

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2023, by and between the MARINWOOD COMMUNITY SERVICES DISTRICT, hereinafter called "Owner" or "District" and _____ hereinafter called "Contractor."

WITNESSETH:

That the Owner and the Contractor for the considerations stated herein, agree as follows:

ARTICLE I. SCOPE OF SERVICES

1. The Contractor shall perform everything required to be performed as described in **Exhibit "A"** attached and shall provide and furnish all the labor, materials, necessary tools, equipment, and services required to complete all the work, in accordance with requirements contained in the Request for Proposals (RFP) documents therefore entitled, "**MARINWOOD PARK PLAYGROUND: PLAY STRUCTURES REPLACEMENT**", 775 Miller Creek Road, San Rafael, CA 94903, hereinafter referred to as "contract documents." Contractor shall furnish all materials, labor and equipment and perform the work for the **PLAY STRUCTURES REPLACEMENT** (sometimes hereinafter called the "work") at a site in the vicinity of Marinwood, all in accordance with the attached specifications and drawing titled "**PLAY STRUCTURES REPLACEMENT**", as agreed upon by Owner and Contractor, all of which are hereby made a part hereof and, together with any Addenda constitute the entire Agreement between the Contractor and the Owner covering the work. Contractor agrees to perform the work for the **PLAY STRUCTURES REPLACEMENT** in strict compliance with said plans, specifications and contract documents. All work performed will be subject to the approval of the Owner or its authorized representatives.

2. "Owner's Representative" or "Owner's Representatives" shall mean such person or persons as may be duly authorized by Owner to act in a representative capacity for the Owner in matters covered by this Agreement. The words "as directed", "as permitted", "as decided" and words of like effect, shall mean that the correction, permission or requirement of the Owner's Representative is intended. Similarly, the words "approved", "acceptable", "satisfactory" and words of like import shall mean approved by, acceptable to or satisfactory to the Owner's Representative.

3. The work shall be commenced in accordance with issuance of the Notice to Proceed and the project construction start date stated within, and all work included in the specifications and drawing shall be completed within **[insert time frame here]** days from the date stated on the Notice to Proceed. Time extensions will be awarded for unavoidable delays, such as rain days,

based on approved change orders.

4. The Contractor represents that they have examined all the Contract Documents listed above and has fully acquainted themselves with all conditions relative to the work at the site, of the work and its surroundings and assumes the risk of any variances between the visible actual conditions relevant to the work and those set out in the Contract Documents. The Contractor represents that he has made all investigations essential to the full understanding of the difficulties that may be encountered in performing the work, and is familiar with local labor requirements, prevailing wage rates and general working conditions in the area. Having fully acquainted themselves with the work, the site of the work, its surroundings and all risks in connection therewith, the Contractor assumes full and complete responsibility for completing the work in accordance with the Contract Documents and for the compensation and within the time provided herein.

ARTICLE II. FEES AND PAYMENT

1. All Federal, State and local taxes are included in the contract price, \$_____
2. The Owner shall pay Contractor all costs within the scope of the project per proposal dated _____, 2023.

3. Payment Schedule:

The fees and payment schedule for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit "B"**.

ARTICLE III. PREVAILING WAGE RATES

1. Reference is hereby made to the "General Prevailing Wage Determination" made by the Director of Industrial Relations pursuant to California Labor Code Division 2, Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1, the provisions of which are hereby specified as the rate of prevailing wage to be paid workers on this project. (see **Exhibit "B"**).

ARTICLE IV. INSURANCE (Exhibit "C")

1. Commercial General Liability: The Contractor shall maintain a commercial general liability insurance policy in the amount of \$1,000,000 (\$2,000,000 aggregate). The District shall be named as an additional insured on the commercial general liability policy.
2. Commercial Automobile Liability: Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor, Contractor shall provide

comprehensive business or commercial automobile liability coverage, including non-owned and hired automobile liability, in the amount of \$1,000,000.00.

3. **Workers' Compensation:** The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance, Exhibit "C" attached, a letter of self-insurance, or a copy of the Certificate of Consent to Self- Insure shall be provided to District prior to commencement of work.

ARTICLE V. DEBARMENT CERTIFICATION (Exhibits "D" and "E")

1. The Contractor and Subcontractor shall agree to mutually exclude Marinwood Community Services District based on debarment by affiliates due to allegations of fraud, mismanagement, and similar improprieties.

ARTICLE VI. MODIFICATIONS AND AMENDMENTS

1. Any change in the provisions of this Agreement or the Specifications or Drawings made subsequent to the execution of this Agreement, except changes in the work and price pursuant to the Specifications, shall be made by formal Amendments executed and approved in the same manner as this Agreement.

2. All changes and additions to this Agreement or the Specifications or Drawing made prior to the execution of this Agreement through Addenda are listed below; if no changes or additions are listed, it is agreed that none were made.

ADDENDA:

ARTICLE VII. TIME LIMITS AND LIQUIDATED DAMAGES

1. The Contractor shall sufficiently obligate themselves to complete the work for the construction of the **PLAY STRUCTURES REPLACEMENT**, including bid alternates authorized by the District within **[insert timeframe here]** consecutive calendar days from the date stated on the Notice to Proceed.
2. Time extensions will be given only for unavoidable delays for adverse weather conditions as determined by the Architect.
3. The Contractor is cautioned that the specific time limits specified above are the essence of this contract, and they will be expected to take whatever measures are necessary to finish the work during this period. This shall include overtime work and working on weekends only as permitted by the County of Marin regulations and with the written consent of the Owner.

Should the completion of the work required under this contract be delayed beyond the overall contract time, as specified above, or such extension of time as may be allowed by reason of unavoidable delays, there shall be deducted from the total contract price for the work, for each and every calendar day by which such completion shall be delayed beyond said specified time or such extension thereof, the sum of five hundred dollars (\$500.00).

It is further understood and agreed that said sum shall be considered not as penalties but as liquidated damages which the District will suffer in expenses for District staff and for engineering by reason of the failure of the Contractor to perform and complete all the required work within the period specified or such extension of said period as may be allowed by reason of unavoidable delays.

Any money due or to become due the Contractor shall be retained by the District to cover said liquidated damages, and should such money not be sufficient to cover such damages, the District shall have the right to recover the balance from the Contractor or their sureties.

The filing of any bid for work shall constitute acknowledgment by the bidder that they understand, agrees and has ascertained that the District will actually suffer damages in the amounts hereinabove fixed for each and every calendar day that the completion of the work required shall be delayed beyond the expiration of the period fixed for such completion or such extension of said period as may be allowed by reason of unavoidable delays.

5. In computing liquidated damages, the Owner will add to the date determined as the date for the completion of the work of the specific order of completion item, the number of calendar days of unavoidable delay, if any, which the District shall have found to have occurred in the prosecution of the work. This corrected date so adjusted as to include the number of calendar days of unavoidable delay, shall be taken as the date allowed under the contract for the completion of said work. The number of calendar days elapsing between this corrected date for

completion and the actual date of completion of said work, multiplied by the number of dollars per day for liquidated damages fixed in the specifications, will be the amount in dollars of liquidated damages which shall be deducted from the contract price on account of late completion of the work.

ARTICLE VIII. COMPONENTS OF THIS AGREEMENT

This contract consists of all of the following contract documents, all of which are as fully a part thereof as if herein set out in full and if not attached hereto, the same as attached hereto:

1. Request for Proposals – Marinwood Park Playground: Play Structures Replacement Project and all included attachments and/or exhibits contained therein;
2. The accepted proposal of Contractor;
3. This Agreement
4. Performance, Labor and Materials Bonds
5. Exhibit A: Scope of Services
6. Exhibit B: Prevailing Wage Rates
7. Exhibit C: Insurance Reduction/Waiver
8. Exhibit D: Debarment Certification for Contractor
9. Exhibit E: Debarment Certification for Subcontractor
10. General Liability, Automobile Liability, and Workers' Compensation Insurance, all as required pursuant to specifications.

IN WITNESS WHEREOF, two identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named on the day and year first above written.

MARINWOOD COMMUNITY SERVICES DISTRICT

Address: 775 Miller Creek Road, San Rafael, CA 94903

By: _____(PRINT NAME)

_____(AUTHORIZED SIGNATURE)

Title: _____

Date: _____

CONTRACTOR

Firm: _____

Official Address: _____

By: _____(PRINT NAME)

_____(AUTHORIZED SIGNATURE)

Title: _____

Date: _____

PERFORMANCE BOND

We, _____, the Contractor in the contract hereto annexed, as PRINCIPAL, and _____ as SURETY, are held and firmly bound unto the Marinwood Community Services District, hereinafter called the OWNER, in the sum of _____ Dollars (\$ _____) lawful money for the United States, for which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Signed and sealed and dated _____

The condition of the above obligation is that if said principal as Contractor in the contract hereto annexed, shall faithfully perform each and all of the conditions of said contract to be performed by him and shall furnish all tools, equipment, facilities, transportation, labor and material, other than material (if any) agreed to be furnished by the District, necessary to perform and complete in good workman like manner the work of:

The Marinwood Park Playground: Play Structures Replacement Project

in strict conformity with the terms and conditions set forth in the contract hereto annexed, and shall pay or cause to be paid all persons who perform labor for, or furnish materials to said contractor, or to any subcontractor in the execution of said contract then this obligation shall be null and void - otherwise to remain in full force and effort; and the said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the work to be performed hereunder of the specifications accompanying same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or the specifications. It is further agreed that this bond shall cover all work for the duration of the contract.

NOTE: Signatures of those
executing or the surety must be
properly acknowledged.

_____SEAL

_____SEAL

_____SEAL
Principal

_____SEAL

_____SEAL

_____SEAL
Surety

LABOR AND MATERIALS BOND

We, _____, the Contractor in the contract hereto annexed, as PRINCIPAL, and _____ as Surety, are held and firmly bound unto the Marinwood Community Services District, hereinafter called the OWNER, in the sun of _____ Dollars (\$) lawful money for the United States, for which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

Signed and sealed and dated _____

The condition of the above obligation is that if said principal as Contractor in the contract hereto annexed, or his or its subcontractor, fails to pay for any materials, provision, provender of other supplies or items, used in, upon, for, or about the performance of the work contracted to be done by said Contractor, namely, to furnish all tools, equipment, apparatus, facilities, transportation, labor and material, other than material (if any) agreed to be furnished by the District, necessary to perform and complete in good workmanlike manner the work of:

The Marinwood Park Playground: Play Structures Replacement Project

in strict accordance with the terms and conditions set forth in the contract hereto annexed, or for any work or labor done thereon of any kind, for amounts due under the Unemployment Insurance Act with respect to such work or labor, said surety will pay for the same in an amount not exceeding the sun herein before set forth, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the courts, the bond is executed in accordance with the requirements of Chapter 3 of the provisions thereof, and shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under and by virtue of the provisions of the Code of Civil Procedure, or to their assigns; and said surety, for value received, alteration or addition to the terms of the contract or to work to be performed thereunder of the specifications accompanying the same shall in any way effect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work of the specifications.

NOTE: Signatures of those
executing or the surety must be
properly acknowledged.

SEAL

SEAL

Principal

SEAL

SEAL

Surety

EXHIBIT "A"
SCOPE OF SERVICES

(NOTE: This Exhibit to be completed based on the results of the bidding process and final agreements as to the scope of services.)

EXHIBIT "B"
FEES AND PAYMENTS
[INSERT PAYMENT SCHEDULE]
ADDITIONAL REQUIREMENTS FOR CONTRACTORS
TO MARINWOOD COMMUNITY SERVICES DISTRICT

REGARDING PREVAILING WAGE RATES, LONGSHOREMEN WORKERS' COMPENSATION ACT AND SB 854 REGISTRATION REQUIREMENTS

All contractors/vendors doing business with public agencies throughout the State of California (including the Marinwood Community Services District) must comply with applicable labor compliance requirements including, but not limited to prevailing wages, SB 854, Labor Code Sections 1771.1(a) and 1725.5, Public Works Contractor Registration Program, Electronic Certified Payroll Records submission to the State Labor Commissioner and other requirements described at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Applicable projects are subject to compliance monitoring and enforcement by the California Department of Industrial Relations

Labor Code Section 1720 and Section 1771 defines "public works" as construction, alteration, demolition, installation, or repair work (including maintenance), done under contract and paid for in whole, or in part with public funds with a total cost (labor and materials) in excess of \$1,000. Maintenance Work (CCR Section 16000 and Section 16001) is defined as: Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

Pursuant to CCR Section 16001, the application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort.

Prevailing Wage Rates are available at the Marinwood Community Services District office, the Department of Public Works for the County of Marin, and at the State of California Division of Labor Statistics and Research website <http://www.dir.ca.gov/DLSR/PWD/index.htm>. Said rates are based on an eight (8) hour day, forty (40) hour week, except as otherwise noted and currently in effect. Existing agreements between the Building Trades and Construction Industry groups related to wages, overtime, holidays, and other special provisions shall be strictly observed.

In accordance with California Labor Code Section 1771.1, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant

to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No Contractor or Subcontractor may be awarded a contract for a public works project awarded on or after April 1, 2015 unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5

In compliance with the provisions of Section 1776 of the Labor Code of the State of California, as amended, the Contractor and each of his Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, or worker employed by them in connection with the project. Said records shall be available for inspection at all reasonable hours, and copies shall be made available to the employee or his authorized representative, the State Division of Labor Standards Enforcement, the State Division of Apprenticeship Standards, and Marinwood Community Services District.

Commencing April 1, 2015, all contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement) pursuant to Section 1771.4 of the Labor Code.

To be eligible for contract award, pursuant to Labor Code Section 1773.2, contractors/vendors shall provide the general rate of per diem wages for each craft, classification or type of worker needed to execute the work. However, the Marinwood Community Services District will provide a copy of prevailing rate of per diem wages to be paid by contractors at its principal office located at: 1775 Miller Creek Road, San Rafael, CA 94903.

Additionally, if any work shall be performed on, in, or under a body of water and governed by the U.S. Longshoremen's and Harbor Workers Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, workers' compensation coverage shall be included for such injuries or claims. Contractor is responsible for determining if there is an exposure to such an injury and agrees to indemnify Marinwood Community Services District for all claims arising out of such an injury.

In addition, pursuant to Labor Code Section 1771.4(a)(2), the prime contractor shall post job site notices as prescribed by regulation.

Acknowledgement of Additional Requirements for Contractors:

Company

Print Contractor's Name and Title:

Signature:

Date:

EXHIBIT "C"

INSURANCE REDUCTION/WAIVER (if applicable)

CONTRACTOR:

CONTRACT TITLE:

This statement shall accompany all requests for a reduction/waiver of insurance requirements. Please check the box if a waiver is requested or fill in the reduced coverage(s) where indicated below:

	Check Where Applicable	Requested Limit Amount	CAO Use Only
General Liability Insurance	<input type="checkbox"/>	\$	
Automobile Liability Insurance	<input type="checkbox"/>	\$	
Workers' Compensation Insurance	<input type="checkbox"/>		
Professional Liability Deductible	<input type="checkbox"/>	\$	

Please set forth the reasons for the requested reductions or waiver:

Contract Manager Signature: _____

Date: _____

Extension: _____

Approved by Risk Manager: _____

Date: _____

EXHIBIT “D”
DEBARMENT CERTIFICATION FOR CONTRACTORS

By signing and submitting this Contract, the Contractor is agreeing to abide by the debarment requirements as set out below.

- The certification in this clause is a material representation of fact relied upon by District.
- The Contractor shall provide immediate written notice to District if at any time the Contractor learns that its certification was erroneous or has become erroneous by reason of changed circumstances.
- Contractor certifies that none of its principals, affiliates, agents, representatives or contractors are excluded, disqualified or ineligible for the award of contracts by any Federal agency and Contractor further certifies to the best of its knowledge and belief, that it and its principals:
 - Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal Department or Agency;
 - Have not been convicted within the preceding three-years of any of the offenses listed in 2 CFR 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period;
 - Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses listed in 2 CFR 180.800(a);
 - Have not had one or more public transactions (Federal, State, or Local) terminated within the preceding three-years for cause or default.
- The Contractor agrees by signing this Contract that it will not knowingly enter into any subcontract or covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

Contractor: _____

Title: _____

Date: _____

EXHIBIT “E”
DEBARMENT CERTIFICATION FOR SUBCONTRACTORS

By signing and submitting this Contract, the Subcontractor is agreeing to abide by the debarment requirements as set out below.

- The certification in this clause is a material representation of fact relied upon by District.
- The Subcontractor shall provide immediate written notice to District if at any time the Subcontractor learns that its certification was erroneous or has become erroneous by reason of changed circumstances.
- Subcontractor certifies that none of its principals, affiliates, agents, representatives or Sub-Subcontractors are excluded, disqualified or ineligible for the award of contracts by any Federal agency and Subcontractor further certifies to the best of its knowledge and belief, that it and its principals:
 - Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal Department or Agency;
 - Have not been convicted within the preceding three-years of any of the offenses listed in 2 CFR 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period;
 - Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses listed in 2 CFR 180.800(a);
 - Have not had one or more public transactions (Federal, State, or Local) terminated within the preceding three-years for cause or default.
- The Subcontractor agrees by signing this Contract that it will not knowingly enter into any subcontract or covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

Subcontractor: _____

Title: _____

Date: _____