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CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement (hereinafter referred to as the "Agreement") is entered into this 12th day of February, 2021, by and between the Gilroy Unified School District, a California school district organized and existing under the laws of the State of California (hereinafter referred to as the "District") and Specified Play Equipment Co., a California corporation which is a contractor licensed by the State of California, with its principal place of business at 121 #1 Industrial Road, Belmont, CA 94002 ("Contractor").

WHEREAS, the District operates Glen View Elementary School, located at 600 West Eighth Street, Gilroy, California 95020 (hereinafter referred to as the "School Facility"); and

WHEREAS, the District desires to construct/install playground facilities and improvements (as more fully described below) at the School Facility; and

WHEREAS, Contractor represents that it is sufficiently experienced in the construction of the type of work sought by the District and is willing to perform said work all as more fully set forth herein; and

NOW, THEREFORE, in consideration of the covenants hereinafter contained, the District and Contractor agree as follows:

SECTION 1. DEFINITIONS

The definitions set forth below also apply when such terms are used in the Agreement.

A. **Construction.** The term "Construction" means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Scope of Work set forth in **EXHIBIT A** attached hereto. Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools and equipment, including, but not limited to, light, water, and power, necessary for the proper execution and completion of the Project.

B. **Construction Documents.** The term "Construction Documents" means the final drawings, profiles, cross sections, design development drawings, construction drawings, and supplemental drawings based on the plans and specifications developed for the Project set forth in **EXHIBIT A** attached hereto, including any reference specifications or reproductions approved by the District, which show or describe the location, character, dimensions or details for the Project and specifications for construction thereof.

C. **Contract Documents.** The term "Contract Documents" means those documents that form the entire agreement by and between the District and Contractor. The Contract Documents consist of this Agreement, including the exhibits and attachments hereto, and the Construction Documents. The term "Contract Documents" shall include all modifications and addenda thereto.

D. **Project**. The term "Project" shall mean the improvements and facilities to be constructed and installed by Contractor pursuant to the Scope of Work as set forth on **EXHIBIT A** attached hereto.

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E. **Subcontractor.** As used in this Agreement, the term "Subcontractor" means any person or entity, including trade contractors, who have a contract with Contractor to perform any of the Construction.

SECTION 2. CONTRACTOR'S DUTIES AND STATUS

Contractor covenants with District to furnish reasonable skill and judgment in performing the services set forth herein and in constructing the Project. Contractor agrees to furnish efficient business administration and superintendence and to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with the Contract Documents.

SECTION 3. CONTRACT PRICE

A. The District shall pay Contractor the total sum of $442,852.20 for Contractor's performance of the Scope of Work set forth in **EXHIBIT A** attached hereto (the "Contract Price"), subject to additions and deductions as provided in the Contract Documents.

B. Contractor shall assume the risk of cost overruns, which were not foreseeable at the time this Agreement is entered into. Contractor acknowledges that (i) Contractor has conducted a site inspection and is familiar with the site conditions relating to the Scope of Work; and (ii) Contractor has reviewed the Contract Documents and is familiar with the contents thereof.

C. District directed changes to the scope of the Project not contemplated in the Scope of Work shall be deemed Extra Work/Modifications pursuant to the procedures set forth in Section 7 of this Agreement. The District shall at all times have the right to reduce the scope of the Project. If the District reduces the scope of the Project, the Contract Price shall be reduced commensurate with the reduced Scope of Work pursuant to the provisions of Section 7, below.

SECTION 4. PAYMENTS

A. Applications for Payment.

1. Based on Applications for Payment submitted to the District by Contractor, the District shall make progress payments on account of the Contract Price to Contractor as provided herein. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

2. An itemized Application for Payment will only include completed portions of the Scope of Work. Contractor warrants that title to all work covered by an Application for Payment will pass to the District no later than the time of payment.

B. Progress Payments.

1. Provided that an Application for Payment, along with all required documentation, is received by the District not later than the 10th day of a month, the District shall make payment of the certified amount to Contractor within 30 days.

2. Subject to other provisions in the Contract Documents, the amount of each progress payment shall the portion of the Contract Price properly allocable to completed Scope of Work less retainage of five percent (5%).

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C. Final Completion and Final Payment.

1. Upon receipt of Contractor's written notice that the Project is ready for final inspection and acceptance and upon receipt of a final Application for Payment, if the District finds the Project is acceptable under the Contract Documents and the Agreement is fully performed, the District will make the final payment constituting the entire unpaid balance of the Contract Price, including retention, to Contractor.

2. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

SECTION 5. SUBCONTRACTORS

A. Contractor agrees to select Subcontractors who are appropriately licensed by the State of California for each trade component of the Project. Contractor shall inform all Subcontractors that the District will not be a party to any contracts for construction services executed by Contractor and Subcontractors.

B. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's work. If Contractor subcontracts any part of its obligations under the Contract Documents, Contractor shall be as fully responsible to the District for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by its Subcontractors, as it is for acts and omissions of persons it directly employs.

SECTION 6. CONSTRUCTION SCOPE OF WORK

A. Contractor shall complete the Construction pursuant to the Construction Documents as amended subject to any additional Division of the State Architect ("DSA") or other regulatory approvals as may be required, performing all work set forth in the Scope of Work, and shall make reasonable efforts in scheduling to prevent disruption to classes and surrounding neighborhoods.

B. Contractor shall be responsible for complying with all applicable building codes, including without limitation mechanical codes, electrical codes, plumbing codes and fire codes, each of the latest edition, required by the regulatory agencies and for arranging and overseeing all necessary inspections and tests including inspections by the DSA or regulatory agencies, obtaining permits and occupancy permits, and ensuring compliance with any Federal and State laws, including, but not limited to, safety procedures and requirements, and construction employee training programs which cover among other items, hazardous chemicals and materials.

C. Contractor shall establish procedures for the protection of all surrounding structures, equipment, utilities, and other existing improvements, both on-site and off-site. Contractor assumes all risk of loss, of vandalism, theft of property or other property

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damage ("Vandalism") which occurs at a site at which Contractor is undertaking construction of the Project. Contractor assumes all risk of loss which occurs where Contractor is undertaking construction of the Project from causes due to negligence or misconduct by Contractor, its officers, employees, subcontractors, licensees and invitees. Contractor shall replace District property damaged by such Vandalism or theft or compensate the District for such loss, including payment of out of pocket expenses such as insurance deductibles the District might incur under such circumstances.

D. Contractor shall develop a mutually agreed upon program with the District to abate and minimize noise, dust, and disruption to normal activities at the School Facility and surrounding neighborhoods, including procedures to control on-site noise, dust, and pollution during construction.

E. Contractor shall promptly advise the District on all anticipated delays in the Project.

SECTION 7. EXTRA WORK/MODIFICATIONS

A. The District may prescribe or approve additional work or a modification of requirements or of methods of performing the Construction, which differ from the work or requirements set forth in the Scope of Work ("Extra Work/Modifications"). Notwithstanding the foregoing, Contractor shall not be entitled to compensation for additional services required as a result of Contractor's acts, errors or omissions.

B. Contractor shall provide a cost estimate and a written description of the additional work necessary to complete any proposed Extra Work/Modifications. Contractor shall submit to the District for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. Compensation for such Extra Work/Modifications shall be negotiated and agreed upon in writing in advance of Contractor performing or contracting for such Extra Work/Modifications. In the absence of a written agreement, the District will not compensate Contractor for such Extra Work/Modifications and Contractor will not be required to perform such Extra Work/Modifications. It is understood and agreed that if Contractor performs any services that it claims are Extra Work/Modifications without receiving prior written approval from the District, Contractor shall not be paid for such claimed Extra Work/Modifications. If the District approves the request in writing, the costs of the Extra Work/Modification shall be added to or deducted from the Contract Price.

C. Contractor agrees that, in determining the Contract Price, it has reviewed the Construction Documents and verified their adequacy and completeness. Accordingly, Contractor shall not be entitled to additional compensation for additional work related thereto that could reasonably be inferred from the Construction Documents.

D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default or other situation (i) obligates the District to pay additional compensation to Contractor; or (ii) obligates the District to grant an extension of time for the completion of this Agreement; or (iii) constitutes a waiver of any provision in this Agreement, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE THE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION

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SUPPORTING THE FACTUAL BASIS OF THE CLAIM including items used in valuing said claim. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. Contractor's failure to notify the District within such ten (10) day period shall be deemed a waiver and relinquishment of the claim against the District.

SECTION 8. TIME OF COMPLETION

A. Contractor agrees that the Project will be substantially complete by April 30, 2021, and said date will be extended for such periods of time as Contractor is prevented from proceeding with or completing the Project for any cause described in this Section 8. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the District as fixed and liquidated damages, and not as a penalty, the sum of five-hundred Dollars ($ 500.00) per day for each calendar day of delay caused by Contractor until the Project is substantially complete. Any money due or to become due to Contractor may be retained by the District to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, the District shall have the right to recover the balance from Contractor.

B. The term "substantially complete" or "substantial completion" as used in the Contract Documents means completed in such a fashion as to enable the District, upon performance of any separate work to be done by the District under separate contract or by day labor, beneficially to occupy the Project, provided such occupancy and use does not substantially interfere with Contractor's performance of the remainder of the Project as agreed upon between Contractor and the District, which may be accomplished prior to the completion of the Project.

C. The term "fully completed and accepted" shall mean that all remaining work has been completed in accordance with the Scope of Work set forth in **EXHIBIT A** attached hereto.

SECTION 9. TERMINATION

A. **Termination for Breach by Contractor.** If Contractor refuses or fails to prosecute the Construction or any separable part thereof with such diligence as will insure its completion within the time specified by this Agreement, or any extension thereof, or fails to complete the Project within such time, or if Contractor should be adjudicated bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or Contractor, or any of its Subcontractors should violate any of the provisions of the Contract Documents, the District may serve written notice upon Contractor of the District's intention to terminate this Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Agreement, and a statement to the effect that Contractor's right to perform this Agreement shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.

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B. **Termination for Convenience.**

(1) The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest. Contractor shall terminate all or any part of the Project upon delivery to Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of the termination, and the "Effective Date" of such termination. After receipt of a Notice of Termination, and except as directed by the District, Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

(a) Stop work as specified in the Notice of Termination;

(b) Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents;

(c) Leave the School Facility in a safe and sanitary manner such that it does not pose any threat to the public health or safety;

(d) Terminate all subcontracts with Subcontractors to the extent that they relate to the portions of the work terminated;

(e) Place no further subcontracts or orders, except as necessary to complete the continued portion of the Project; and

(f) Submit to the District within thirty (30) days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by Contractor solely as a result of the District's exercise of his right to terminate this Agreement pursuant to this clause which costs Contractor is authorized under this Agreement to incur, shall (i) be submitted to and received by the District no later than thirty (30) days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

(2) Termination of this Agreement shall not relieve Contractor of its obligation for any just claims arising out of or relating to the work performed on the Project. In the event that the District exercises its right to terminate this Agreement pursuant to this clause, the District shall pay Contractor, upon Contractor's submission of the documentation required by this provision, and other applicable provisions of this Agreement, the following amounts:

(a) All actual costs incurred according to the provisions of this Agreement, including but not limited to reasonable demobilization costs and insurance costs incurred in connection with the Project.

(b) A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of this Agreement under this Section 9B.

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Notwithstanding the foregoing, in no event shall the total amount paid to Contractor pursuant to this provision exceed the Contract Price and all approved Extra Work/Modifications.

C. **Termination by Contractor.**

Contractor may terminate this Agreement upon thirty (30) days written notice to the District, whenever: (1) the entire Project has been suspended for ninety (90) consecutive days through no fault or negligence of Contractor, and neither a notice to resume nor a notice to terminate this Agreement has been received from the District within this time period; or (2) the District should fail to pay Contractor any material sums due it in accordance with the terms of this Agreement and within the time limits prescribed. In the event of such termination, Contractor shall have no claims against the District except for work performed and reasonable demobilization costs of the Project as of the date of termination computed as set forth in Section 9 (B)(2)(a)-(b), above.

SECTION 10. CONTRACTOR'S CONTINUING RESPONSIBILITY

Neither the final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project or for any failure to comply with the requirements of the Contract Documents.

SECTION 11. USE OF PREMISES

Contractor shall confine operations at the School Facility to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the School Facility with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the School Facility.

SECTION 12. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

Contractor shall comply with the District's Hazardous Materials Procedures and Requirements as set forth herein.

A. If the District has identified the presence of hazardous materials on or in proximity to the School Facility (the "Pre-existing Hazardous Materials"), Contractor shall review all information provided by the District that characterizes the Pre-existing Hazardous Materials and shall take the actions approved by DTSC and issued by the District necessary to address the Pre-existing Hazardous Materials in the performance of the work. Contractor shall conduct the work based on this information issued at the time contract documents are executed. Contractor shall immediately communicate, in writing, any variances from available information to the District.

B. The District will retain an additional independent environmental consultant to perform the investigation, inspection, testing, assessment, sampling and analysis necessary to prepare and recommend a remediation plan for the Pre-existing Hazardous Materials for the District's approval (the "Remediation Plan").

C. The District will retain title to all Pre-existing Hazardous Materials encountered during the work. This does not include hazardous material generated by Contractor, including but not

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limited to used motor oils, lubricants, cleaners, etc. Contractor shall dispose of such hazardous waste in accordance with the provisions of the Contract Documents, as well as local, State and Federal laws and regulations. The District will be shown as the hazardous waste generator and will sign all hazardous waste shipment manifests for non-Contractor generated hazardous waste. Nothing contained within these Contract Documents shall be construed or interpreted as requiring Contractor to assume the status of owner or generator of hazardous waste substances for non-Contractor generated hazardous wastes.

D. Except as otherwise provided herein, it is the responsibility of Contractor to obtain governmental approvals relating to Hazardous Materials Management, including Federal and State surface water and groundwater discharge permits and permits for recycling and reuse of hazardous materials for all work noted in the contract documents. Contractor shall be responsible for coordinating compliance with such governmental approvals and applicable governmental rules with the District's hazardous materials consultant, including those governing the preparation of waste profiles, waste manifests, and bills of lading. If Contractor encounters hazardous materials, it shall immediately notify the District in writing. The District, consultant and Contractor shall jointly establish the plan for disposition and actions to be taken with respect to the hazardous materials, subject to final written approval by the District.

E. If, during construction, Contractor encounters materials, conditions, waste, contaminated groundwater or substances, not identified in the District's assessment report, that Contractor reasonably suspects are hazardous materials, Contractor shall stop the affected portion of the work, secure the area, promptly notify the District, and take reasonable measures to mitigate the impact of such work stoppage. The District shall retain the services of an environmental consultant to perform investigation, inspection, testing, assessment, sampling and analysis of the suspect materials, conditions, waste, groundwater or substances.

(1) Found Not to be Hazardous Materials. If the environmental consultant determines that the materials, conditions, waste, contaminated groundwater or substances do not constitute hazardous materials, Contractor shall recommence the suspended work.

(2) Found to be Hazardous Materials. If the environmental consultant determines that the materials, conditions, waste, contaminated groundwater or substances constitute hazardous materials and such hazardous materials require remediation and disposal, then the District, consultant and Contractor shall jointly establish the plan for disposition and actions to be taken with respect to the hazardous materials, subject to final written approval by the District. All such costs shall be the responsibility of the District.

F. Exacerbation of Pre-Existing Hazardous Materials.

If during construction Contractor encounters pre-existing environmental conditions that it knew or should have known involve hazardous materials (the "Point of Discovery") (which encounters may include an unavoidable release or releases of hazardous materials) then Contractor must immediately stop the affected portion of the work. If Contractor fails to immediately stop the affected portion of the work after the Point of Discovery, then Contractor is solely responsible for any resultant Exacerbation Cost. "Exacerbate," in all its forms, means the worsening effects of Contractor's failure to stop the affected portion of work after the Point of Discovery. "Exacerbation Cost" means the differential between (i) the actual increase in the cost of remediation and delays to the Project attributable to pre-existing environmental conditions involving hazardous substances, and (ii) the cost thereof or delays thereto had Contractor immediately stopped the affected portion of the work after the Point of

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Discovery. The standard of "should have known" applies to Contractor's supervisory personnel, whether or not on the School Facility. Contractor's supervisory personnel must have had the hazardous material training required by applicable OSHA and Cal OSHA rules or regulations.

SECTION 13. INDEPENDENT CONTRACTOR

A. Contractor is retained as an independent contractor and is not employed by the District. No employee or agent of Contractor shall become, or be considered to be, an employee of the District for any purpose. It is agreed that the District is interested only in the results obtained from service under this Agreement and that Contractor shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. Contractor shall complete this Agreement according to its own methods of work which shall be in the exclusive charge and control of Contractor and which shall not be subject to control or supervision by the District except as to results of the work. It is expressly understood and agreed that Contractor and its employees shall in no event be entitled to any benefits to which the District employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation, worker's compensation benefits, sick or injury leave or other benefits.

B. Contractor shall be responsible for all salaries, payments, and benefits for all of its officers, agents, and employees in performing services pursuant to this Agreement.

SECTION 14. GUARANTEE

A. Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for the life of the installation. Contractor shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship (and materials within the manufacturer's warranty period) for the life of the installation without expense whatsoever to the District, ordinary wear and tear, unusual abuse or neglect excepted. The District will give notice of observed defects with reasonable promptness. Contractor shall notify the District upon completion of repairs.

B. In the event of failure of Contractor to comply with above-mentioned conditions within one week after being notified in writing, the District is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor. Contractor hereby agrees to pay costs and charges therefore immediately on demand.

C. If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District or to prevent interruption of occupation of the Project, the District will attempt to give the notice required by this Section. If Contractor cannot be contacted or does not comply with the District's request for correction within a reasonable time as determined by the District, the District, notwithstanding the provisions of this Section, may proceed to make such correction or provide such attention. The costs of such correction or attention shall be charged against Contractor. Such action by the District will not relieve Contractor of the

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guarantees provided in this Section or elsewhere in the Contract Documents.

D. This does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish the District with all appropriate guarantee or warranty certificates upon completion of the Project.

E. Notwithstanding the foregoing, nothing contained in this Section shall waive or limit any other rights or remedies available to the District pursuant to the Contract Documents or under law or in equity.

SECTION 15. INSURANCE/INDEMNITY

A. Workers' Compensation Insurance; Employer's Liability Insurance. Contractor shall purchase and maintain Workers' Compensation Insurance as will protect Contractor from claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Scope of Work to be performed, whether such operations be by Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor. The Employer's Liability Insurance required of Contractor hereunder may be obtained by Contractor as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Contractor hereunder. Workers' compensation limits as required by the Labor Code, but not less than $1,000,000 and employers' liability limits of $1,000,000 per accident for bodily injury or disease.

B. Commercial General Liability and Property Insurance. Contractor shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents and for which Contractor may be legally responsible: (i) claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees; (ii) claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees; (iii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by Contractor, or (b) by another person; (iv) claims for damages, other than to the Project itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (v) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; and (vi) contractual liability insurance applicable to Contractor's obligations under the Contract Documents.

C. **Builder's Risk "All-Risk" Insurance**. It is Contractor's responsibility to maintain or cause to be maintained Builder's Risk [Fire; "All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures which are a part of the Agreement and subject to loss or damage by fire, and vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, terrorism, lighting, smoke and rioting, in an amount to cover 100% of the replacement cost of the Project. Contractor is to provide insurance coverage on completed value form, all-risk or special causes of loss coverage. In addition, such insurance shall comply with the following:

1. Such insurance policy shall be so conditioned as to cover the performance of any extra work performed under the Agreement.

2. Coverage shall include all materials stored on site and in transit.

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3. Coverage shall include Contractor's tools and equipment.

4. Insurance shall include machinery coverage.

D. Automobile Liability Insurance. Contractor shall take out and maintain at all times during the term of this Agreement Automobile Liability Insurance in the amount set forth in Section 15E below. Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the District.

E. Coverage Amounts. Contractor shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:

Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than $2,000,000.00 or Commercial General Liability Insurance which provides limits of not less than:

(a)	Per occurrence (combined single limit).....	$2,000,000.00
(b)	Project Specific Aggregate (for this Project only).....	$2,000,000.00
(c)	Products and Completed Operations (aggregate)	$2,000,000.00
(d)	Personal and Advertising Injury Limit	$1,000,000.00

Insurance Covering Special Hazards

The following Special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

(a)	Automotive and truck where operated in amounts.....	$1,000,000.00
(b)	Material Hoist where used in amounts	$1,000,000.00
(c)	Explosion, Collapse and Underground (XCU coverage).....	$1,000,000.00
(d)	Hazardous Materials.....	$1,000,000.00

In addition, provide Excess Liability Insurance coverage in the amount of Four Million Dollars ($4,000,000.00).

F. Evidence of Insurance; Subcontractor's Insurance.

(1) Certificates of Insurance. With the execution of the Agreement, Contractor shall deliver to the District Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. Failure or refusal of Contractor to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of Contractor under the Contract Documents. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District.

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The insurance policies required of Contractor and Subcontractors hereunder shall also name the County of Santa Clara, the District and its Board of Trustees, officers employees and agents as additional insured as their interests may appear. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by the District in its sole discretion and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

Should any policy of insurance be canceled before Final Acceptance of the Work by the District and Contractor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due Contractor under the Contract Documents. Contractor shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of Contractor to comply with the District's request may be deemed by the District to be a default of a material obligation of Contractor under the Contract Documents.

(2) **Subcontractors' Insurance.** Contractor shall require that every Subcontractor, of any tier, performing or providing any portion of the Work obtain and maintain the policies of insurance set forth in Sections 15A and 15B. The policies of insurance to be obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, Contractor obtaining and maintaining such policies of insurance. Each of the policies of insurance obtained and maintained by a Subcontractor hereunder shall conform to the requirements of this Section 15. Upon request of the District, Contractor shall promptly deliver to the District Certificates of Insurance evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Section 15. Failure or refusal of the Contractor to provide the District with Subcontractors' Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of Contractor hereunder.

G. **Maintenance of Insurance**. Any insurance bearing on the adequacy of performance of the Scope of Work shall be maintained after the District's Final Acceptance of all of the Project for a one-year period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and Contractor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to Contractor. Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor's responsibility for payment of damages resulting from its operations or performance of the Scope of Work under the Contract Documents, including without limitation Contractor's obligation to pay Liquidated Damages. Contractor will not be relieved of its obligation to maintain insurance required under this Section until the date of Final Acceptance of the Project by the District, or such time thereafter as required by the Contract Documents. The insurer providing any insurance coverage required hereunder shall be to the reasonable satisfaction of the District.

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H. **Contractor's Insurance Primary**. All insurance and the coverages thereunder required to be obtained and maintained by Contractor hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by Contractor's Builder's Risk Insurance or the Commercial General Liability Insurance of Contractor or any Subcontractor, the District, Contractor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverages required herein shall be included in the Contract Price.

I. **Indemnity**. To the fullest extent permitted by law and in conformity with California Civil Code Section 2782.8, Contractor agrees that it will indemnify, defend and hold the County of Santa Clara, the District, members of District's Board of Trustees, directors, officers, employees, agents and authorized volunteers (the "Indemnitees") entirely harmless from all claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, its officers, employees, consultants, subconsultants or agents.

Contractor's obligation to indemnify does not include the obligation to defend actions or proceedings brought against the Indemnitees but rather to reimburse the Indemnitees for attorney's fees and costs incurred by the Indemnitees in defending such actions or proceedings brought against the Indemnitees to the extent such actions or proceedings arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, its officers, employees, consultants, subconsultants or agents, but not to the extent of loss, injury, death or damage caused by the negligence or willful misconduct of District or of other third parties for which Contractor is not legally liable.

The Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; and (iv) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Contractor, any of Contractor's Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Project and their respective agents, officers or employees. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which the District is bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the District from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Agreement.

SECTION 16. AGREEMENT MODIFICATIONS

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No waiver, alteration or modification of any of the provisions of this Agreement or of the Contract Documents shall be binding upon either the District or Contractor unless the same shall be in writing and signed by both the District and Contractor.

SECTION 17. NOTICES

Any notices or filings required to be given or made under this Agreement shall be served, given or made in writing upon the District or Contractor, as the case may be, by personal delivery or registered mail (with a copy sent via fax or regular mail) to the respective addresses given below or at such other address as such party may provide in accordance with the provisions herein. Any change in the addresses noted herein shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice.

If to Contractor:

Specified Play Equipment Co.
121 # Industrial Road
Belmont, CA 94002

If to the District:

Gilroy Unified School District
7810 Arroyo Circle
Gilroy, California 95020
Attn: Dr. Deborah A. Flores, Superintendent

With a copy to Mary Hernandez,

Garcia, Hernandez, Sawhney LLP
2490 Mariner Square Loop, Suite 140
Alameda, CA 94501

Notices under this Agreement shall be deemed to have been given and shall be effective upon actual receipt by the other parties, or, if mailed, upon the earlier of the fifth (5^{th}) day after mailing or actual receipt by the other party.

SECTION 18. ASSIGNMENT

Contractor shall not assign this Agreement or sublet it as a whole without the written consent of the District, nor shall Contractor assign any monies due or to become due to it hereunder without the prior written consent of the District.

SECTION 19. PROVISIONS REQUIRED BY LAW

Each and every provision of law required to be inserted in these Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Contract Documents shall forthwith be physically amended to make such insertion or correction.

SECTION 20. HEADINGS

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The headings in this Agreement are inserted only as a matter of convenience and reference and are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

SECTION 21. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties irrevocably agree that any action, suit or proceeding by or among the District and Contractor shall be brought in the Superior Court of the State of California, Santa Clara County and waive any objection that they may now or hereafter have regarding the choice of forum whether on personal jurisdiction, venue, forum non conveniens or on any other ground.

SECTION 22. SUCCESSION OF RIGHTS AND OBLIGATIONS

All rights and obligations under this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

SECTION 23. AUTHORITY

Each person executing this Agreement on behalf of a party hereto represents and warrants that he or she is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

SECTION 24. PERSONAL LIABILITY

Neither the trustees, officers, employees, or agents of District, or the District's representative shall be personally responsible for any liability arising under the Contract Documents.

SECTION 25. SEVERABILITY

If any one or more of the terms, covenants or conditions of this Agreement shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of the Contract Documents shall be affected thereby, and each provision of the Contract Documents shall be valid and enforceable to the fullest extent permitted by law.

SECTION 26. ENTIRE AGREEMENT

This Agreement and the Contract Documents as defined in paragraph C of Section 1 herein, constitute the entire agreement between Contractor and the District. The Contract Documents shall not be amended, altered, changed, modified or terminated without the written consent of both parties hereto, except as otherwise provided in Section 18 hereof.

SECTION 27. EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF the parties hereto, intending to be legally bound thereby, have executed this Agreement effective as of the date first above written.

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CONTRACTOR

Specified Play Equipment Co.
121 #1 Industrial Road
Beleont, CA. 94002

By: DocuSigned by: David Yosso 2BE69C1FCF15488...

Title: Principal, Owner

Date: 2/2/2021

THE DISTRICT

Gilroy Unified School District,
a California school district
7810 Arroyo Circle
Gilroy, CA 95020

By: _____

Title: _____

Date: _____

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EXHIBIT A

Scope of Work

Please see attached proposal, dated July 29, 2020.