

ATTACHMENT A



COUNTY OF SANTA BARBARA
AGREEMENT FOR:
Community Services Department
Parks Division
Camino Pescadero Beach Access Stair Replacement
Isla Vista, California 93117
Project No. 8656

THIS AGREEMENT is made by and between the County of Santa Barbara, a political subdivision of the State of California, hereinafter called **COUNTY**, and Cushman Contracting Corporation, referred to as **CONTRACTOR**, for the completion of the work identified herein, on the following terms, conditions and provisions:

1. **CONTRACT**: This agreement incorporates by reference all of the General and Special Conditions and Plans and Specifications provided by COUNTY for the work identified above; and where consistent with this document, the proposal submitted by the CONTRACTOR. CONTRACTOR acknowledges receipt of all such documents as were not already in Contractor's possession. Said incorporated documents, this agreement, any Notice to Bidders, Bid Documents and Exhibits, any Bid Addenda, the Bid Bond, the Faithful Performance Bond, and Payment Bond are referred to herein as the "Contract" or "Contract Documents." Copies of all said documents are on file in the Department of Community Services Office of the COUNTY and have been and will be made available to the CONTRACTOR during the term of this Contract.
2. **WORK**: CONTRACTOR agrees, at its own proper cost and expense, to furnish all the work and all equipment and materials necessary to perform and complete the work described in the Contract Documents referred to above, in a good and workmanlike manner and to the satisfaction of the Director of Community Services of said COUNTY, all in strict accordance with the Plans and the Contract Documents provided.
3. **EXCAVATIONS**: Before any pavement resurfacing, displacement or excavation of the ground that may be required by any performance under this Contract, the CONTRACTOR shall obtain an inquiry identification number by calling Underground Service Alert (USA) or by such other means as may be required; shall conform to all requirements of California Government Code Sections 4215 through 4216.9, inclusive, regarding any such pavement resurfacing, displacement or excavation, including the payment of any fees required; and shall facilitate performance by the COUNTY of any obligation required of the COUNTY under said Sections. There shall be no performance under this Contract by either party unless and until the provisions of such Sections are complied with and the County Representative is notified regarding the compliance.
4. **COUNTY REPRESENTATIVE**: The County Representative referred to in the Contract Documents is Jill Van Wie.
5. **PAYMENT**: As full compensation for furnishing all labor, supervision, overhead, materials and equipment and for doing all the work completed and embraced in this Contract and subject to adjustments and liquidated damages, if any, as provided in the Contract Documents, the base amount to be paid to the CONTRACTOR for satisfactory completion of all requirements of the Contractor under this Contract is and shall be Five Hundred Ninety-Seven Thousand Two Hundred and Ten Dollars (\$597,210), to be paid as provided in the Contract Documents. The CONTRACTOR assumes and will provide against any and all loss or damage arising out of the nature of the work undertaken, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the COUNTY, and assumes any and all expenses incurred by or in consequence of suspension or discontinuance of the work, for well and faithfully completing the work and the whole thereof, in the manner and to the requirements of the Contract and directions of the County Representative, hereunder.
6. **AUDIT AND REVIEW**: CONTRACTOR shall keep such business records pursuant to this Contract as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession and shall maintain such records for at least four (4) years following the termination of this Contract. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three (3) years after final payment under the Contract (Cal. Govt. Code Section 8546.7). CONTRACTOR

shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY. If federal, state or COUNTY audit exceptions are made relating to this Contract, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

7. EXTRA WORK: Extra work, materials, resolution of disputes, corrections, and/or changes to the plans and specifications as are required for the proper completion of the work or the improvement contemplated may be effected or authorized in writing and agreement made of compensation at the same rate per unit (or at a corresponding rate for work that is different from that provided for in the Contract Documents) by the County Representative, in an amount not to exceed 10% of the first \$250,000, or \$25,000, plus 5% of the amount of the bid in excess of \$250,000 as provided in California Public Contract Code Section 20142. Excess work or changes in excess of Forty-Two Thousand Three Hundred Sixty-One Dollars (\$42,361) may be authorized by resolution or minute order of the Santa Barbara County Board of Supervisors. The County Representative may agree upon appropriate additional time to be allowed as required for such extra work, materials, resolution or changes.

8. COMPLIANCE WITH LAWS: CONTRACTOR shall keep fully informed of all laws, ordinances and regulations which do or may affect the conduct of the work, the materials used therein or persons engaged or employed thereon and all such orders of bodies and tribunals having any jurisdiction over same. If it be found that the Special Provisions or Standard Specifications for the work conflict with any such law, ordinance or regulation, the CONTRACTOR shall immediately report same to the County Representative in writing. CONTRACTOR shall at all times observe and comply with and shall cause all agents and employees to observe and comply with all such laws, ordinances, regulations or decrees as the same now exists or may be hereafter amended and all superseding provisions thereof. CONTRACTOR acknowledges, particularly, the provisions of Sections 9364, 9550 and 9560 of the Civil Code of California. CONTRACTOR shall protect and indemnify the County of Santa Barbara, the Board of Supervisors, the Director of Community Services, and/or any officer, agent or employee of the COUNTY against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or decree whether by CONTRACTOR, or a subcontractor, agent or employee.

9. PAYMENTS NOT ACCEPTANCE: No certificate given or payments made under this Contract, except the final payment shall be evidence of the performance of this Contract, either wholly or in part, against any claim upon CONTRACTOR. Final payment for the work performed under this Contract shall not be made until the lapse of thirty (30) days after the Notice of Completion of said work has been filed for record and no payment shall be construed to be acceptance of any defective work or improper materials. CONTRACTOR agrees that the payment for final quantities due under this Contract and the payment of undisputed Contract amounts due for any work in accordance with any amendments of this Contract, shall release the County of Santa Barbara from any and all claims or liabilities on account of work performed under this Contract or any amendments thereof related to those amounts. In addition to guarantees required elsewhere, CONTRACTOR shall and does hereby guarantee all workmanship and material to be free of defects and fit for the purposes intended for a period of one year from and after both the date of acceptance of the work and the recordation of the Notice of Completion by the COUNTY, and CONTRACTOR shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the County Representative, is or becomes defective during the period of said guarantee without expense whatsoever to the COUNTY.

10. PREVAILING WAGE RATES: CONTRACTOR shall comply with the California Labor Code, including, but not limited to, the payment of prevailing wages when required. The general prevailing wage rates determined by the Director of Industrial Relations, for the county or counties in which the work is to be done, are on file at the office of the Community Services Department. Copies of these general prevailing wage rates shall be made available to any interested party upon request. Changes, if any, to the general prevailing wage rates will be available at the same location. The prevailing wage rates are also available from the California Department of Industrial Relations' internet website at <http://www.dir.ca.gov/dlsr/pwd>. The CONTRACTOR shall post applicable prevailing wage rates at each job site.

11. CONTRACT DOCUMENTS ACKNOWLEDGED: CONTRACTOR hereby declares that it has read the "Contract Documents" pertaining to the work to be accomplished hereunder, has carefully examined the plans, specifications and detail drawings of the work to be performed and fully understands the intent and meaning of the same.

12. TIME FOR COMMENCEMENT, COMPLETION: No work shall commence prior to the execution of this Agreement. As soon as practicable after the Contract has been executed by both the CONTRACTOR and the COUNTY, a Notice to Proceed will be issued by the County Representative stating the start date of the Contract time. The CONTRACTOR shall begin work within fifteen (15) calendar days after receiving the Notice to Proceed, unless otherwise provided. The work to be done under this Contract shall be completed within **one hundred five (105)** calendar days from the start date noted in the Notice to Proceed. Attention is directed to the provisions of this Contract pertaining to Liquidated Damages for failure to complete the work within the allowed time.

13. WORKERS' COMPENSATION INSURANCE: CONTRACTOR certifies as to knowledge of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code. CONTRACTOR will comply with such provisions before commencing the performance of the work of this Contract.

14. PROGRESS PAYMENT NO WAIVER FOR DELAY: Any progress payment made after the scheduled completion date will not constitute a waiver of any liquidated damages heretofore agreed upon as part of this Contract.

15. GUARANTEE BONDS: Before any performance under this Contract, the CONTRACTOR shall provide the payment bond required by California Civil Code Section 9550 in the amount of 100 percent of the total amount payable under this Contract to secure the payment of all workers and suppliers, and the performance bond required by California Public Contract Code Section 20129 in the amount of 100 percent of the total amount payable under this Contract to secure faithful performance of all terms and conditions of this Contract, in a form approved by the COUNTY. Both securities shall contain provisions which automatically increase amounts thereof and/or time of completion or both for all change orders, extensions and additions to the work provided pursuant to this Contract. Any work performed prior to COUNTY's express approval of the CONTRACTOR's payment and performance bonds shall constitute material breach of this Contract, and the COUNTY shall not be liable for payment for any work performed under this Contract or otherwise prior to COUNTY's approval of the payment and performance bonds.

16. NON-DISCRIMINATION: The CONTRACTOR acknowledges that this Contract is subject to the provisions of Article XIII of Chapter 2 of the Santa Barbara County Code, providing against discrimination in employment. The CONTRACTOR agrees to perform all requirements of a contractor under the provisions of said Article and to pay all costs occasioned to the COUNTY by any noncompliance by the CONTRACTOR.

17. DISPUTES: Should any dispute arise respecting the construction or meaning of any of the plans or specifications, the dispute shall be resolved by the Engineer/Architect whose decision shall be final and binding upon the parties. If, after the decision of the Engineer/Architect as provided herein, claims (as defined in California Public Contracts Code Section 20104) under this Contract are filed by CONTRACTOR against COUNTY and those claims are in the aggregate amount of \$375,000 or less, said claims shall be resolved pursuant to California Public Contracts Code Sections 20104 through 20104.8, inclusive.

18. SUBSTITUTION OF MATERIALS, SUBSTITUTION OF CONTRACTORS: The County Representative is authorized to act on behalf of the awarding authority in order to substitute materials or equipment specified or to substitute subcontractors.

IN WITNESS WHEREOF, the parties have executed this Contract to be effective on the date executed by COUNTY.

ATTEST:

MONA MIYASATO
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: Sheila de la Guerra

COUNTY OF SANTA BARBARA

By: Steve LaWagnino
STEVE LA WAGNINO, CHAIR
BOARD OF SUPERVISORS

**CONTRACTOR
COMPANY NAME**

By: Lee Cushman
LEE CUSHMAN, Corporate Secretary
P.O. Box 147, Goleta, CA 93116-0147
License No.: 689962
DIR No.: 1000004083

By: George Charjian
GEORGE CHARJIAN
Director, Community Services Department

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI
COUNTY COUNSEL

By: Michael C. Ghizzoni
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

BETSY M. SCHAFFER, CPA
AUDITOR-CONTROLLER

By: Betsy M. Schaffer
Deputy

APPROVED AS TO FORM:

RAY AROMATORIO, ARM, AIC
RISK MANAGER

By: Ray Aromatorio
Risk Manager