

**AGREEMENT FOR  
CARMICHAEL RECREATION AND PARK DISTRICT  
CARMICHAEL PARK CLUBHOUSE PROJECT – FLOORING INSTALLATION**

THIS AGREEMENT is made and entered into on \_\_\_\_\_ 2019, by and between the **CARMICHAEL RECREATION AND PARK DISTRICT**, a park district existing under authority of Public Resources Code § 5780 et seq, hereinafter referred to as “DISTRICT” and **GUSTAVE ENTERPRISE INC dba CREATIVE FLOORING COVERINGS SALES AND SUPPLIES, INC.**, hereinafter referred to as “CONTRACTOR.”

**RECITALS**

WHEREAS, the Advisory Board of Directors for DISTRICT heretofore caused plans and specifications for the work hereinafter mentioned to be prepared, and therefore did approve and adopt said plans and specifications; and

WHEREAS, the Advisory Board of DISTRICT did cause to be published for the time and in the manner of law, a Request for Proposal inviting written quotes for the performance of said work; and

WHEREAS, the Contractor, in response to such Notice, submitted to the Advisory Board of Directors of said District within the time specified in said Notice, and in the manner provided for therein, a written quote for the performance of the work specified in said plans and specifications, which said quote and proposal, and the other written quotes and proposals submitted in response to said Notice, the District Advisory Board of Directors publicly opened and canvassed in the manner provided by law; and

WHEREAS, the Contractor was the lowest responsible bidder for the performance of said work, and said District Advisory Board of Directors as a result of the canvass of said written quotes, did determine and declare Contractor to be the lowest responsible bidder for said work and award to a contract therefore.

WHEREAS, CONTRACTOR has proposed to provide the requested services for the compensation to be provided herein; and

WHEREAS, pursuant to Government Code Section 31000, the DISTRICT is authorized to contract for specific special services with person specially trained, experience and competent to perform such services;

WHEREAS, pursuant to Resolution #2017-0010, the Sacramento County Board of Supervisors authorized the Carmichael Recreation and Park District to execute Consulting Service Agreements; and

WHEREAS, DISTRICT and CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, DISTRICT and CONTRACTOR agree as follows:

**1. SCOPE OF SERVICES**

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

**2. TERM**

This Agreement shall be effective and commence as of the date first written above and shall remain in effect until all services covered by this Agreement are completed, which is estimated to be May 15, 2019. DISTRICT'S ADMINISTRATOR is authorized to amend this Agreement with CONTRACTOR to extend the term.

**3. NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO DISTRICT:

Attn: Liz Bellas,  
District Administrator  
Carmichael Recreation & Park District  
5750 Grant Ave.  
Carmichael, CA 95608

TO CONTRACTOR:

Gustave Enterprise Inc. dba  
Creative Flooring Coverings Sales  
and Supplies Inc.  
60 98<sup>th</sup> Ave., Suite 102  
Oakland, Ca., 94603

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

**4. COMPLIANCE WITH LAWS**

CONTRACTOR shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

**5. GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

**6. LICENSES AND PERMITS**

A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by DISTRICT. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by DISTRICT.

B. CONTRACTOR further certifies to DISTRICT that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state or DISTRICT government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

**7. PREVAILING WAGES**

CONTRACTOR shall comply with the provisions of the California Labor Code, specifically, but not limited to, Chapter 1, commencing at Section 1720, of Part 7 of Division 2 (payment of prevailing wages). The prevailing rates for per diem wages shall be those rates determined by the Director of the California Department of Industrial Relations.

**8. PERFORMANCE STANDARDS**

CONTRACTOR shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONTRACTOR'S services.

**9. OWNERSHIP OF WORK PRODUCT**

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR provided hereunder shall be the exclusive property of DISTRICT and shall be delivered to DISTRICT upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by DISTRICT. DISTRICT recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR'S services and are not designed for use other than what is intended by this Agreement.

**10. STATUS OF CONTRACTOR**

A. It is understood and agreed that CONTRACTOR (including CONTRACTOR'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR'S assigned personnel shall not be entitled to any benefits payable to employees of DISTRICT. DISTRICT is not required to make

any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement; and as an independent contractor, CONTRACTOR hereby indemnifies and holds DISTRICT harmless from any and all claims that may be made against DISTRICT based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

- B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of DISTRICT as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the DISTRICT shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of DISTRICT, neither the CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any entitlement as a DISTRICT employee, right to act on behalf of DISTRICT in any capacity whatsoever as agent, nor to bind DISTRICT to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the DISTRICT to employees of the DISTRICT.
- E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTOR'S assigned personnel under the terms and conditions of this Agreement.

**11. CONTRACTOR IDENTIFICATION**

CONTRACTOR shall provide the DISTRICT with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR'S name, address, telephone number, social security number or federal tax identification number, and whether dependent health insurance coverage is available to CONTRACTOR.

**12. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS**

- A. CONTRACTOR's failure to comply with state and federal child, family and spousal support reporting requirements regarding CONTRACTOR's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.
- B. CONTRACTOR's failure to cure such default within 90 days of notice by DISTRICT shall be grounds for termination of this Agreement.

**13. BENEFITS WAIVER**

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from DISTRICT: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between DISTRICT and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from DISTRICT, CONTRACTOR agrees to indemnify and hold harmless DISTRICT from any and all claims that may be made against DISTRICT for such benefits.

**14. RETIREMENT BENEFITS/STATUS**

CONTRACTOR acknowledges and agrees that DISTRICT has not made any representations regarding entitlement, eligibility for and/or right to receive ongoing Sacramento County Employee Retirement System (SCERS) retirement benefits during the term of this Agreement. By entering into this Agreement, CONTRACTOR assumes sole and exclusive responsibility for any consequences, impacts or action relating to such retirement benefits that is or will be occasioned as a result of the services provided by CONTRACTOR under this Agreement. CONTRACTOR waives any rights to proceed against DISTRICT should SCERS modify or terminate retirement benefits based on CONTRACTOR'S provision of services under this Agreement.

**15. CONFLICT OF INTEREST**

CONTRACTOR and CONTRACTOR'S officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

**16. LOBBYING AND UNION ORGANIZATION ACTIVITIES**

- A. CONTRACTOR shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.
- B. If services under this Agreement are funded with state funds granted to DISTRICT, CONTRACTOR shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

**17. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

- A. CONTRACTOR agrees and assures DISTRICT that CONTRACTOR and any sub-CONTRACTORS shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of DISTRICT, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of DISTRICT employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.
- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.

**18. INDEMNIFICATION**

To the fullest extent permitted by law, for professional services provided under this Agreement, CONTRACTOR shall indemnify, defend, and hold harmless District, its governing Board, officers, directors, officials, employees, and authorized volunteers and agents (collectively "Indemnified Parties"), from and

against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, expert fees, and reasonable attorneys' fees, resulting from injuries to or death of any person, including employees of either Party hereto, and damage to or destruction of property, or loss of use or reduction in value thereof, including the property of either Party hereto, and recovery of monetary losses incurred by District directly attributable to the performance of CONTRACTOR, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, CONTRACTOR's subcontractors or subcontractors at any tier, or any other party for which CONTRACTOR is legally liable under law.

The right to defense and indemnity under this Section shall initiate upon occurrence of an event giving rise to a Claim and, thereafter, upon tender in writing to CONTRACTOR. CONTRACTOR shall defend Indemnified Parties with counsel reasonably acceptable to County. Notwithstanding the foregoing, District shall be entitled, on its own behalf, and at the expense of CONTRACTOR, to assume control of its defense or the defense of any Indemnified Party in any legal action, with counsel reasonably selected by it. Should District elect to initially assume control of its defense, or the defense of any Indemnified Party, it does so without prejudice to its right to subsequently request that CONTRACTOR thereafter assume control of the defense and pay all reasonable attorneys' fees and costs incurred thereby.

This indemnity obligation shall not be limited by the types and amounts of insurance or self-insurance maintained by CONTRACTOR or CONTRACTOR's subcontractors or subcontractors at any tier.

Nothing in this Indemnity obligation shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Indemnity obligation shall survive the expiration or termination of the Agreement.

**19. INSURANCE OR SELF-INSURANCE**

Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit B. It is the responsibility of CONTRACTOR to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit B. It is understood and agreed that DISTRICT shall not pay any sum to CONTRACTOR under this Agreement unless and until DISTRICT is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this agreement may be grounds for material breach of contract.

**20. INFORMATION TECHNOLOGY ASSURANCES omitted.**

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by DISTRICT, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to DISTRICT under this Agreement.

**21. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS**

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit C, or Exhibit C as modified by DISTRICT in accordance with express provisions in this Agreement.
- B. CONTRACTOR shall submit an invoice in accordance with the procedures prescribed by DISTRICT on a monthly basis for services performed during the previous month. Invoices shall be submitted to DISTRICT no later than the fifteenth (15th) day following the invoice period, and DISTRICT shall pay CONTRACTOR within thirty (30) days after receipt of an appropriate and correct invoice.
- C. DISTRICT operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by DISTRICT unless CONTRACTOR has obtained prior written DISTRICT approval to the contrary.
- D. CONTRACTOR shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- E. In the event CONTRACTOR fails to comply with any provisions of this Agreement, DISTRICT may withhold payment until such non-compliance has been corrected.

**22. LEGAL TRAINING INFORMATION omitted.**

**23. SUBCONTRACTS, ASSIGNMENT**

- A. CONTRACTOR shall obtain prior written approval from DISTRICT before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under



subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by DISTRICT for the performance of any subcontractor whether approved by DISTRICT or not.

B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of DISTRICT.

**24. AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon DISTRICT unless agreed in writing by DIRECTOR and counsel for DISTRICT.

**25. SUCCESSORS**

This Agreement shall bind the successors of DISTRICT and CONTRACTOR in the same manner as if they were expressly named.

**26. TIME**

Time is of the essence of this Agreement.

**27. INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

**28. DIRECTOR**

As used in this Agreement, "Director" shall mean the District Administrator of the Carmichael Recreation and Park District.

**29. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, CONTRACTOR shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. DISTRICT shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws

of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

**30. TERMINATION**

- A. DISTRICT may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by DISTRICT to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. DISTRICT may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, DISTRICT may proceed with the work in any manner deemed proper by DISTRICT. If notice of termination for cause is given by DISTRICT to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. DISTRICT may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to the DISTRICT is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in DISTRICT's yearly proposed and/or final budget are not appropriated by DISTRICT for this Agreement or any portion thereof; or 4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by DISTRICT as a result of mid-year budget reductions.
- D. If this Agreement is terminated by DISTRICT under paragraph (A) or (C) above:
  - 1. CONTRACTOR shall cease rendering services pursuant to this Agreement as of the termination date.
  - 2. CONTRACTOR shall deliver to DISTRICT copies of all writings prepared pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, drawings, blueprints, printing, electronic media, photostating, photographing, and every other means of recording upon any tangible thing, any

form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

3. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONTRACTOR can legally cancel.
- E. If this Agreement is terminated under paragraphs (A) or (C), above, CONTRACTOR shall be paid for authorized and approved services performed prior to the termination date in accordance with the provisions of the Compensation and Payment of Invoices Limitations provision of this Agreement.
- F. The Administrator has authority to terminate this Agreement under paragraphs (A), (B), or (C), above.

**31. REPORTS**

CONTRACTOR shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by DIRECTOR concerning CONTRACTOR'S activities as they affect the contract duties and purposes herein. DISTRICT shall explain procedures for reporting the required information.

**32. AUDITS AND RECORDS**

Upon DISTRICT'S request, DISTRICT or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR'S premises, CONTRACTOR'S financial and program records as DISTRICT deems necessary to determine CONTRACTOR'S compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon DISTRICT'S request at DISTRICT'S expense. DISTRICT shall have the right to withhold any payment under this Agreement until CONTRACTOR has provided access to CONTRACTOR'S financial and program records related to this Agreement.

**33. PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between DISTRICT and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between DISTRICT and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

**34. SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

**35. FORCE MAJEURE**

Neither CONTRACTOR nor DISTRICT shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

**36. SURVIVAL OF TERMS**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

**37. AUTHORITY TO EXECUTE**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

**38. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**“DISTRICT”**

**Carmichael Recreation & Park District,  
a park district existing under authority  
and of Public Resources Code**

**§ 5780 et seq**

By: \_\_\_\_\_

Liz Bellas,

Interim District Administrator

Date: \_\_\_\_\_

**“CONTRACTOR”**

**Gustave Enterprise Inc. dba  
Creative Flooring Coverings Sales  
Supplies Inc.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A to Agreement**

**SCOPE OF SERVICES**

**1. SERVICE LOCATION(S)**

Facility Name(s): CARMICHAEL PARK CLUBHOUSE  
Street Address: 5750 GRANT AVE.  
City and Zip Code: CARMICHAEL, CA 95608

**2. SCOPE**

- A. Contractor will furnish all labor, materials, services, transportation, appliances, and mechanical workmanship required for CONTRACT NO. 19-0001, as provided for and set forth in said plans and specifications, or in either of them, which said plans and specifications are hereby referred to and by such reference incorporated herein and made a part of this Agreement.
- B. The DISTRICT'S Director or designee, may negotiate with CONTRACTOR and approve reasonable modifications in tasks, work products, schedules, milestones, and staff assignments so long as such modifications are within the general scope of services provided under this Agreement, do not exceed the Maximum Total Payment Amount, and are determined to be in the best interest of DISTRICT.

**3. SCHEDULE**

CONTRACTOR shall perform the services in an expeditious manner in accordance with a mutually acceptable schedule developed between DISTRICT and CONTRACTOR.

**4. RESPONSIBILITIES OF DISTRICT AND CONTRACTOR FOR SCOPE**

- A. All of the said work done under this Agreement shall be under the supervision of and performed to the satisfaction of the Sacramento County Engineer, The Landscape Architect or the Park District Project Manager, who shall have the right to reject any and all materials and supplies furnished by the CONTRACTOR which do not comply with said plans and specifications, together with the right to require the Contractor to replace any and all work furnished by the Contractor which is not, either in workmanship or material, in strict accordance with said plans and specifications.

- B. CONTRACTOR shall be solely responsible for the quality and accuracy of its work and the work of its subcontractors performed in connection with this Agreement. Any review, approval, or concurrence therewith by the DISTRICT shall not be deemed to constitute acceptance or waiver by the DISTRICT of any error or omission as to such work. CONTRACTOR shall coordinate the activities of any subcontractors.

5. **AUTHORITY OF CONTRACTOR PERFORMING SCOPE OF WORK**

CONTRACTOR is retained to provide and perform the scope of services covered by this Agreement. CONTRACTOR, including CONTRACTOR'S assigned personnel, shall have no authority to represent DISTRICT or DISTRICT staff at any meetings of public or private agencies unless an appropriate DISTRICT official provides prior written authorization for such representation which outlines the purpose, scope and duration of such representation. CONTRACTOR shall possess no authority or right to act on behalf of DISTRICT in any capacity whatsoever as agent, nor to bind DISTRICT to any obligations whatsoever. DISTRICT is responsible for making all policy and governmental decisions related to the work covered by this Agreement.

6. **PUBLICATION OF DOCUMENTS AND DATA**

CONTRACTOR shall not publish, or disclose to any third party, documents, data, or any confidential information relative to the work of the DISTRICT without the prior written consent of DISTRICT, however, submission or distribution to meet official regulatory requirements, or for other purposes authorized by this Agreement, shall not be construed as publication in derogation of the rights of either the DISTRICT or CONTRACTOR.

7. **PROJECT PERSONNEL**

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## EXHIBIT B to Agreement

### **CARMICHAEL RECREATION AND PARK DISTRICT INSURANCE REQUIREMENTS**

Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by CONTRACTOR, its agents, representatives or employees. DISTRICT shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of DISTRICT Risk Manager, insurance provisions in these requirements do not provide adequate protection for DISTRICT and for members of the public, DISTRICT may require CONTRACTOR to obtain insurance sufficient in coverage, form and amount to provide adequate protection. DISTRICT'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

#### **1. Verification of Coverage**

CONTRACTOR shall furnish DISTRICT with certificates evidencing coverage required below. **Copies of required endorsements must be attached to the certificates provided.** DISTRICT Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of DISTRICT and general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by DISTRICT before performance commences. DISTRICT reserves the right to require that CONTRACTOR provide complete, certified copies of any policy of insurance including endorsements offered in compliance with these specifications.

#### **2. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

**GENERAL LIABILITY:** Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by DISTRICT Risk Manager.

**AUTOMOBILE LIABILITY:** Insurance Services Office's Commercial Automobile Liability coverage form CA 00 01. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply. Personal Lines automobile insurance shall apply if vehicles are individually owned.



WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.

PROFESSIONAL LIABILITY or Errors and Omissions Liability insurance appropriate to CONTRACTOR'S profession.

UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

**3. Minimum Limits of Insurance**

CONTRACTOR shall maintain limits no less than:

General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
Fire Damage:	\$ 100,000

Automobile Liability:

- a. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit.
- b. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.

Workers' Compensation: Statutory.

Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Professional Liability or Errors and Omissions Liability: \$1,000,000 per claim and aggregate.

**4. Deductibles and Self-Insured Retention**

Any deductible or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by DISTRICT.

**5. Claims Made Professional Liability Insurance**

If professional liability coverage is written on a Claims Made form:

- a. The "Retro Date" must be shown, and must be on or before the date of the Agreement or the beginning of Agreement performance by CONTRACTOR.
- b. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.
- c. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, CONTRACTOR must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

**6. Other Insurance Provisions**

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

**7. All Policies:**

- a. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII. DISTRICT Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of DISTRICT and the general public are adequately protected.
- b. MAINTENANCE OF INSURANCE COVERAGE: CONTRACTOR shall maintain all insurance coverages and limits in place at all times and provide DISTRICT with evidence of each policy's renewal ten (10) days in advance of its anniversary date.

CONTRACTOR is required by this Agreement to immediately notify DISTRICT if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. CONTRACTOR shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

**8. Commercial General Liability and/or Commercial Automobile Liability:**

- a. ADDITIONAL INSURED STATUS: DISTRICT, its officers, directors, officials, employees, and volunteers are to be endorsed as additional insureds as respects: liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, occupied or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no endorsed limitations on the scope of protection afforded to DISTRICT, its officers, directors, officials, employees, or volunteers.

- b. **CIVIL CODE PROVISION:** Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- c. **PRIMARY INSURANCE:** For any claims related to this agreement, CONTRACTOR'S insurance coverage shall be endorsed to be primary insurance as respects DISTRICT, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by DISTRICT, its officers, directors, officials, employees, or volunteers shall be excess of CONTRACTOR'S insurance and shall not contribute with it.
- d. **SEVERABILITY OF INTEREST:** CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. **SUBCONTRACTORS:** CONTRACTOR shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by CONTRACTOR'S subcontractor.

**9. Professional Liability:**

**PROFESSIONAL LIABILITY PROVISION:** Any professional liability or errors and omissions policy required hereunder shall apply to any claims, losses, liabilities, or damages, demands and actions arising out of or resulting from professional services provided under this Agreement.

**10. Workers' Compensation:**

**WORKERS' COMPENSATION WAIVER OF SUBROGATION:** The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against DISTRICT, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this Agreement by CONTRACTOR. Should CONTRACTOR be self-insured for workers' compensation, CONTRACTOR hereby agrees to waive its right of subrogation against DISTRICT, its officers, directors, officials, employees, agents or volunteers.

**11. Property omitted.**

**12. Notification of Claim**

If any claim for damages is filed with CONTRACTOR or if any lawsuit is instituted against CONTRACTOR, that arise out of or are in any way connected with CONTRACTOR'S performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect DISTRICT, CONTRACTOR shall give prompt and timely notice thereof to DISTRICT. Notice shall be prompt and timely if given within thirty (30) days following the date of

receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

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**EXHIBIT C to Agreement**

**COMPENSATION**

**1. MAXIMUM PAYMENT TO CONTRACTOR**

The Maximum Total Payment Amount under this Agreement is: **\$31,310**  
(Please note: this amount includes reimbursable expenses.)

**2. COMPENSATION COMPONENTS**

Includes the cost of materials, supplies, and installation.

**3. ITEMIZED TASKS AND SUBTASKS**

If CONTRACTOR'S Proposal contains a schedule of tasks or subtasks with identified levels of effort such as estimated hours and/or estimated costs, or identifiable work products, milestones, or other events, then compensation for these individual tasks or activities shall not exceed the identified estimate or other limiting factors without the written approval of DISTRICT'S Project Manager. CONTRACTOR shall promptly notify DISTRICT'S Project Manager in writing of any tasks, subtasks, work products, or milestones that need to be reevaluated and indicate the reason and/or justification for such reevaluation. DISTRICT'S Project Manager is authorized to negotiate adjustments of individual tasks so long as the work is within the general scope of the project and the total compensation does not exceed the Maximum Total Payment Amount under this Agreement listed above.

**4. WORK NOT IN SCOPE OF SERVICES**

CONTRACTOR shall immediately notify the DISTRICT'S Project Manager in writing of any work that the DISTRICT requests to be performed that CONTRACTOR believes is outside of the original scope of work covered by this Agreement. If it is determined that said request is outside of the scope of work, such work shall not be performed unless and until the Director approves such request in writing and authorizes the use of any contingency funds for such work, or an amendment providing for an adjustment in CONTRACTOR'S compensation is approved and executed by both parties.

**5. NOTIFICATION OF 75% EXPENDITURE OF COMPENSATION omitted.**

**6. SUBMISSION OF INVOICES**

CONTRACTOR shall address and submit all invoices associated with this

Agreement by U.S. mail or personal delivery to the following address:

Carmichael Recreation and Park District  
5750 Grant Avenue  
Carmichael, CA 95608  
Attn: Accounts Payable

CONTRACTOR shall include the following information on all invoices:

Project Name: Carmichael Park Clubhouse Project  
Date of Invoice Submission  
Time Period Invoice Covers  
Services Provided and Respective Compensation Requested  
Any other information deemed necessary by CONTRACTOR and/or DISTRICT.

DISTRICT may change the address to which subsequent invoices shall be sent by giving written notice designating a change of address to CONTRACTOR, which shall be effective upon receipt.

**7. PAYMENTS**

In accordance with the Compensation and Payment of Invoices Limitations provision of this Agreement, DISTRICT shall address and submit payments to CONTRACTOR at address in the Notice provision of this Agreement.

CONTRACTOR may change the address to which subsequent payments shall be sent by giving written notice designating a change of address to DISTRICT, which shall be effective upon receipt.