



AGREEMENT/CONTRACT

Notice to Bidders:

Documents in the following section are not to be submitted with Bid Proposal. They will be signed and submitted at time of Award of Contract.

IMPORTANT NOTICE:

- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- As required by law, the Contractor shall pay all workers California prevailing wages for each trade or classification on the job during the term of this project. These rates include employer payments for health and welfare, pension, vacation, travel time, subsistence pay and apprenticeship or training.
- Contractors and subcontractors are required to submit certified payroll records (CPRs) to the Labor Commissioner using DIR's electronic certified payroll reporting system.
- For registration and other detailed information about compliance, visit <http://www.dir.ca.gov/Public-Works/Contractors.html>

AGREEMENT

1. **Project Name.** *Shade Structure at Children's Park*

2. **Project Location:**

The property is a 1.00 acre parcel shown as Assessor's Parcel Number 075-051- 022. Street address is 6881 Picasso Rd, located at the corner of Camino Del Sur in Isla Vista, CA. See **Attachment I** for Site Location Map.

3. **Parties.**

Isla Vista Recreation and Park District (District)
961 Embarcadero Del Mar
Isla Vista, CA 93117 (650)
805-968-2017

District Representative:

Rodney Gould
General Manager/Project Manager
805-968-2014 Ext 27
rgould@ivparks.com

Contractor Name: _____

License Type and Number _____

Address: _____

Phone: _____

Email: _____

4. **Scope of Work.**

This project includes the removal of 4 skylights and the re-roofing of an existing 412 sq. ft. restroom/storage structure, the addition of 310 sq. ft. to an existing patio area and construction of 615 sq. ft. patio cover with exterior lighting to be attached to the existing restroom/storage structure at Children's Park. The existing structure and new patio cover are to be reroofed as a single unit using 30 year architectural asphalt shingles. All work to be performed per the attached Project Info and Site Plan dated 4/5/17 drawn by Jill Horton, Agent for Owner. (See **attachment A**)

NOTICE: The project is located in an active park and the Contractor is responsible for fencing the construction site and keeping construction debris out of the surrounding area at all times for visitor safety. Contractor is responsible for maintaining a clean safe construction site for the duration of the project and promptly disposing of all demolition and construction materials. Failure to do so may result in District executing the work at Contractors expense.

5. Contract Price.

Upon Acceptance of the Work by District Representative, District agrees to pay Contractor, as full compensation for the Work, the sum of \$_____ as submitted in Contractors Bid proposal. Partial payment shall not constitute final Acceptance of any Work or relieve Contractor of any obligations hereunder. Contractor shall submit a weekly work sheet indicating staff and hours worked. Project can be billed at 25%, 50%, 75% and 100% completion of the project. District shall retain ten percent (10%) from each payment (“Retention”). This Retention may be requested thirty-five (35) days after formal Acceptance of the Work. Contractor may elect to substitute acceptable securities equivalent to the amount withheld as provided for by Public Contract Code §22300.

6. Term.

The Term of this Agreement shall commence on the date of execution hereof by the District’s General Manager and shall end upon formal written Acceptance of the Work by same. Either party may terminate this Agreement with or without cause by providing 14 days’ notice in writing to the other party. The District may terminate this Agreement at any time without prior notice in the event that Contractor commits a material breach of the terms of this Agreement. If the District elects to terminate the Agreement, it shall pay Contractor for services satisfactorily provided up to the effective date of termination, except that the District may deduct from that payment the amount of any costs the District incurred as a result of any breach of the Agreement.

7. Beginning and Completion of Work.

Time is of the essence to this Agreement. Contractor shall provide District Representative with evidence of all required certificates and licenses within fourteen (14) calendar days of the commencement of the Term of this Agreement. Contractor agrees that the Work shall be fully completed to District Representative’s satisfaction by September 30 unless otherwise extended by written approval from District. Contractor shall not start any work until issuance of a written Notice to Proceed is issued. Working hours are 7am-5pm, Monday through Friday except when extended in writing by the District Representative. Written permission may be requested by notifying the District Representative at least two (2) working days in advance.

8. Extensions, Delays.

The District Representative shall have sole discretion in the approval or denial of Contract time extensions. The Contractor may make written request to the District Representative for an extension of time to complete the Contract promptly following an occurrence of any one or more of the following:

- (1) Delay due to work by the District.
- (2) Delay in delivery or availability of material or equipment, if the Contractor can document that the material or equipment, has been ordered with enough lead-time for the manufacture or acquisition of the item.
- (3) Labor dispute beyond the Contractor's control that affects work progress.
- (4) A natural disaster that the District Representative concludes substantially damages completed work or stored material (provided the Contractor's neglect did not contribute to the damage).
- (5) Unusual Inclement Conditions if an extended inclement weather season causes contract work delay.

9. **Liquidated Damages.** If the Contractor fails to complete the work within the specified time plus any extensions thereof, the Contractor shall become liable to the District, as liquidated damages, the sum of \$100.00 for each calendar day beyond the time specified above. As the actual damage incurred is difficult to calculate, the parties hereby agree that this is a fair and reasonable approximation. Nothing in this Paragraph shall be construed so as to preclude District from recovery of damages for causes other than delay by Contractor.

10. **Indemnification.**

- A. Contractor agrees to indemnify, hold harmless, defend and protect the District, its officers, directors, agents and employees from any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including all reasonable attorney's fees), penalties, judgments or obligations whatsoever in connection with any injury, death, or damage to any person or property or pecuniary or monetary loss that results from, arises out of, or in any way relates to the activities of the Contractor both on and off the project site, including but not limited to claims related to the presence, use or disposal of hazardous materials, except for injury or damage resulting from the sole negligence or willful misconduct of the District.
- B. In the event a claim is made against the Contractor, its officers, directors, agents and/or employees or any action concerning this Contract, the Contractor shall immediately notify the District.
- C. In the event that an apportionment of liability between the District and the Contractor is made by the judge in a court of competent jurisdiction, neither the District nor the Contractor shall request that apportionment of liability be determined by a jury. The Contractor shall be responsible to indemnify and hold harmless the District as set forth above, unless the court determines that the injury or damage resulted from the sole negligence or intentional and willful misconduct of the District.
- D. The Contractor hereby waives all claims and recourse against the District, including the right of contribution for loss or damage to property, and hereby releases the District from any liability related to or in any way connected to the Contractor's activities or the Contractor's use of the project site, premises or facilities.
- E. The Contractor and its subcontractors shall have sole responsibility for the safety of their equipment, property and personnel (including, but not limited to, employees, agents and officers from any and all injuries, death or damages.

11. **Insurance.**

A. **General Insurance Requirements**

Contractor shall provide, and keep in full force and effect during the Term of this Agreement, at Contractor's sole expense, policies of insurance with companies licensed to do business in the State of California that are acceptable to District for the Coverages as more particularly set forth below. Contractor shall keep all required policies in full force and effect until final acceptance of the Work by District. Contractor shall supply District with a Certificate Insurance with endorsement, naming the Isla Vista Recreation and Park District as additionally insured for each policy. The

Certificates of Insurance must be on a primary non-contributing basis in relationship to any other insurance available to District. The Certificate is subject to approval by the District and the requirement must be satisfied before a Notice to Proceed will be issued. District reserves the right to cancel the contract if these requirements are not met within 30 calendar days of the Notice of Award.

B. Specific Insurance Requirements.

- (a) Workers' Compensation Employer's Liability coverage as required by statute, in full compliance with California Labor Code §3700, and containing a waiver of subrogation in favor of District. Contractor hereby acknowledges having read and understood the provisions of the California Labor Code §3700, which require every employer to be insured against liability for workers' compensation or that they undertake self-insurance in accordance with the provisions of that code, and Contractor agrees to comply with such provisions before commencing the Work. Contractor has executed **Attachment E** – Labor Code §1861 Workers Compensation Certificate, attached hereto and incorporated herein.
- (b) Comprehensive or Commercial General Liability, including coverage for Bodily Injury and Property Damage in the amount of \$1,000,000.00 per occurrence and \$2,000,000 aggregate for all covered losses.
- (c) Business Automobile Liability insurance with coverage evidencing “any auto” and with limits of no less than \$1,000,000.00 per occurrence.
- (d) Subcontractor(s) Insurance Requirements. Contractor shall either require each subcontractor to procure and maintain during the life of its subcontract all insurance of the type and in the amounts specified above or insure the activities of subcontractor(s) under its own policy or policies.

12. Licensing.

Contractor:

Contractor must possess an appropriate license that is current and valid at the commencement of and throughout the Term of this Agreement. The License required by this Agreement is a Type B General Building Contractor.

Subcontractors:

Contractor must set forth the name, address, phone number, type and cost of work, and proof of required license for each subcontractor who will perform work or render services in any amount exceeding one-half percent (1/2%) of the total bid according to provisions of the California Public Contract Code §4100 through §4113. Contractor has executed **Attachment F -Subcontractors**, attached hereto and incorporated herein.

13. Non-Collusion Affidavit.

Pursuant to California Public Contract Code Section 7106, Contractor has executed **Attachment C - Non-Collusion Affidavit**, attached hereto and incorporated herein.

14. Change Orders.

The District reserves the right to require alterations, additions to and/or deletions from the Work. If the District Representative determines that a change ordered by the District causes an increase or decrease in the Contractor's costs or time required for completing the Contract, appropriate adjustments to the Contract price and/or time shall be made. The Contractor shall not be entitled to any compensation for extra work or time to finish the Contract without a written directive from the District Representative. Attached hereto and incorporated herein as **Attachment G-1**, "Proposed Change Order" and as **Attachment G-2**, "Change Order", are the sole permitted forms for making a valid change order amendment to this Agreement. Contractor must submit a Proposed Change Order and receive a fully executed Change Order before this Agreement may be deemed so amended.

15. Guarantee Bond.

Contractor shall furnish to the District a fully executed Faithful Performance Bond for 100% of the Contract price. Bond is subject to approval of District Representative.

16. Contract Documents.

This Agreement with all attachments and the Project Plans and Specifications, incorporated herein by reference, constitute the "Contract Documents" and together represent the entire, integrated Agreement as to the Work contracted for between the parties. It supersedes all prior negotiations, representations or agreements, whether written or oral. The Contract Documents are complementary. Work shown on the Plans and not mentioned in the Specifications, or vice versa, is to be executed as if in both.

17. Permits and Regulations.

The plans for this project have been permitted by the County of Santa Barbara. A copy of all permits and agreements must be displayed at the Work site. The Contractor shall comply with all applicable laws, ordinances, rules and regulations. Before the District Representative issues the certificate for final payment, the Contractor shall deliver to the District Representative all licenses, permits and certificates of inspection.

18. District Representative.

During the term of this Agreement, District Representative or his or her designee, is fully authorized to represent the District in all contractual matters. District Representative shall make all decisions as to the intent of the Plans and Specifications; the amount and quality of work performed and/or materials furnished; the manner and rate of work performed; the fulfillment of the Contract; and any compensation due to the Contractor. Disputes or claims between the Contractor and the District arising from this Agreement valued at \$60,000.00 or less shall be governed by the claims resolution procedures of California Public Contract Code Section 20104 *et seq.* The District Representative has the authority to reject any Work or material that does not conform with Contract requirements and to stop any and all Work deemed necessary for such rejection at no cost to the District. The District Representative is authorized to require Contractor to immediately correct any unsafe or unsuitable condition to the District Representative's satisfaction at the Contractor's expense.

The District Representative may furnish additional instructions needed for the proper execution of the Work. The District Representative has the authority to require minor field adjustments in the Work not involving extra cost. Contractor shall not modify contract items without the District Representative's approval.

19. Examination of Site and Contract Documents.

- A. *Fully informed execution of Agreement.* By signing this Agreement, Contractor acknowledges having examined the Work site, compared the site with the Plans and Specifications, determined any site variations that affect the bid, and investigated the conditions of existing clearance, restrictions or limitations that affect access to the work. Contractor's failure to do any of the above shall not become a basis for a claim to additional monies or for an extension of time for performance hereunder. No allowance shall be made on behalf of the Contractor due to neglect, failure or error in acquainting itself with the project or any and all of the Contract Documents. All project documents may be viewed on the District website at http://ivparks.org/shade_structure/
- B. *Contractor's Notice to Subcontractors.* The Contractor's failure to provide all subcontractors with all information received during the pre-bid period shall not become a basis for monetary claim, extension of time, or change to Contract requirements.

20. Water and Environmental Protection.

- A. *Water Pollution.* The Contractor shall exercise every precaution to protect turf and landscape from contaminated water used in the construction process. The District Representative may require the Contractor to revise project operations if the Contractor's pollution control measures are ineffective.
- B. *Dust Control.* The Contractor shall control dust resulting from the Contractor's performance of the Work either by applying water or a dust palliative without additional costs to the District. District Representative has full authority to suspend work wholly or in part should the Contractor fail to perform to the satisfaction of the District Representative.
- E. *Wildlife.* Construction workers shall be instructed not to disturb or feed wildlife.

21. Safety and Public Convenience.

The Contractor shall be responsible for initiating, maintaining and supervising suitable safety precautions and programs. All Work shall conform to the requirements of the California Administrative Code, Title 8, Industrial Relations, Division of Industrial Safety. The Contractor alone shall be responsible for responding to and final satisfaction of any and all claims of personal injury or property damage, and for the violation of any safety or health laws, statutes, ordinances or regulations. Contractor shall at all times ensure the least possible obstruction to traffic and other inconvenience to the general public.

22. Fire Hazards and Prevention.

Contractor shall be responsible for any fire ignited by the Contractor, employees, subcontractors, or equipment. Employees shall not be allowed to start fires. No open flames shall be permitted.

23. Utilities.

- A. *Existing Utilities.* The Contractor's attention is directed to the existence of utilities shown or not shown on the Plans. The location of any utilities shown is approximate. It is the Contractor's responsibility to investigate and locate existing utilities. The Contractor will immediately report to the District Representative any utility that varies significantly from the Plans. The Contractor shall remove and/or replace any known existing structures, pipes, conduits, pavements, and/or other items identified in the plans as required for the performance of the Work at no additional cost to the District. The Contractor shall repair all areas surrounding utility work to the District Representative's and utility owner's satisfaction according to California Government Code §4215.

- C. *Utilities Not Identified in Plans and Specifications.* When any utility on the project must be removed, relocated, protected or repaired by the Contractor and the utility is not identified in the Plans and Specifications, the District shall compensate the Contractor for the cost of that utility work. The District shall compensate the Contractor for equipment idled by work on unidentified utilities. The Contractor shall use reasonable care in his work to prevent damage to any unknown utility. The District shall not charge the Contractor for delay of work due to any unidentified utility. The Contractor shall notify the District Representative and the utility owner in writing, whenever the Contractor discovers an unidentified utility according to California Government Code §4215.

- D. *Right to Enter Reserved.* The District and any and all utility companies have the right to enter the project to make repairs and changes that become necessary in the performance of this Contract.

- E. *Certificate of Satisfaction.* The Contractor shall, at Contract completion, produce written certification provided by any utility affected by the Contractor's work stating that the utility is satisfied with the Contractor's work.

- F. *Temporary Utilities and Facilities.* Unless otherwise stated in the Contract Documents, Contractor shall provide any necessary temporary utilities at no expense to the District. The Contractor shall immediately remove temporary items upon completion of Contract or at the direction of the District Representative.

24. Protection of Work and Property.

The Contractor shall protect from damage or loss Contractor's work and existing District, private or public improvements or resources including vegetation, pathways, roadways, structures, and utilities not designated for removal. The Contractor shall repair or provide replacement for any such damage or loss to the satisfaction of the District Representative, at no cost to the District.

25. Assumption of Risk.

- A. *Injury, Damage to Work.* The Contractor assumes all risks of injury or damage to the Work and materials arising from fire, storm, vandalism, theft or other causes prior to the Acceptance of Work. The Contractor shall repair and/or replace any Work or materials damaged or destroyed, from any cause, to the reasonable satisfaction of the District Representative and at no cost to the District.

B. *Exception.* The Contractor shall not assume risk of injury or damage to work when damage exceeding five percent (5%) of the total Contract amount is caused by an Act of God as defined in Public Contracts Code Section 7105 provided the Work damaged is built in accordance with acceptable and applicable building standards, and the Plans and Specifications. In event of the above, the District may terminate this Contract upon reasonable notice to the Contractor and upon payment of any amount owed.

26. Materials.

- A. All materials furnished by the Contractor shall be new and meet all standards of quality and workmanship of their kind unless otherwise specified in the Contract Documents. All materials are at any time subject to inspection, sample, test, approval or rejection by the District Representative. When required by the District Representative, the Contractor shall furnish acceptable documented evidence of the kind and quality of materials used. The words "or equal" in the Plans and Specifications mean "or equal in the opinion of the District Representative."
- B. The District Representative's approval of a substitute material shall not relieve the Contractor of responsibility for total compliance with the Plans and Specifications. The Contractor shall pay all costs for modifications resulting from the approved substitution of material. There shall be no cost to the District resulting from any substitute material.
- C. A request for a material substitution shall be submitted promptly to the District Representative in writing at least two (2) working days prior to the day approval is required so as not to delay the Work.

27. Equal Employment and Affirmative Action.

The Contractor and its subcontractors will comply with all applicable state equal employment opportunity and affirmative action laws throughout the term of this Agreement. The Contractor hereby certifies that it will not unlawfully discriminate in its employment with regard to race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, or age; that all federal, state and local directives and executive orders regarding non-discrimination in employment will be complied with; and that the principle of equal opportunity in employment will be demonstrated positively and aggressively.

28. Prevailing Wages.

As required by law, the Contractor shall pay all workers California prevailing wages for each Trade or classification on the job during the term of this Agreement. These rates include employer payments for health and welfare, pension, vacation, travel time, subsistence pay and apprenticeship or training. Prevailing wages and other important information is available on line at <http://www.dir.ca.gov/Public-Works/Contractors.html>

29. Inspection.

- A. *District Access.* The District and its duly authorized agent(s) shall have unrestricted access to the Work whether it is in preparation or in progress. The District and its duly authorized agent(s) shall at all times reserve the right to inspect and/or test for compliance with the Contract Documents any or all materials and/or work provided to or installed in the Work. The Contractor shall provide safe and proper facilities for access and inspection.

- B. *Required Inspections and Testing.* If any law, regulation, ordinance, public authority, specification or the District Representative requires any part of the Work to be specially inspected or tested, the Contractor shall notify the District Representative three (3) working days prior to the Work's readiness for testing or inspection.
- C. *Inspection of Phases.* The Contractor shall notify the District Representative two (2) working days in advance of each phase set forth in the Plans or Specifications for inspection.
- D. *Work, Examination; Re-examination.* The District Representative may order and the Contractor shall comply with the examination or re-examination of work. The Contractor shall not cause any work to be covered or enclosed without approval of the District Representative. Any work enclosed or covered before approval shall be uncovered. After inspection the Contractor shall restore all work to original condition at the Contractor's expense.

30. Final Inspection and Acceptance of Work; Punch List.

- A. When the Work is complete, Contractor shall request District Representative to make a final inspection of the Work. District shall make the final inspection within seven (7) calendar days of such request. If the District determines that the Work has been completed and is acceptable, the District Representative shall formally Accept the Work in writing. Upon acceptance, the Contractor shall be relieved of maintaining and protecting the work unless specified otherwise. If the District determines that the Work is not complete or is unacceptable, the Contractor shall be notified in writing of the deficiencies and the Contractor shall again initiate the procedure for final inspection after such deficiencies are corrected.
- B. The Work may be substantially completed and Accepted with a “punch” list, as determined by the District Representative. The punch list items must be completed within the 35-day Retention period. Failure to timely complete Work on the punch list by Contractor waives any and all rights to the Retention monies unless otherwise agreed in writing.

31. Guarantee, Correction of Work after Final Payment.

- A. In addition to any guarantees required by the Plans and Specifications, the Contractor guarantees all work and materials furnished under this Contract against defects for one (1) year from the date of final acceptance. The Contractor shall be liable for all damages and income lost resulting from defects. The Contractor shall, within seven (7) calendar days from receipt of written notice, repair and/or replace any defects (ordinary wear and tear excepted) and any resulting damage at the Contractor's sole expense. In the event the Contractor fails to remedy any defects within seven (7) calendar days from receipt of written notice, the District may have defects remedied at the Contractor's expense.
- B. Nothing in this Contract shall relieve the Contractor from responsibility for latent defects, departures from the Contract, fraud, gross mistakes, or damage resulting from any of the above.

C. Guarantees shall be in the form of the following, on the Contractor's own letterhead:

**GUARANTY-WARRANTY FOR THE
"SHADE STRUCTURE AT CHILDREN'S PARK PROJECT"**

We hereby warrant and guaranty that the installed, and work performed has been done in accordance with the Plans and Specifications and that the work as installed will fulfill the requirements of the guaranty- warranty included in these specifications. We agree to reimburse the District for any income lost and to repair or replace any or all of our work together with any other work which may be displaced by so doing, that may prove to be defective in workmanship or material within one (1) year from the date of acceptance of the above-named project by the District, without any expense whatsoever to the District, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of our failure to comply with the above-mentioned conditions within seven (7) calendar days after being notified in writing the District, we, collectively and separately, do hereby authorize the District to have such defects repaired and made good at our expense, and will honor and pay all costs and charges, including the District's administrative fee of fifteen percent (15%) of the total cost, thereof, upon demand.

Signed:

General Contractor: _____

Date: _____

32. Notice.

Any notice required or desired to be given under this Agreement shall be in writing and may be given by (i) depositing such notice in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to a party at its address set forth above; (ii) transmitting such notice by means of Federal Express or similar overnight commercial courier ("Courier"), postage paid and addressed to the other at its street address set forth below, or (iii) by personal delivery. Any notice given by Courier shall be deemed given on the date shown on the signed delivery receipt. Either party may, by written notice, change the address to which notices addressed to it shall thereafter be sent.

33. Miscellaneous.

- A. Should any provision of this Agreement prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.
- B. Any executed copy of this Agreement shall be deemed an original for all purposes.
- C. This Agreement may be executed in counterparts, which counterparts shall together constitute one agreement if signed by both parties.
- D. This Agreement shall be construed and enforced in accordance with the laws of the State of California.
- E. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against either party.

- F. Capitalized terms refer to the definition provided with its first usage in the Agreement.
- H. When the context of this Agreement requires, the neuter gender includes the masculine, the feminine, a partnership or corporation, trust or joint venture, and the singular includes the plural.
- G. The terms “shall,” “will”, “must” and “agree” are mandatory. The term “may” is permissive.
- H. When a party is required to do something by this Agreement, it shall do so at its sole cost and expense without right to reimbursement from the other party unless specific provision is made otherwise.
- I. Where any party is obligated not to perform any act, such party is also obligated to restrain any others within its control from performing such act, including its agents, invitees, contractors, subcontractors and employees.
- J. No responsibility either direct or implied will be assumed by the District for omissions or duplications to the Contractor or any subcontractors due to real or alleged error in arrangement of material in the Contract Documents.

Signature Page

Contractor:

Name and Title: _____ Date: _____

(please type or print)

Signature: _____

Date Federal Employer I.D. Number: _____

License Number Expiration Date: _____

Fully executed at Isla Vista, California:

Isla Vista Recreation and Park District

Rodney Gould, General Manager

Signature: _____ Date: _____

Attest:

Pegeen Soutar, Fiscal Officer

Signature: _____ Date: _____