

**CITY OF MILPITAS
EQUIPMENT PURCHASE AGREEMENT**

This Equipment Purchase Agreement (“Agreement”) is entered into this ____ day of _____, 2020, by and between the City of Milpitas, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at a municipal corporation organized under the laws of the State of California with its principal place of business at 455 E. Calaveras Boulevard, Milpitas, California 95035 (“City”), and **Playcore Wisconsin Inc. dba GameTime**, a corporation with its principal place of business at **150 Playcore Drive, SE Fort Payne, AL 35967** (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City issued a solicitation (“Solicitation”) seeking proposals, bids or quotes from qualified contractors to provide the required equipment, a copy of which is attached hereto as Exhibit “D” and incorporated herein by reference.

B. Contractor submitted a proposal in response to the Solicitation and City selected Contractor to provide the required equipment.

C. The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions upon which Contractor shall provide the required equipment to City.

AGREEMENT

NOW, THEREFORE, the Parties hereto hereby agree as follows:

Section 1. DEFINITIONS.

A. “Equipment” means all machinery, equipment, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Contractor as specified in Exhibit “A,” attached hereto and incorporated herein by reference.

B. “Delivery Date(s)” means that date or dates upon which the Equipment is to be delivered to City, ready for approval, testing and/or use as specified in Exhibit “B.”

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit “A” specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without City’s written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit “A” as equal to any particular standard, City will decide the question of equality. When requested by City, Contractor will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated

in the Equipment. Material samples will be submitted at City's request.

The site of any installation work shall be kept clean and free of hazards at all times during performance of such installation services. After installation is completed at the site, as applicable, Contractor shall clean the surrounding area to the condition prior to delivery and installation.

Section 3. INSPECTIONS AND TESTS.

City shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibit "A," then without prejudice to any other rights or remedies, City may reject the Equipment or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods, irrespective of City's failure to notify Contractor of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

If the Contractor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the City.

Section 4. WARRANTY.

A. Contractor warrants that the Equipment will be of merchantable quality and free from defects in design, engineering, material and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer's warranty or as agreed to by Contractor and City, from the date of final written acceptance of the Equipment by City as required for final payment under Section 7. Contractor further warrants that any services provided in connection with the Equipment will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Contractor further warrants that all machinery, equipment or process included in the Equipment will meet the performance requirements and specifications specified in Exhibit "A" and shall be fit for the purpose intended. City's inspection, testing, approval or acceptance of any such machinery, equipment or process will not relieve Contractor of its obligations under this Section 4.B.

C. For any breach of the warranties contained in Section 4.A and Section 4.B, Contractor will, immediately after receiving notice from City, at the option of City, and at Contractor's own expense and without cost to City:

1. Repair the defective Equipment;
2. Replace the defective Equipment with conforming Equipment, F.O.B. City's plant, office or other location of City where the Equipment was originally performed or delivered; or

3. Repay to City the purchase price of the defective Equipment.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Equipment which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

D. Contractor also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

E. In the event of a breach by Contractor of its obligations under this Section 4, City will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "C," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. CHANGES.

City, at any time, by a written order, and without notice to any surety, may make changes in the Equipment, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Equipment or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between City and Contractor and such change will be authorized by a change order document signed by City and accepted by Contractor.

Section 7. PAYMENTS.

A. Terms of payment, are net thirty (30) days, after receipt of invoice. Payment of invoices shall not constitute acceptance of Equipment.

B. Payments otherwise due may be withheld by City on account of defective Equipment not remedied, liens or other claims filed, reasonable evidence indicating probable filing

of liens or other claims, failure of Contractor to make payments properly to its subcontractors or for material or labor, the failure of Contractor to perform any of its other obligations under the Agreement, or to protect City against any liability arising out of Contractor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, City may remove them at Contractor's expense.

- C. Payment of any invoice will be made by City upon:
1. Written acceptance of the Equipment by City;
 2. Delivery of all drawings and specifications, if required by City;
 3. Delivery of executed conditional releases of any and all liens arising out of this Agreement (Contractor must deliver full unconditional releases follow receipt of final payment); and
 4. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Contractor may furnish a bond satisfactory to City to indemnify City against any claim or lien at no cost to City.

D. Acceptance by Contractor of payment pursuant to Section 7.C will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Contractor then has, or can subsequently acquire against City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment for the final Progress Milestone by City will not constitute a waiver, release or discharge of any claims or demands which City then has, or can subsequently acquire, against Contractor, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

Section 8. SCHEDULE FOR DELIVERY.

A. The time of Contractor's performance is of the essence for this Agreement. The Equipment will be delivered in accordance with the schedule set forth in Exhibit "B." Contractor must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights City may have under this Agreement or at law, Contractor shall pay City the sum of One Hundred Dollars and Zero Cents (\$100.00) per item of Equipment for each calendar day for which the item of Equipment is unavailable beyond the scheduled delivery date(s) specified in Exhibit "B."

B. In the event that the Equipment is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Contractor will fully cooperate in scheduling the delivery so that City can maximize the efficient completion of such project(s).

Section 9. TAXES.

A. Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.

B. Contractor will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Contractor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Equipment provided hereunder, will be the responsibility of Contractor. In addition, all taxes assessed by any taxing jurisdiction based on Contractor property used or consumed in the provision of the Equipment such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Contractor.

D. Contractor will, upon written request, submit to City written evidence of any filings or payments of all taxes required to be paid by Contractor hereunder.

Section 10. INDEPENDENT CONTRACTOR.

Contractor enters into this Agreement as an independent contractor and not as an employee of City. Contractor shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of City. City shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 11. SUBCONTRACTS.

Unless otherwise specified, Contractor must obtain City's written permission before subcontracting any portion of the Equipment. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Equipment, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Contractor from its obligations to City, including, but not limited to Contractor's insurance and indemnification obligations. No subcontract or order will bind City.

Section 12. TITLE AND RISK OF LOSS.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Equipment upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Equipment. However,

Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace, or repair said Equipment or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then City shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered or City has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Equipment, but which does not become a part of the Equipment.

Section 13. INDEMNIFICATION.

A. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Equipment or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the active or sole negligence or willful misconduct of the City.

B. Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its directors, officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its elected officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding, if the Contractor is proven at fault. Contractor shall reimburse City and its elected officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its elected officials, officers, employees, agents or volunteers.

Section 14. INSURANCE.

A. General. Contractor shall take out and maintain:

1. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;

2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per

accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);

3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and

4. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by the Contractor if transporting hazardous materials.

5. If Contractor is also the manufacturer of any equipment included in the Equipment, Contractor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give City, its elected officials, officers, employees, agents or volunteers additional insured status for ongoing operations. Such policies shall contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

C. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City.

D. Evidence of Insurance. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by the Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before delivery commences.

E. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

Section 15. LIENS.

A. Contractor, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Contractor, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Contractor will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims. Nothing in Section 15 shall limit or revoke Contractor's statutory lien rights.

Section 16. TERMINATION OF AGREEMENT BY CITY.

A. Should Contractor at any time refuse or fail to deliver the Equipment with promptness and diligence, or to perform any of its other obligations under the Agreement, City may terminate Contractor's right to proceed with the delivery of the Equipment by written notice to Contractor. In such event City may obtain the Equipment by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Contractor. In such case Contractor will not be entitled to receive any further payments until the Equipment is delivered. If City's cost of obtaining the Equipment, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Contractor will be liable for and will pay the difference to City.

B. City may, for its own convenience, terminate Contractor's right to proceed with the delivery of any portion or all of the Equipment by written notice to Contractor. Such termination will be effective in the manner specified in such notice, will be without prejudice to any claims which City may have against Contractor, and will not affect the obligations and duties of Contractor under the Agreement with respect to portions of the Equipment not terminated.

C. On receipt of notice under Section 16.B, Contractor will, with respect to the portion of the Equipment terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Equipment and the placing of orders for materials, facilities, and supplies in connection with the Equipment,
2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and

3. Deliver only such portions of the Equipment which City deems necessary to preserve and protect those portions of the Equipment already in progress and to protect material, plant and equipment at the Equipment site or in transit to the Equipment site.

D. Upon termination pursuant to Section 16(B) and in the event manufacturing of the Equipment or portion of the Equipment has already commenced, Contractor shall be compensated for actual manufacturing costs less any resale value incurred prior to termination. Completed Equipment manufactured specifically for this Agreement and that Contractor cannot sell to other consumers are non-cancelable obligations for which Contractor will be compensated provided termination is not based on Contractor's default.

Section 17. MISCELLANEOUS PROVISIONS.

A. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address or at such other address as the respective parties may provide in writing for this purpose:

CITY:

City of Milpitas

455 E. Calaveras Boulevard

Milpitas, California 95035

Attn: City Engineer

CONTRACTOR:

Playcore Wisconsin Inc. dba GameTime

150 Playcore Drive, SE

Fort Payne, AL 35967

Attn: Clint Whiteside

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

B. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Contractor from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City.

C. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

D. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

E. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

F. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Santa Clara County.

G. Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

H. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

I. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

J. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

K. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

L. City's Right to Employ Other Contractors. City reserves its right to employ other contractors in connection with the Equipment.

M. Compliance with Law. Contractor shall comply with all applicable laws and regulations of the federal, state and local government and shall be responsible for obtaining any required licenses, permits or certifications necessary to perform this Agreement. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of its performance of this Agreement. Contractor is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work being performed under this Agreement is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000.00 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of work under this Agreement, including any delay, shall be Contractor's sole responsibility and Contractor shall indemnify City from liability arising out of the same. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section

1771.4 and to be registered with the Department of Industrial Relations shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1771.4, 1725.5 and 1771.1.

N. Wage Theft Prevention.

1. Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the Milpitas Minimum Wage Ordinance.

2. BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY, FINDING IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT THAT CONTRACTOR OR ITS SUBCONTRACTORS HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS EITHER FULLY SATISFIED EACH JUDGMENT, DECISION OR ORDER, OR, IF ANY JUDGMENT, DECISION OR ORDER HAS NOT BEEN FULLY SATISFIED, CONTRACTOR AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) IS CURRENTLY SATISFYING SAID JUDGMENT, DECISION OR ORDER THROUGH A PAYMENT OR ALTERNATIVE PLAN APPROVED BY THE APPLICABLE COURT/GOVERNMENT AGENCY AND THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) ARE IN COMPLIANCE WITH SAID PLAN AS OF THE DATE OF EXECUTING THIS AGREEMENT.

3. If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed in its bid/proposal, Contractor shall inform the City no more than fifteen (15) calendar days after the judgment, decision or order becomes final or from the date of learning of the final judgment, decision or order. Contractor or its subcontractor(s) shall, within thirty (30) calendar days after notifying the City, either (i) fully satisfy any such judgment, decision, or order and provide the City with documentary evidence of satisfying said judgment, decision or order; or (ii) provide the City documentary evidence of a payment or other alternative plan approved by the court/government agency to satisfy the judgment, decision or order. If the Contractor or its subcontractor is subject to a payment or other alternative plan, the Contractor or its subcontractor shall continue to submit documentary evidence every thirty (30) calendar days during the term of the Agreement demonstrating continued compliance with the plan until the judgment, decision or order has been fully satisfied.

4. For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time period to appeal has expired. Relevant investigatory government agencies include: the United States Department of Labor, the California Division of Labor Standards Enforcement, the City, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

5. Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

6. Notice provided to the City shall be addressed to: Attention: Finance Director, 455 E. Calaveras Blvd. Milpitas, CA 95035. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

O. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Equipment specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR EQUIPMENT PURCHASE AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND PLAYCORE WISCONSIN INC. DBA GAMETIME

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF MILPITAS

Approved By:

Steve McHarris, Interim City Manager

Date

Approved:

Walter C. Rossmann,
Risk Manager/Director of Finance

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved As To Content:

Steve Erikson, Director of Engineering

**Playcore Wisconsin Inc. dba
GameTime**

Signature

Clint T. Whiteside

Name

Sales Administration Project Manager

Title

Date

EXHIBIT "A"
EQUIPMENT SPECIFICATIONS

		Per Plans		
		City		School
Item No.	Description	Park	Barn	
01	SPLIT LOG BENCH #38231	2	1	2
02	JAZZ COMBO #4680	1		1
03	CANTATA CHIMES #3256	1		
04	CONCERT TRIO #3259	1		1
05	LEAF TRASH RECEPTACLE #38210	2	1	2
06	SONA PLAY ARCH ON CONCRETE BASE #YA3500	1		
07	INCHWORM #7112L	1		
08	ROUNDAABOUT #3148	1		
09	SPINNING SENSORY WAVE SEAT #3205	1		
10	SHADOW PLAY FLOWER #6238	1	1	1
11	GAME TIME CUSTOM POWER SCAPE	1		1
12	FLOWER SHADE	2		
13	FLOWER TALK TUBE#38018	3		
14	5' SINGLE ZIP SLIDE #90503	1		
15	7' WILDERSLIDE #90704	1		

16	6' WILDERSLIDE #90700	1		
17	4' DOUBLE ZIP SLIDE #90507	1		
18	LADYBUG #7114L	1		
19	CUSTOM POD CLIMBER	1		
20	CUSTOM NET CLIMBER	1		
21	PICNIC TABLE #796		1	
22	4 FEET HAY BALE STACK SEAT		1	
23	CUSTOM WHIMSICAL BARN #8888		1	
24	OUTDOOR THEATRE WITH MASHROOMS			1
25	SMALL MUSHROOM		2	
26	THRIVE 450 #14912S	1		
27	THRIVE 250 #14912S	1		
28	OMNITRI NET #3137			1
29	DOUBLE ARCH SWING #5057			1
30	BUTTERFLY NET #38003			1
31	ROCKIN ROBIN #38020	1		1
32	HARMONIC CHIMES #4676			1
33	LARGE MASHROOM #38109		1	
34	SURFACING COLOR FLOWER, TYP.	5		3

35	YALP MEMO ON CONCRETE BASE #YA3900			1
36	BIKE RACK #38054	4		

EXHIBIT "B"
DELIVERY SCHEDULE

City of Milpitas North Storage Yard

1425 N. McCarthy Drive

Milpitas CA 95036

Confirmation by Contractor of delivery date and time shall be coordinated two (2) business days prior to delivery of the equipment with Danny Lopez, Public Works Manager, at 408-586-2647 or DLopez@ci.milpitas.ca.gov

No delivery shall be made on a City Holiday. A list of City Holiday closures can be found here: <http://www.ci.milpitas.ca.gov/milpitas/departments/about-human-resources-2/city-milpitas-holiday-closures/>

EXHIBIT "C"

FEE SCHEDULE

Item/Part #	Description	Qty	Unit Price	Ext. Price
4680	GameTime - Jazz Combo	1	\$5,408.72	\$5,408.72
3256	GameTime - Cantata Chimes	1	\$4,259.27	\$4,259.27
3259	GameTime - Concert Trio	1	\$3,778.15	\$3,778.15
38231	GameTime - Split Log Bench	3	\$1,941.10	\$5,823.30
38217	GameTime - Flower Talk Tube Ground Level 2-5	3	\$500.64	\$1,501.92
7112L.	GameTime - Inchworm	1	\$7,373.00	\$7,373.00
7114L.	GameTime - Ladybug	1	\$4,924.00	\$4,924.00
6238	GameTime - Shadow Play Flower	2	\$3,921.12	\$7,842.24
3205	GameTime - Spinning Sensory Wave Seat	1	\$920.64	\$920.64
3148	GameTime - Roundabout	1	\$26,542.11	\$26,542.11
38109	GameTime - Large Mushroom Red	1	\$574.24	\$574.24
38110	GameTime - Small Mushroom Red	2	\$500.52	\$1,001.04
796	GameTime - H D Picnic Table, 6' Alum	1	\$838.08	\$838.08
38210	GameTime - Leaf Trash Receptacle	3	\$967.33	\$2,901.99
14912S	GameTime - Thrive 450 Surface Mount	1	\$19,301.10	\$19,301.10
38054	GameTime - Nature Bike Rack	4	\$304.08	\$1,216.32
Custom	PlayWorx GFRC - 4' Hay Bale Stack Seat, GFRC	1	\$11,280.00	\$11,280.00
8888	GameTime - Whimsical Barn	1	\$62,980.00	\$62,980.00
5212SP	GameTime - Hillside Tug Ropes w Handholds	1	\$2,218.40	\$2,218.40
8888	GameTime - Hillside Cargo Climber	1	\$6,504.80	\$6,504.80
8888	GameTime - Hillside Double Net Climber w Pods	1	\$19,552.00	\$19,552.00
8888	GameTime - Pollen Pod Hillside Climb Activity	1	\$14,438.40	\$14,438.40
RDU	GameTime - GameTime Custom PowerScope 5-12 Unit (US Communities Discount at 17.29% and GameTime Grant at 21.39%)	1	\$82,676.43	\$82,676.43
14911S	GameTime - Thrive 250 Surface Mount	1	\$9,483.11	\$9,483.11
YA3500	Yalp - Yalp Sona Play arch, including Funky Floor	1	\$33,875.00	\$33,875.00
YA8551	Yalp - Sona PRO MyYalp Subscription (10 year)	1	\$6,250.00	\$6,250.00

YA3531D1	Yalp - Sona deep mount kit (to use with concrete)	1	\$0.00	\$0.00
Flower Shade	USA Shade - Flower Shade (22 ft x 21 ft, 12 ft entry)-	2	\$19,320.00	\$38,640.00
	Drawings USA Shade - Sealed Engineered Drawings	1	\$850.00	\$850.00
38020	GameTime - Rockin Robin	1	\$2,702.28	\$2,702.28
RDU	GameTime - 4' Double Zip Slide - Hill Slide	1	\$3,565.92	\$3,565.92
RDU	GameTime - 6' WilderSlide - Hill Slide	1	\$4,355.56	\$4,355.56
RDU	GameTime - 5' Single Zip Slide - Hill Slide	1	\$3,504.36	\$3,504.36
RDU	GameTime - 7' WilderSlide - Hill Slide	1	\$4,883.76	\$4,883.76
RDU	GameTime - GameTime Custom PowerScope 5-12 Unit* (US Communities Discount at 21.74% and GameTime Grant at 14.74%)	1	\$75,947.20	\$75,947.20
4680	GameTime - Jazz Combo	1	\$5,408.72	\$5,408.72
5057	GameTime - Double Arch Swing	1	\$11,273.99	\$11,273.99
4676	GameTime - Harmonic Chimes (set of 3)	1	\$2,769.35	\$2,769.35
3259	GameTime - Concert Trio	1	\$3,778.15	\$3,778.15
38231	GameTime - Split Log Bench	2	\$1,941.10	\$3,882.20
38020	GameTime - Rockin Robin	1	\$2,702.28	\$2,702.28
38003	GameTime - Butterfly Net	1	\$11,610.48	\$11,610.48
38210	GameTime - Leaf Trash Receptacle	2	\$967.33	\$1,934.66
RDU	GameTime - #4147RP Outdoor Theatre w Mushrooms	1	\$13,163.84	\$13,163.84
3137	GameTime - Omnitri Net	1	\$23,252.78	\$23,252.78
6238	GameTime - Shadow Play Flower	1	\$3,921.12	\$3,921.12
YA3900	Yalp - Yalp Memo Activity Zone (game posts only)	1	\$37,750.00	\$37,750.00
YA8581	Yalp - Memo PRO MyYalp subscription (10 year)	1	\$6,250.00	\$6,250.00
YA3902	Yalp - Standard Memo flooring in black and white	1	\$4,200.00	\$4,200.00
YA3930D	Yalp - Memo deep mount kit (to use with concrete)	1	\$0.00	\$0.00
Equipment Sub Total				\$609,810.91
City of Milpitas Sales Tax (9.0%)				\$54,882.98
Shipping and Handling				\$46,310.00
Agreement Not-To-Exceed Amount				\$711,003.89

Exhibit “D”

Solicitation

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