

Request for Proposals
Owner's Representative and Construction Management Services
For Pardall Gardens and Children's Park Renovation Projects



APPENDIX C: PROFESSIONAL SERVICES AGREEMENT SAMPLE

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is made and entered into this _____ day of _____, 2023 (“Effective Date”) by and between _____ (“Contractor”) and the **ISLA VISTA RECREATION AND PARK DISTRICT**, a California special district (“District”), with reference to the following facts:

RECITALS

WHEREAS, District desires to engage the services of Contractor to provide professional services, as set forth herein; and

WHEREAS, Contractor represents that it has the qualifications, experience, ability, and staff to provide such services to District in a professional, efficient, and effective manner.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, Contractor and District agree as follows:

- 1. Retention of Contractor’s Services.** District hereby agrees to retain Contractor, and Contractor hereby agrees to provide the Services (as defined in Section 2.1) to District, in the manner and on the terms set forth in this Agreement.
- 2. Scope of Services.**
 - 2.1. Services.** Contractor shall provide to District the professional services described in Exhibit A attached hereto and incorporated herein by reference (“Services”). District shall have the right to order, in writing, changes in the Services. Any changes in the Services by Contractor must be in writing and approved by both parties. The cost, if any, of a change in the Services must be agreed to by both parties in writing.
 - 2.2. Provision of Services.** Contractor shall perform the Services in a professional, efficient, and effective manner and compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances. Contractor is required to provide all Services under this Agreement with a high degree of care and diligence, consistent with the professional standards observed by similar situated professionals in Santa Barbara County. In providing the Services, Contractor shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by District.
 - 2.3. Personnel.** Contractor represents and warrants that it has, or will secure at its own expense, all personnel required in performing the Services. All of the Services shall be performed by Contractor or under its supervision and all personnel engaged in the work shall be fully licensed and qualified to perform the Services. Contractor shall be responsible to District for the acts or omissions of any subcontractor or other personnel furnishing any of the Services. Contractor represents and warrants that Contractor

possesses all legally required licenses, permits and qualifications, if any, for the performance of the Services.

- 2.4. Materials to Be Furnished by Contractor.** Contractor shall supply Contractor's own supplies and equipment in performance of the Services and shall be fully responsible for the maintenance and repairs of said equipment. Contractor shall be responsible for renewing and paying for all required licensing and certifications for conducting the Services.
- 2.5. Timing of Performance.** Contractor shall perform the Services in consultation with District pursuant to the schedule set forth in Exhibit B attached hereto and incorporated by reference ("Work Schedule"). Contractor shall, at all times during the term of this Agreement, employ sufficient personnel to complete all Services in accordance with the Work Schedule. Notwithstanding the foregoing, the time frame set forth in the Work Schedule shall be extended for any unanticipated delay beyond the reasonable control of Contractor, provided that (a) the delay impacts the Work Schedule, and (b) Contractor notifies District in writing within two (2) business days of the commencement of such delay. Providing the foregoing requirements are met, the Work Schedule shall be extended by the length of the delay as determined in District's reasonable discretion.
- 2.6. Independent Contractor.** In the performance of the Services, the parties agree that Contractor and any subcontractors engaged by Contractor shall at all times be acting as independent contractors and not as employees, agents or partners of District. As more fully set forth in Section 4 below, Contractor and any subcontractors engaged by Contractor shall be responsible for their own insurance (including but not limited to liability, worker's compensation, health and automotive insurance), retirement contributions, and the compensation, benefits and taxes for their employees and subcontractors. Contractor acknowledges that District will make no income tax withholdings from the fees payable to Contractor pursuant to this Agreement.

3. Term and Termination

- 3.1. Term.** This Agreement shall commence upon the Effective Date and shall continue in effect until terminated as provided in Section 3.2 below or until one (1) year has passed since the completion of the Services to District's satisfaction.
- 3.2. Termination.** District may terminate this Agreement at any time without penalty or cause upon at least thirty (30) days' prior written notice to Contractor. In the event of a material breach of this Agreement by the other party, either party may terminate this Agreement upon five (5) days' prior written notice to the other party, which notice will expressly state the breach and provide a reasonable period for cure of such breach.
- 3.3. Effect of Termination.** In the event of termination of this Agreement, Contractor agrees to cease all work under this Agreement on or before the effective date of such termination. If termination is due to no fault or failure of performance by Contractor, Contractor shall be paid based on the percentage of work satisfactorily completed at the

time of termination. Contractor shall have no other claim against District by reason of such termination, including any claim for compensation.

4. Insurance.

4.1. Required Insurance. Contractor and any subcontractor engaged by Contractor shall, at its sole expense, maintain in effect at all times during the term of this Agreement the following insurance:

- (a) **Workers' Compensation.** Workers' compensation insurance as required by State law to cover employees of Contractor or employees of any subcontractor engaged by Contractor.
- (b) **General Liability.** Comprehensive General Liability insurance with minimum limits of not less than One Million Dollars (\$1,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by Contractor.
- (c) **Automobile.** Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit, covering any vehicle utilized by Contractor in performing the Services required by this Agreement.
- (d) **Professional Liability Insurance.** Professional Liability Insurance (errors and omissions) with minimum limits of Two Million Dollars (\$2,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by District. Further, Contractor agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

4.2. General Insurance Provisions.

- (a) Contractor shall require each of its subcontractors to maintain insurance coverage which meets all of the requirements of this Agreement.
- (b) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a A-:VII in the latest edition of Best's Insurance Guide.
- (c) Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, District may immediately terminate this Agreement.
- (d) At all times during the term of this Agreement, Contractor shall maintain on file with the District a certificate or certificates of insurance and insurance endorsements showing that the aforesaid policies are in effect in the required amounts. Contractor shall, prior to commencement of work under this Agreement,

file with the District Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming the District as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to District, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(e) The insurance provided by Contractor shall be primary to any coverage available to District. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(f) Any deductibles or self-insured retentions must be declared to and approved by District.

5. No Assignment. This Agreement may not be assigned in whole or in part by Contractor without the prior written approval of District. Any attempt by Contractor to so assign this Agreement or any rights, duties or obligations arising hereunder without such approval by District shall be void and of no effect. If assigned, Contractor shall nevertheless remain responsible for the Services under this Agreement.

6. No Discrimination. Contractor, in the operations to be conducted pursuant to the provisions of the Agreement, shall not discriminate or permit discrimination against any person or class of persons by reason of race, color, creed, religion, ancestry, sexual orientation, gender, age, handicap or national origin in any manner prohibited by the laws of the United States, State of California or otherwise. Noncompliance with provisions of this section shall constitute a material breach hereof.

7. Compensation; Waiver.

7.1. Compensation. [Check Applicable Provision]

If compensation is based on an hourly rate

District agrees to compensate Contractor for the Services and/or goods provides under this Agreement, and Contractor agrees to accept in full satisfaction for such Services, a sum not to exceed _____, as more particularly described in Exhibit A, attached hereto and incorporated herein, based on the hourly rates set forth in Exhibit A.

If compensation is based on a flat fee

District agrees to compensate Contractor for the Services and/or goods provides under this Agreement, and Contractor agrees to accept in full satisfaction for such Services, a sum not to exceed _____, as more particularly described in Exhibit A, attached hereto and incorporated herein.

7.2. Expenses. [Check Applicable Provision]

If no reimbursable expenses

The amount set forth in Section 7.1 shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, and installation, as applicable). There shall be no claims for additional compensation for reimbursable expenses.

If District reimburses for certain expenses in addition to compensation

Contractor shall be entitled to reimbursement only for those expenses expressly set forth in Exhibit A. Any expenses incurred by Contractor which are not expressly authorized by this Agreement will not be reimbursed by District.

7.3. Method of Payment. Contractor shall submit to District on the first day of each month during the term of this Agreement an invoice for the Services rendered to District or in such other manner as set forth in Exhibit A. District shall pay Contractor for such Services within thirty (30) days of receipt of the statement.

7.4. Waiver. In no event shall the making by District of any payment to Contractor constitute a waiver by District of any breach of any covenant or any default under this Agreement which may then exist on the part of Contractor.

8. General Provisions.

8.1. Notices. Any notices required or permitted by this Agreement, and any other notices given by one party to the other, shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall be (a) sent by United States Mail or overnight delivery using a nationally recognized overnight carrier or (b) sent by personal delivery during the receiving party’s regular business hours. Notices delivered personally shall be deemed delivered as of the date of actual receipt; mailed notices shall be deemed delivered one (1) business day following the date of mailing.

District:

961 Embarcadero Del Mar
Isla Vista, California 93117
Attention: District Clerk

Contractor:

[Redacted Contractor Information]

8.2. Indemnification. Contractor shall indemnify, defend, and hold harmless District, and its elected officials, officers, employees and designated volunteers (collectively, "Indemnitees") from and against any and all claims, demands, damages, liability, loss, settlements, costs and expenses, including but not limited to personal injury or death and property damage ("Claims"), arising out of, pertaining to, or relating to the Agreement, including without limitation the performance of Services or Contractor's other obligations under this Agreement. Contractor shall defend Indemnitees in any actions filed in connection with any such Claims with counsel of District's choice, and shall pay all costs and expenses, including actual attorney's fees, incurred in connection with such defense.

8.3. Conflict of Interest. No director, official or employee of District shall have any personal interest, direct or indirect, in this Agreement nor shall any such director, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

Contractor warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement except such attorneys' and Contractor's fees as it may incur in preparation of this Agreement.

8.4. Ownership of Work Product. Contractor agrees that all work product created or developed by Contractor in connection with the Services shall be the exclusive property of District. Contractor agrees to execute any documents reasonably requested by District to evidence District's ownership of such work product. Upon termination of this Agreement, Contractor shall immediately return to District any confidential or proprietary information of District and any work product created or developed in connection with the Services.

8.5. Severability. If any term or provision of this Agreement is deemed invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

8.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.7. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the rendering of the Services by Contractor for District and contains all of the covenants and agreements between the parties with respect to the rendering of Services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this

Agreement shall be effective only if it is in writing and signed by both parties or as otherwise provided herein.

- 8.8. Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.
- 8.9. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 8.10. Third Party Obligations.** District and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give any right or benefit, whether directly or indirectly, to third parties.
- 8.11. Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- 8.12. Signature Authority.** Each individual signing this Agreement certifies that (i) he or she is authorized to sign this Agreement on behalf of his or her respective organization, (ii) such organization has obtained all necessary approvals to enter into this Agreement, including, but not limited to, the approval of its governing board and (iii) when executed, this Agreement shall be a valid and enforceable obligation of such organization.

[Signatures appear on following page]

IN WITNESS WHEREOF, District and Contractor have executed this Agreement effective as of the date first set forth above.

CONTRACTOR

NAME OF CONTRACTOR

By: _____

Name: _____

Title: _____

DISTRICT

ISLA VISTA RECREATION AND PARK DISTRICT,
a California special district

By: _____

Kimberly Kiefer, General Manager

EXHIBIT A

SERVICES

EXHIBIT B

WORK SCHEDULE