Contractor and any subcontractor must be registered with the California Department of Industrial Relations for any bid proposal submitted on or after March 1, 2015, and for any contract for public work entered into on or after April 1, 2015. Further, this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

19.1.4 Pursuant to Labor Code § 1776, Contractor and any subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code §§ 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.

19.1.5 Notwithstanding anything to the contrary, Contractor shall defend, indemnify, and hold harmless the City, and its officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of failure or alleged failure of Contractor to comply with such prevailing wage laws.”

19.2 To the extent that the estimated amount of this Agreement exceeds \$1,000, this Agreement is further subject to 8-hour work day and wage and hour penalty law, including, but not limited to, Labor Code Sections 1810 and 1813, as well as California nondiscrimination laws, as follows:

19.2.1 Contractor shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed, color, national origin, ancestry,

physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Section 12940 of the Government Code. Pursuant to the provisions of the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Contractor's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to City \$25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by Contractor or by any Subcontractor of Contractor, for each calendar day during which such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the provisions of the Labor Code.

- 19.3 This AGREEMENT is subject to Public Contract Code Section 6109: CONTRACTOR shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

20. Dispute Resolution

- 20.1 All disputes arising out of this Agreement are subject to a mandatory step-by-step claims submission and evaluation process as a precondition to legal action in accordance with Public Contracts Code § 9204.
- 20.2 Any court action arising out of this Agreement shall be filed in the Los Angeles County Superior Court. Any alternative dispute resolution proceeding arising out of this Agreement shall be heard in the County of Los Angeles.
- 20.3 AGENCY shall have full City to compromise or otherwise settle any claim relating to this Agreement or any part hereof at any time. City shall provide timely notification to Contractor of the receipt of any third-party claim relating to this Agreement. City shall be entitled to recover its reasonable costs incurred in providing the notification required by this section.
- 20.4 This Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by Contractor, for the response to such claims by the City, for a mandatory meet and confer conference upon the request of Contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the parties' failure to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set

forth herein.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Calabasas

“Contractor”
Progressive Design Playgrounds DBA PD Play

By: _____
David Shapiro, Mayor

By: _____
John Ogden CEO

Date: _____

Date: _____

By: _____

Date: _____

Attest:

By: _____
Maricela Hernandez, City Clerk

Date: _____

Approved as to form:

By: _____
Matthew T. Summers
Calabasas City Attorney

Date: _____

Initials: (City) _____ (Contractor) _____

EXHIBIT B SCOPE OF WORK

See attached.



2235 Meyers Avenue
Escondido, CA 92029

Quotation

Quote is valid for 30 days.

www.pdplay.com

Phone #	Fax #
760-597-5990	760-597-5991

Date	JOB NUMBER
10/18/2023	23303-Opt1

BILLING ADDRESS
City of Calabasas Playground Equipment Design Design and Installation at Freedom Park

Terms	JOB NAME
See terms below	Freedom Park - 23303

Description	Qty	Rate	Total
Contractors License #686356 / DIR # 1000006514			
Site Location: Freedom Park 4041 Balcony Dr., Calabasas, CA 91302			
Materials & Equipment			
PPS Play SuperMax Play Structure - 821-163607	1	112,401.00	112,401.00
Pour in Place Safety Surfacing 1,538 sf, 8" CFH. Includes 3.25" cushion layer and a 0.5" wear layer. Includes the following Colors: Mix of 50% Black and 50% Beige Mix of 50% Black and 50% Teal Design includes multiple wavy bands using the (2) colors listed above No TTA . Aromatic Binder.		14,040.00	14,040.00
PPS Discount		-50,580.45	-50,580.45
Labor: Prevailing Wage			
Labor to remove existing sand and PIP 1625 sf. Install play structure, new mow curb (mow curb will replace the wood trail containment), subbase (6") and PIP.		76,313.00	76,313.00
Bond Required per contract 3%		5,097.06	5,097.06
Freight		10,521.63	10,521.63
Fed Tax ID #33-0759075		Total	



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See terms below	Freedom Park - 23303

Description	Qty	Rate	Total
<p>Conditions-Exclusions: Access: Site should be clear, level and allow for unrestricted access of trucks and machinery. Staging area for dumpsters and equipment will be required within 100' of playground.</p> <p>Storage: Customer is responsible for providing a secure location to off-load and store the equipment during the installation process. Once equipment has been delivered to the site, the owner is responsible should theft or vandalism occur unless other arrangements have been made and noted on this quote.</p> <p>Footer Excavation: Installation pricing is based on footer excavation through earth/soil only. Customer shall be responsible for unknown conditions such as buried utilities (public or private), tree stumps, rock, or any other concealed materials or conditions that may result in additional labor or materials cost.</p> <p>Utilities: Owner is responsible for locating any utilities.</p> <p>Terms: 1. Per contract 2. Quote valid for 30 days.</p> <p>If contract is awarded and the start date for our scope exceeds 45 days - Pricing will need to be verified/updated prior to start of work.</p> <p>Sign and return a copy for us to process your order. Customer agrees to pay for the products and services outlined above.</p>			
Fed Tax ID #33-0759075	Total		



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BILLING ADDRESS
City of Calabasas Playground Equipment Design Design and Installation at Freedom Park

Terms	JOB NAME
See terms below	Freedom Park - 23303

Description	Qty	Rate	Total
Accepted by: Name/Title: _____			
Date: _____			
Sales Tax		9.50%	7,206.75
Fed Tax ID #33-0759075	Total		\$174,998.99

Freedom Park
100 Civic Center Way
Calabasas CA 91302

Play and Park Structures

This play equipment is recommended for children ages:
5-12
Minimum Area Required:
Per Area

Scale: 5/32" = 1'-0"
This drawing can be scaled only when in an 11" x 17" format

Drawn By:
Tiffany Brown
Date:
10/12/23
Quote Number:
821-163607

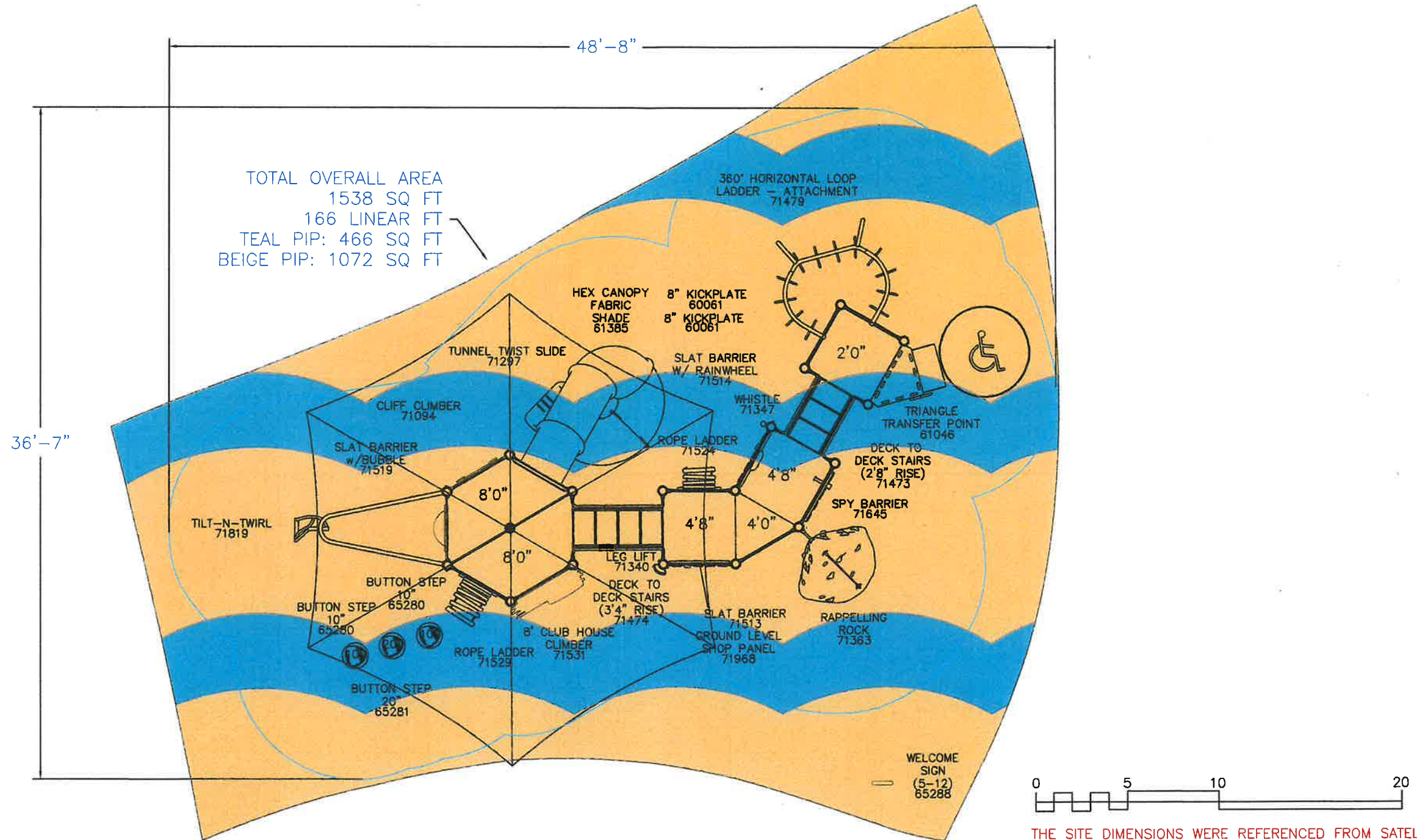
play&park
structures

A PLAYCORE Company
544 Chestnut Street
Chattanooga, TN 37402
800-727-1907 / www.playandpark.com



Total Play Components	17		
Elevated Play Components	10		
Elevated Play Components Accessible by Ramp	0	Req.	0
Elevated Components Accessible by Transfer	10	Req.	5
Accessible Ground Level Components Shown	7	Req.	3
Different Types of Ground Level Components	3	Req.	3

User Capacity
50-60
Critical Fall Height
8'-0"



THE SITE DIMENSIONS WERE REFERENCED FROM SATELLITE IMAGING AND MUST BE VERIFIED FOR ACCURACY.

It is the manufacturer's opinion that the structure shown herein complies with current ada standards concerning accessibility if used with proper accessible surfacing and together with other necessary ground level play equipment. Top view drawings and measurements are for overall site and structure appearance purposes. Top view should not be conceived as a construction detail; therefore, all measurements and slope requirements should be field verified prior to construction. **IMPORTANT:** Never install play equipment over hard, unresilient surfaces such as asphalt, concrete, or compacted earth. It is the owner's responsibility to ensure the "minimum area required" contains an appropriate amount of resilient material to cushion accidental falls.



LIMESTONE AZURE ROTO MULTICOLORED ACCENT

FREEDOM PARK
CALABASAS, CA

play&park
structures

544 CHESTNUT ST.
CHATTANOOGA, TN 37402
800.727.1907
PLAYANDPARK.COM



LIMESTONE AZURE ROTO MULTICOLORED ACCENT

FREEDOM PARK
CALABASAS, CA

play&park
structures

544 CHESTNUT ST.
CHATTANOOGA, TN 37402
800.727.1907
PLAYANDBARK.COM

EXHIBIT B
ADDITIONAL SCOPE OF WORK

See attached.

NON-COLLUSION AFFIDAVIT

State of California)
) ss.
County of Los Angeles)

_____, being first duly sworn, deposes and says that he or she is _____ of _____, the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.”

Signature of Bidder

Business Address

Place of Residence

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public in and for the County
of
State of California.

My Commission Expires _____, 20__.

WORKERS' COMPENSATION INSURANCE CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATE: _____

(Contractor)

By:

(Signature)

(Title)

Attest:

By:

(Signature)

(Title)

Initials: (City) _____ (Contractor) _____

**PAYMENT BOND
CITY OF CALABASAS
Freedom Park Playground Replacement**

WHEREAS, the City of Calabasas, as City has awarded to Progressive Design Playgrounds DBA PD Play, as Contractor, a contract for the above-stated project;

AND WHEREAS, Contractor is required to furnish a bond in connection with the contract, to secure the payment of claims of laborers, mechanics, material persons, and other persons as provided by law;

NOW THEREFORE, we, the undersigned Contractor and Surety, are held and firmly bound unto City in the sum of **One Hundred and Seventy-Five Thousand (\$175,000) Dollars**, which is one hundred percent (100%) of the total contract amount for the above-stated project, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH that if Contractor, its heirs, executors, administrators, successors, assigns or subcontractors, shall fail to pay any of the persons named in Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor withheld, and to pay over to the Employment Development Department from the wages of employees of the Contractor and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor, that the surety or sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, Surety will pay reasonable attorneys' fees to the plaintiffs and City in an amount to be fixed by the court.

This bond shall inure to the benefit to any of the persons named in Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

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 it shall in any manner affect Surety's obligations on this bond. The Surety hereby waives notice of any such change, extension, alteration or addition and hereby waives the requirements of Section 2845 of the Civil Code as a condition precedent to any remedies City may have.

(Continued on Next Page)

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seals as of the dates set forth below:

CONTRACTOR* **CONTRACTOR's Signer's Name, Title** _____
 CONTRACTOR's Business Name _____
 Mailing Street Address _____
 City, State, Zip Code _____
 Telephone # _____
 Date: _____

Surety* **Surety Signer's Name / Title** _____
 Surety's Business Name _____
 Mailing Street Address _____
 City, State, Zip Code _____
 Telephone # _____
 Date: _____

*Provide CONTRACTOR and Surety name, address and telephone number and the name, title, address and telephone number for the respective authorized representatives. Power of Attorney and Notary Acknowledgement must be attached. Seals and dates of signing must also be included.

(EXECUTE IN DUPLICATE)

Initials: (City) _____ (Contractor) _____

CERTIFICATE OF ACKNOWLEDGMENT

State of California
County of _____

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)

Initials: (City) _____ (Contractor) _____

**FAITHFUL PERFORMANCE BOND
CITY OF CALABASAS
Freedom Park Playground Replacement**

KNOW ALL PERSONS BY THESE PRESENTS That Progressive Design Playgrounds DBA PD Play, hereinafter referred to as “Contractor” as Principal, and [REDACTED], hereinafter referred to as “Surety”, a corporation duly organized and doing business under and by virtue of the laws of the State of California and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings as Surety, are held and firmly bound unto the City of Calabasas, hereinafter referred to as the “City” in the sum of

AMOUNT (\$DOLLARS), which is one hundred percent (100%) of the total contract amount for the above stated project; 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, executors, administrators, assigns and successors, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that whereas Contractor has been awarded and is about to enter into a Contract with City to perform all work required pursuant to the contract documents for the project entitled: Freedom Park Playground Replacement which Contract is by this reference incorporated herein, and is required by City to give this Bond in connection with the execution of the Contract;

NOW, THEREFORE, if Contractor and his or her Subcontractors shall well and truly do and perform all the covenants and obligations of the Contract on his or her part to be done and performed at the times and in the manner specified herein including compliance with all Contract specifications and quality requirements, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect;

PROVIDED, that any alterations in the work to be done, or in the material to be furnished, which may be made pursuant to the terms of the Contract, shall not in any way release Contractor or the Surety thereunder, nor shall any extensions of time granted under the provisions of the Contract release either Contractor or said Surety, and notice of such alterations of extensions of the Contract is hereby waived by said Surety.

In the event suit is brought upon this Bond by City and judgment is recovered, said Surety shall pay all costs incurred by City in such suit, including a reasonable attorney’s fee to be fixed by the Court.

(Continued on Next Page)

Initials: (City) _____ (Contractor) _____

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seals as of the dates set forth below:

CONTRACTOR* **CONTRACTOR's Signer's Name, Title** _____
 CONTRACTOR's Business Name _____
 Mailing Street Address _____
 City, State, Zip Code _____
 Telephone # _____
 Date: _____

Surety* **Surety Signer's Name / Title** _____
 Surety's Business Name _____
 Mailing Street Address _____
 City, State, Zip Code _____
 Telephone # _____
 Date: _____

*Provide CONTRACTOR and Surety name, address and telephone number and the name, title, address and telephone number for the respective authorized representatives. Power of Attorney and Notary Acknowledgement must be attached. Seals and dates of signing must also be included.

(EXECUTE IN DUPLICATE)

Initials: (City) _____ (Contractor) _____

CERTIFICATE OF ACKNOWLEDGMENT

State of California
County of _____

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)

Initials: (City) _____ (Contractor) _____

**MAINTENANCE BOND
CITY OF CALABASAS
PROJECT NAME**

KNOW ALL PERSONS BY THESE PRESENTS THAT WHEREAS, the City of Calabasas, as City has awarded to Progressive Design Playgrounds DBA PD Play, as Contractor, a contract for the above-stated project.

AND WHEREAS, Contractor is required to furnish a bond in connection with the contract guaranteeing maintenance thereof;

NOW, THEREFORE, we, the undersigned Contractor and Surety, are held firmly bound unto AGENCY in the sum of **One Hundred and Seventy-Five Thousand (\$175,000) Dollars**, which is 100 percent (1000%) of the total contract amount for the above-stated project to be paid to City, its successors and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH that if Contractor shall remedy without cost to City any defects which may develop during a period of one (1) year from the date of recordation of the Notice of Completion of the work performed under the contract, provided such defects are caused by defective or inferior materials or work, then this obligation shall be void; otherwise it shall be and remain in full force and effect. In case suit is brought upon this bond, Surety will pay reasonable attorneys' fees to the City in an amount to be fixed by the court.

IN WITNESS WHEREOF the parties hereto have set their names, titles, hands, and seals as of the date set forth below:

CONTRACTOR*	CONTRACTOR's Signer's Name, Title CONTRACTOR's Business Name Mailing Street Address City, State, Zip Code Telephone # Date:	_____ _____ _____ _____ _____ _____
Surety*	Surety Signer's Name / Title Surety's Business Name Mailing Street Address City, State, Zip Code Telephone # Date:	_____ _____ _____ _____ _____ _____

*Provide CONTRACTOR and Surety name, address and telephone number and the name, title, address and telephone number for the respective authorized representatives. Power of Attorney and Notary Acknowledgement must be attached. Seals and dates of signing must also be included.

(EXECUTE IN DUPLICATE)

Initials: (City) _____ (Contractor) _____

CERTIFICATE OF ACKNOWLEDGMENT

State of California
County of _____

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)

Initials: (City) _____ (Contractor) _____