

## CITY OF IRVINE

Sweet Shade Universal Playground  
CIP 361906  
BID NO. 23-3324

### CONSTRUCTION CONTRACT FOR CAPITAL IMPROVEMENTS

This Contract is made and entered into January 10, 2024, by and between the CITY OF IRVINE, a municipal corporation of the State of California, hereinafter referred to as "CITY," and KYA SERVICES, LLC, a California limited liability company, hereinafter referred to as "CONTRACTOR."

#### WITNESSETH:

That the CITY and the CONTRACTOR, for the consideration hereinafter named, mutually agree as follows:

1. The complete Contract includes all of the Contract Documents, which are incorporated herein by this reference, to wit:

- a. Permits and Agreements
- b. Contract
- c. Addenda
- d. Instructions to Bidders, Proposal Requirements and Conditions
- e. Special Provisions
- f. Contract Plans
- g. Standard Plans
- h. Standard Specifications
- i. Reference Specifications

The Contract Documents are complementary, and that which is required by one shall be as binding as if required by all.

2. CONTRACTOR shall provide and furnish all labor, materials, necessary tools, expendable equipment, and all utility and transportation services required for the following work of improvement: Project consists of ADA improvements and renovation of an existing playground. New play equipment, demolition of existing equipment and site work, new site work, new sports court, ADA parking stalls, addition of a new restroom, and other items not mentioned here, but are required by the plans and the Special Provisions.

3. CONTRACTOR agrees to perform all the said work and furnish all the said materials at his own cost and expense that are necessary to construct and complete in strict conformance with Contract Documents and to the satisfaction of the Engineer, the

work hereinafter set forth in accordance with the Contract therefore adopted by the City Council and as prepared by Nuvis Landscape Architecture, 20250 Acacia Street #260, Newport Beach, CA 92660.

**Contractor Information**

Address for Notices and Payments:

1800 East McFadden Avenue  
Santa Ana, CA 92705

**Attn:** Brooks Berry

**Telephone:** 714-659-6477

**Email:** contracts@thekeyagroup.com

4. CITY agrees to pay and CONTRACTOR agrees to accept in full payment for performance of this work of improvement as described, the stipulated sum of \$2,177,722.00 the "Contract Price".

CITY agrees to make progress payments and final payment in accordance with the method set forth in the Special Provisions.

5. CONTRACTOR agrees to commence construction of the work provided for herein within ten (10) Calendar Days after the date specified in the Notice to Proceed, and to continue diligently in strict conformance with Contract Documents and without interruption, and to complete the construction thereof within 150 Working Days after the date specified in the Notice to Proceed.

The CONTRACTOR shall diligently prosecute all the work (including plant establishment) to completion before the expiration of 210 Working Days from the date specified in the Notice to Proceed.

6. Time is of the essence of this Contract, and it is agreed that it would be impracticable or extremely difficult to ascertain the extent of actual loss or damage which the CITY will sustain by reason of any delay in the performance of this Contract. It is, therefore, agreed that CONTRACTOR will pay as liquidated damages to the CITY the following sum: \$4,000.00 per Calendar Day, for each and every Calendar Days delay in finishing the Work, except plant establishment work, in excess of the number of Working Days prescribed above. The CONTRACTOR shall pay to the CITY the sum \$950.00 per Calendar Day, for each and every Calendar Days delay in completing the plant establishment work in excess of the number of Working Days prescribed above. In no case will liquidated damages be assessed more than \$4,000.00 for plant establish per day. If liquidated damages are not paid, as assessed by the CITY, the CITY may deduct the amount thereof from any money due or that may become due the CONTRACTOR under this Contract in addition to any other remedy available to CITY. By executing this Contract, CONTRACTOR agrees that the amount of liquidated damages is reasonable and shall not constitute a penalty.

7. CONTRACTOR will maintain and will require all subcontractors to maintain valid and current Department of Industrial Relations (DIR) Public Works Contractor registration during the term of this project. CONTRACTOR shall notify the CITY in writing immediately, and in no case more than twenty-four (24) hours, after receiving any information that CONTRACTOR'S or any of its subcontractor's DIR registration status has been suspended, revoked, expired, or otherwise changed.

8. CONTRACTOR will pay, and will require all subcontractors to pay, all employees on said Contract a salary or wage at least equal to the prevailing salary or wage established for such work as set forth in the wage determinations and wage standards applicable to this work, a copy of which is on file in the office of the City Clerk of the City of Irvine. Federal prevailing wage rates apply for federally funded projects. Travel and subsistence pay shall be paid in accordance with Labor Code § 1773.1.

9. CONTRACTOR shall be subject to the penalties in accordance with Labor Code of § 1775 for each worker paid (either by him or by any subcontractors under him) less than the prevailing rate described above on the work provided for in this Contract.

10. CONTRACTOR and subcontractors shall comply with Labor Code § 1810 and § 1811 which stipulates that eight hours labor constitutes a legal day's work, and § 1812 which stipulates that the CONTRACTOR and subcontractors shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work performed under the terms of the Contract. Failure to comply with these sections of the Labor Code will subject the CONTRACTOR to penalty and forfeiture provisions of the Labor Code § 1813.

11. CONTRACTOR will comply with the provisions of Labor Code § 1777.5 pertaining to the employment of apprentices to the extent applicable to this Contract.

12. 12. The City of Irvine will be using the eComply Solutions software for managing certified payrolls on this project. Accordingly, Contractor shall register in, attend training for, and use the eComply Solutions software for submitting certified payrolls and related tasks as deemed appropriate by the City of Irvine. When the project commences, you will be contacted by an eComply Solutions representative regarding this process. Further information will be provided via a separate communication at that time.

13. CONTRACTOR, by executing this Contract, hereby certifies:

"I am aware of, and will comply with the Labor Code § 3700 by securing payment for, and maintaining in full force and effect for the duration of the contract, complete Workers' Compensation Insurance, and shall furnish a Certificate of Insurance to the Agency before execution of the Contract. The CITY, its officers, or employees, will not be responsible for any claims in law or equity

occasioned by failure of the CONTRACTOR to comply with this paragraph.”

CONTRACTOR further agrees to require all subcontractors to carry Workers' Compensation Insurance as required by the Labor Code of the State of California.

14. CONTRACTOR shall, concurrent with the execution of this Contract, furnish two bonds approved by the CITY, one in the amount of One Hundred Percent (100%) of the Contract Price, to guarantee the faithful performance of the work “Performance Bond”, and one in the amount of One Hundred Percent (100%) of the Contract Price to guarantee payment of all claims for labor and materials furnished “Payment Bond.” This Contract shall not become effective until such bonds are supplied to and approved by the CITY.

15. CONTRACTOR shall, prior to commencing work, furnish certificates evidencing compliance with all requirements of the Contract Documents pertaining to insurance.

16. Any amendments to any of the Contract Documents must be in writing executed by the CONTRACTOR and the CITY. Any time an approval, time extension, or consent of the CITY is required under the Contract Documents, such approval, extension, or consent must be in writing in order to be effective.

17. This Contract contains all of the agreements and understandings of the parties and all previous understandings, negotiations, and contracts are integrated into and superseded by this Contract.

18. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Contract shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Contract which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.

19. The persons executing this Contract on behalf of the parties hereto warrant that they are duly authorized to execute this Contract on behalf of said parties and that, by so executing this Contract, the parties hereto are formally bound to the provisions of this Contract.

20. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

21. In performing its obligations and duties under this Contract, each party shall comply with all applicable local, state, and federal laws, regulations, rules, standards, and ordinances.

22. In the event any action is brought between the parties hereto relating to this Contract or the breach thereof, the prevailing party in such action shall be entitled to recover from the other party reasonable expenses, attorneys' fees, and costs in connection with such action or proceeding.

23. This Contract may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

24. This Contract is to be governed by the laws of the State of California.

(Signatures on following page)

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.


**CITY OF IRVINE**

DocuSigned by:  
By:   
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Sean Crumby

Its: Director of Project Delivery &  
Sustainability

**KYA SERVICES, LLC**

DocuSigned by:  
By:   
5C8B383F3D0B47E...

Edwin Jay

Its: Member

DocuSigned by:  
By:   
7809AA719A2B4C7...

Oliver C. Chi

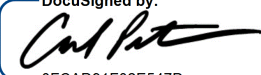
Its: City Manager

DocuSigned by:  
By:   
CF36A9EA8445497...

Farrah N. Khan

Its: Mayor of the City of Irvine

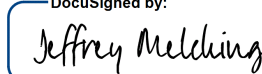
Attest:

DocuSigned by:  
By:   
0FCAD91F02E547D...

Carl Petersen

Its: City Clerk

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

DocuSigned by:  
By:   
DABE8686180C4BB...

Jeffrey Melching