

EXHIBIT
"B"

**CITY OF ROUND ROCK AGREEMENT
FOR PURCHASE OF AUDIOBOOKS
AND EDUCATIONAL MATERIALS
WITH
PLAYAWAY PRODUCTS, LLC**

THE STATE OF TEXAS

§

CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

§

THAT THIS AGREEMENT for the purchase of audiobooks and educational materials, and related goods, for the City's Library (referred to herein as the "Agreement"), is made and entered into on this the ____ day of the month of _____, 2023 by and between the CITY OF ROUND ROCK, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and PLAYAWAY PRODUCTS, LLC, whose offices are located at 31999 Aurora Road, Solon, Ohio 44139 (referred to herein as "Vendor").

RECITALS:

WHEREAS, purchase of audiobooks and educational materials, and related goods, for the City's Library; and

WHEREAS, expenditures that are for procurement of items from only one source, including books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials, are exempt from competitive bidding requirements pursuant to Section 252.022 of the Texas Local Government Code; and

WHEREAS, the City has determined that Vendor is a sole source provider for these goods and services; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is

mutually agreed between the parties as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City is obligated to buy specified goods and services and Vendor is obligated to provide said goods and services. The Agreement includes the attached exhibit.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and services** mean the specified services, supplies, materials, commodities, or equipment.

2.01 EFFECTIVE DATE AND TERM

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

B. The term of this Agreement shall be for sixty (60) months from the effective date of this Agreement with no automatic renewals.

C. City reserves the right to review the relationship with Vendor at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

The goods and services which are the subject of this Agreement are described in Exhibit "A," attached hereto and incorporated herein by reference for all purposes. Exhibit "A," together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

4.01 SCOPE OF WORK

Vendor shall satisfactorily provide all services described under the attached Exhibit "A." Vendor's undertakings shall be limited to performing services for the City and/or advising City concerning those matters on which Vendor has been specifically engaged. Vendor shall perform its services in accordance with this Agreement, in accordance with the appended exhibit, in accordance with due care, and in accordance with prevailing industry standards for comparable services.

5.01 CONTRACT AMOUNT

In consideration for the goods and related services set forth in the attached Exhibit "A," City agrees to pay Vendor a not-to-exceed amount of **Thirty-Five Thousand and No/100 Dollars (\$35,000.00)** per year and a total of **One Hundred Seventy-Five Thousand and No/100 (\$175,000.00)** for the term of the Agreement.

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- D. Delivery or performance dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year. Any early termination due to non-appropriation of funds shall not obligate Vendor to refund any prepaid fees.

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which

City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

9.01 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

10.01 TAXES

City represents it is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor's charges. Upon Vendor's request, City shall provide evidence of tax exempt status. If City does not provide requested evidence of tax exempt status upon Vendor's request, taxes may be included in Vendor's charges.

11.01 ORDERS PLACED WITH ALTERNATE SERVICES PROVIDERS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers

12.01 CITY'S REPRESENTATIVE

City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Michelle Cervantes
Library Director
200 East Liberty Avenue
Round Rock, Texas 78664
(512) 218-7010

13.01 INSURANCE

Vendor shall meet all City of Round Rock Insurance Requirements as set forth at:
http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf

14.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

15.01 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Vendor agrees that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- B. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- C. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. In the event of default by Vendor as described in 15.01 above and not cured by Vendor within thirty (30) days from the City's written notice, City has the right to immediately terminate this Agreement for cause, in whole or in part as to the affected service.

B. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City as further described in the License Agreement, or by mutual agreement to terminate evidenced in writing by and between the parties.

C. In the event City terminates under subsection (A) of this section, the following shall apply: Vendor shall discontinue all services in connection with the performance of this Agreement. Upon termination, Vendor shall issue City a pro-rata refund of prepaid fees corresponding to the unused balance of the subscription term as its sole and exclusive remedy. Upon termination, each party reserves the right to pursue all available legal remedies.

17.01 INDEMNIFICATION

Vendor shall indemnify and hold harmless from liability for all costs or damages incurred by City in an action or threatened action for infringement of an intellectual property right of a third party, relating to or caused by the Vendor's products and services ("Service") in the form in which it is furnished hereunder, provided that City gives Vendor notice of any suit or threatened suit for infringement brought within twenty (20) days of the day of service of the complaint upon City or from the receipt by City of notice of a threatened suit and further provided that Vendor shall control the defense of any such suit. Vendor shall not be liable hereunder if: (1) any infringement or violation claim is based solely upon the use of the Service in combination with the programs, equipment or devices not of Vendor origin, design or selection; or (2) any infringement or violation claim arises out of use of the Service in a manner contrary to the rights granted in this Agreement, including use contrary to the Copyright Act of 1976, Title 17 U.S.C. or other intellectual property law. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.01 CONFIDENTIALITY

Each party agrees that it will not disclose to any third party or unauthorized personnel any information concerning the customers, trade secrets, methods, processes, procedures or any other confidential, financial or business information of the other party which it learns during the course of its performance of this Agreement, without the prior consent of the other party unless such disclosure is required by law. The parties recognize and understand that City is subject to the Texas Public Information Act and its duties run in accordance therewith.

19.01 COMPLIANCE WITH LAWS, CHARTER, AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains

written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott Israel and will not boycott Israel at any time during the term of this Agreement.

C. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

D. In accordance with 2274, Texas Government Code, a governmental entity may not enter into a contract with a company with at least ten (10) full-time employees for a value of at least One Hundred Thousand and No/100 Dollars (\$100,000.00) unless the contract has a provision verifying that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott energy companies, and it will not boycott energy companies during the term of this Agreement.

20.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party except that Vendor may assign this Agreement in whole or in part as part of a corporate reorganization, consolidation, merger or sale of substantially all of its assets related to this Agreement without the City's prior consent.

21.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;
or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

Playaway Products, LLC
31999 Aurora Road
Solon, OH 44139

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO: Stephanie L. Sandre, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

22.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

23.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, including the License Agreement attached as Exhibit "A," constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

24.01 DISPUTE RESOLUTION

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

25.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any

stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

26.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Attest:

By: _____
Meagan Spinks, City Clerk

For City, Approved as to Form:

By: _____
Stephanie L. Sandre, City Attorney

Playaway Products, LLC

By: Torin Cone
Printed Name: Torin Cone
Title: Vice President, Sales + Marketing
Date Signed: 6/15/2023

Exhibit "A"



Custom Order Program Playaway Products and Round Rock Public Library

Welcome to the Playaway Products Custom Order Program. This program is designed to give libraries the most flexibility to serve their patrons.

By signing this agreement, Round Rock Public Library agrees to the following:

- Round Rock Public Library agrees to spend a minimum of \$35,000 annually on Playaway Pre-Loaded Products and Accessories at the following discount tiers:

Actual Annual Spend	Playaway Audiobooks Discount*	Playaway Product Accessories	Playaway Recorded Books Discount	Playaway Launchpad Discount	Wonderbook Discount
\$35,000-50,000	28%	28%	5%	10%	7%

* excluding Pottermore and Recorded Books content

- The monthly spend will accrue at the time order is placed, not at the point of shipment/invoice.
- An updated spend report will be sent to Round Rock Public Library monthly and as requested.
- Discounts will be assessed at the end of the month. When the dollars spent reach the next level, the discount will increase and remain in effect until the renewal of this agreement.
- Discounts affiliated with the Playaway Products Custom Order Programs cannot be combined with any other offers or discounts except where explicitly stated.
- **Play It Forward:** Round Rock Public Library may participate in the Play it Forward program.
 - Additional program details available at shop.playaway.com
- All processing services agreements will apply to titles shipped under this agreement.
- Additional program benefits include:
 - Free 2-year manufacturer's warranty on all purchased Launchpads following execution of COP agreement.
 - Free 2-year manufacturer's warranty on all purchased Wonderbook following execution of COP agreement
- The program can be cancelled at any time. Requests must be made in writing and sent by email to Kristi Lawler at klawler@playaway.com

Exhibit "A"

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- Upon cancellation of the program, discounts offered to Round Rock Public Library System will revert to:

Playaway Discount	Playaway Product Accessories	Playaway Recorded Books Discount	Playaway Wonderbook Discount	Playaway Launchpad Discount	
25%	25%	0%	0%	0%	

- Program shall be pro-rated initially with a start date of 05/01/2023. Pro-rated program end date shall be 09/30/2023 (minimum spend \$14,583 pro-rated for this term). This agreement will renew at stated discount rates and spend levels for 5 successive twelve (12) month terms starting 10/01/2023 and ending 09/30/2028, unless written notice is given thirty (30) days prior to the end of the preceding term to Kristi Lawler, Account Manager at klawler@playaway.com.
- If minimum spend level or terms of this agreement are not met by Round Rock Public Library, Playaway Products reserves the right to cancel the renewal of this agreement. Playaway Products will provide written notice to Rhonda Kuiper, rkuiper@roundrocktexas.gov of cancellation. Upon cancellation of the program, discounts offered to Round Rock Public Library will revert to: [See above table].

By signing below, I agree to the terms and conditions within this document and represent that I am an authorized purchasing agent for Round Rock Public Library.

Authorized Agent Printed Name:

Authorized Agent Signature :

Date :