

LEE COUNTY CONSTRUCTION CONTRACT
AGREEMENT FORM

AGREEMENT

THIS AGREEMENT (“Agreement”), effective the date the Lee County Board of County Commissioners awarded the Solicitation to the Contractor, is made and entered into by both parties, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "OWNER" or the “COUNTY” and INDUSTRIAL SHADEPORTS, INC. a Florida corporation, whose address is 6600 NW 12th Avenue, Suite 220, Fort Lauderdale, FL 33309, and whose Federal tax identification number is 81-4247013 hereinafter referred to as “CONTRACTOR”.

In consideration of the mutual covenants herein set forth, the COUNTY and the CONTRACTOR do hereby agree as follows:

ARTICLE 1. WORK

The CONTRACTOR shall perform all the Work required by the Contract Documents (the “Work”).

Scope of Work:

In full accordance with the drawings and as further elaborated in the specifications of Lee County Request for Proposal No. RFP210282WCD (the “Solicitation”), a copy of which is on file with the Lee County Department of Procurement Management and is deemed incorporated into this Agreement, the CONTRACTOR shall provide design/visual concept build-out, equipment, labor, materials, and incidentals for the construction of new playground shade structures throughout COUNTY facilities. Shade structures locations include, but may not be limited to playgrounds and water pads.

PROJECT NAME: PARKS SHADE STRUCTURES

LOCATION: Lee County, Florida

ARTICLE 2. AMOUNT OF CONTRACT

2.1 The COUNTY shall pay the CONTRACTOR in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the sum of: THREE HUNDRED FORTY-ONE THOUSAND ONE HUNDRED - NINETEEN THOUSAND DOLLARS AND ZERO CENTS (\$341,119.00).

2.2 All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of nonappropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the CONTRACTOR on thirty (30) calendar days' prior written notice, but failure to give such notice shall be of no effect, and the County shall not be obligated under this Agreement beyond the date of termination.

ARTICLE 3. PROGRESS PAYMENTS

Based upon Applications for payment submitted to the OWNER'S Representative by the CONTRACTOR, and Certificates for Payment issued by the OWNER'S Representative, the COUNTY shall make progress payments on account of the Contract Price to the CONTRACTOR as provided in the Contract Documents as follows:

3.1 Not later than fifteen (15) calendar days following the approval of an Application for payment, up to ninety-five percent (95%) of the portion of the Contract Price properly allocated to the aggregate of labor, materials, and equipment costs collectively incorporated in the Work and up to ninety-five percent (95%) of the portion of the Contract Price properly allocated to materials and equipment suitably stored at the site or some other location agreed upon in writing, for the period covered by the application for payment, less the aggregate of previous payments made by the COUNTY. In the event day fifteen (15) falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline shall fall to the next Monday or non-Lee County recognized holiday.

3.1.1 The amount of retainage withheld from each subsequent progress payment made to the CONTRACTOR may not exceed 5%.

3.2 Upon final completion of the work and acceptance of the project, a sum sufficient to increase the total payments to one hundred percent (100%) of the Contract Price, less such amounts as the COUNTY shall determine for all incomplete Work, unsettled claims, or unused units as provided in the Contract Documents.

ARTICLE 4. CONTRACT DOCUMENTS

This Contract executed this date by the Lee County Board of County Commissioners and the CONTRACTOR. WITNESSETH that the parties hereto do mutually agree as follows:

4.1 The CONTRACTOR shall furnish all labor, equipment, and materials and perform the Work above described for the amount stated above in strict accordance with the General Conditions, Supplementary Information, Plans and Specifications, and other Contract Documents, all of which are made a part hereof as if attached and enumerated as follows:

4.1.1 Lee County Request for Proposal/Project Manual titled: Parks Shade Structures dated June 22, 2021

4.1.2 Addendum Number 1 dated July 6, 2021

4.1.3 Addendum Number 2 dated July 7, 2021

4.1.4 CONTRACTOR's Price Proposal dated September 20, 2021

4.1.5 CONTRACTOR'S Rendering attached hereto and incorporated as Exhibit B

4.2 The COUNTY shall pay the CONTRACTOR in accordance with the Exhibit A, Price Proposal, attached hereto and incorporated herein.

4.3 Public Payment and Performance Bond

4.4 Certificate of Insurance

4.5 Notice of Award

4.6 Documentation submitted by the CONTRACTOR prior to the Notice of Award: None.

4.7 CONTRACTOR's Background Screening Affidavit attached hereto and incorporated herein as Exhibit C.

4.8 The following, which may be delivered or issued after the effective date of the Agreement and are not attached hereto: All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

5.1 Work to be started on the date specified in the Official Notice to Proceed.

5.2 Substantial completion shall be achieved not later than the number of days specified in the Special Conditions.

5.3 Final completion shall be achieved not later than the number of days specified in the Special Conditions.

Liquidated Damages:

5.4 The COUNTY and CONTRACTOR recognize that time is of the essence of this Agreement and that the COUNTY will suffer financial loss if the work is not completed within the times specified in 5.2 and 5.3 above, plus any extensions thereof allowed by Change Order. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the COUNTY if the work is not completed on time. Accordingly, instead of requiring any such proof, COUNTY and CONTRACTOR agree that as Liquidated Damages for delay (but not as a penalty), the sum of \$250.00 per calendar day shall be deducted from monies due to the CONTRACTOR or paid by the CONTRACTOR to the COUNTY for each calendar day that expires after the time specified for Substantial Completion and the project fails to reach Substantial Completion. The CONTRACTOR shall also be liable for any Actual Damages sustained by the COUNTY due to the CONTRACTOR'S failure to fully complete the work by the time agreed upon for Final Completion in the Contract Documents. Actual Damages may include, but not be limited to: costs related to supervision, inspection, rentals, testing, consulting fees, or lost productivity. The COUNTY shall have the right to deduct all damages due from the final payment request as well as retainage. However, prior to deducting liquidated damages, the COUNTY shall give the CONTRACTOR seven (7) calendar days' notice prior to submitting the adjusted amount due to the Clerk for payment.

ARTICLE 6. DISPUTE RESOLUTION

6.1 In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.

6.2 In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.

6.3 Any dispute, action, or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.

6.4 This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.

6.5 Unless otherwise agreed in writing, the Contractor will be required to continue all obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1 Final payments, constituting the entire unpaid balance of the Contract Price shall be paid by the COUNTY to the CONTRACTOR when the work has been completed, the Contract fully performed, and a final Certificate for Payment, form No. CMO:013, has been approved by the COUNTY.

7.2 Terms used in the Agreement which are defined in the General Conditions of the Contract shall have the meaning designated in those conditions.

7.3 The COUNTY and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

7.4 The CONTRACTOR shall not assign or transfer any of its rights, benefits, or obligations, except for transfer that results from transfer or consolidation with a third party, without the prior written approval of the COUNTY. The CONTRACTOR shall have the right to employ other persons and/or firms to serve as sub-contractors in connection with the requirements of the Contract Documents.

7.5 The CONTRACTOR agrees through the signing of this agreement by an authorized party or agent that he shall hold harmless and defend the County of Lee and its agents and employees from all suits and action, including attorney's fees, and all cost of litigation and judgments of every name and description arising out of and incidental to the performance of this Contract Document or work performed thereunder, whether or not due to or caused by negligence of the COUNTY, excluding only the sole negligence of the COUNTY. This provision shall also pertain to any claims brought against the COUNTY by any employee of the CONTRACTOR, or sub-contractor(s), or anyone directly or indirectly employed by any of them. The CONTRACTOR'S obligation under this provision shall not be limited in any way to the agreed upon Contract Price as shown in this agreement or the CONTRACTOR'S limit of or lack of sufficient insurance protection.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

INDUSTRIAL SHADEPORTS, INC.

Signed By: [Signature]

Signed By: [Signature]

Print Name: Danville Shaw

Print Name: Stanley Breitweiser

Title: President/owner

Date: 9-27-2021

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: [Signature]

CHAIR
Commissioner Cecil L. Pendergrass, Chairman
Lee County Board of County Commission
District 2

DATE: 12-3-21

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: [Signature]
DEPUTY CLERK



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: [Signature]
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A
PRICE PROPOSAL



September 20, 2021

RFP210282WCD
Parks Playground Shade Structures Construction

Pricing

Location	Option C	
	Type/Size	Price
Buckingham Park	Dome ±896 Sqft	\$43,402.00
Hunter Park	Dome ±832 Sqft	\$42,196.00
Lakes Park (West)	Sails ±2,025 Sqft	\$83,581.00
Lakes Park (East)	Sails ±2,200 Sqft	\$89,181.00
Matlacha Park	Dome ±624 Sqft	\$39,737.00
Veterans Park	Dome ±840 Sqft	\$43,022.00
Total	±7,417 Sqft	\$341,119.00

EXHIBIT B

RENDERING

EXHIBIT B

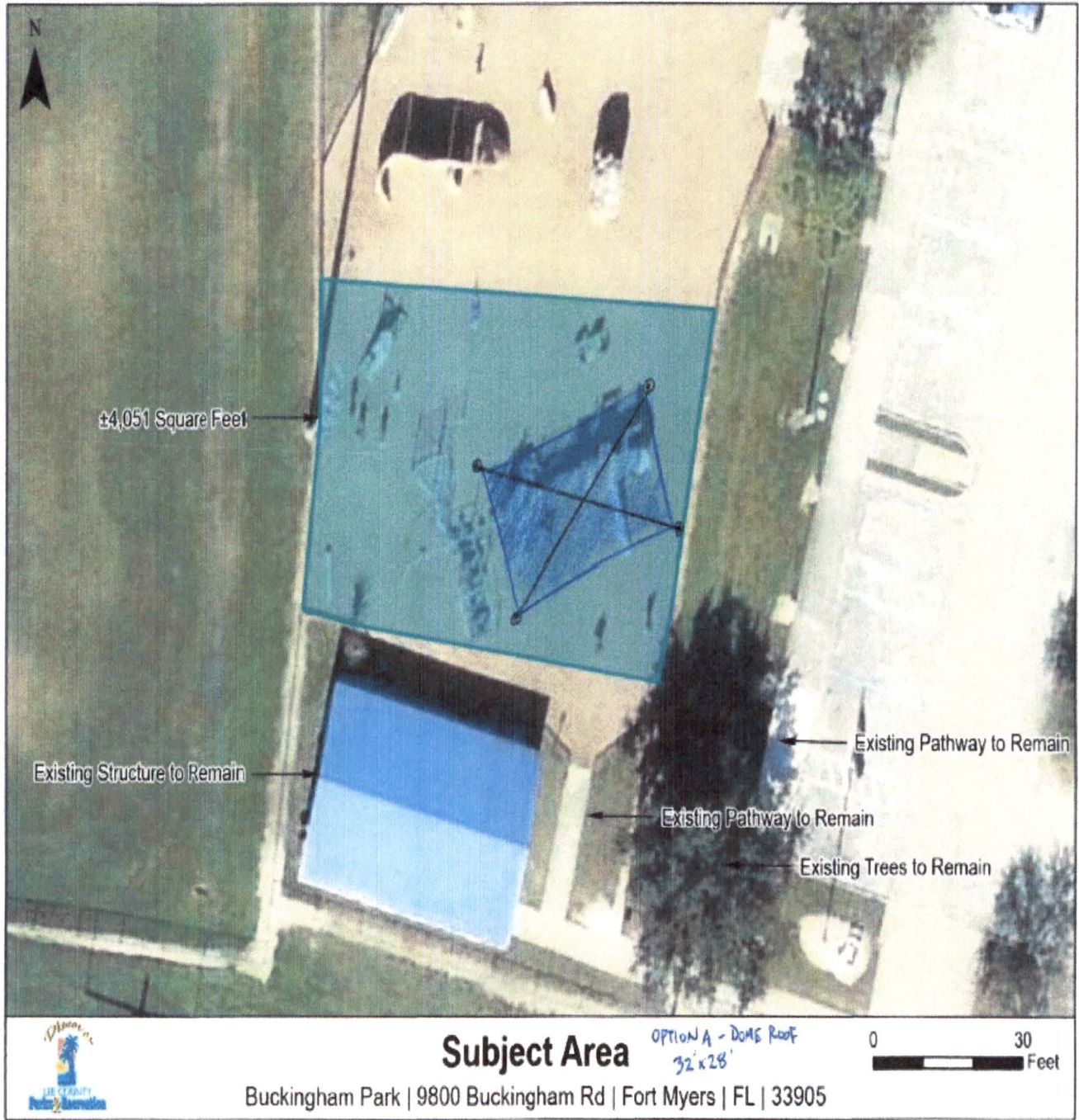


Subject Area

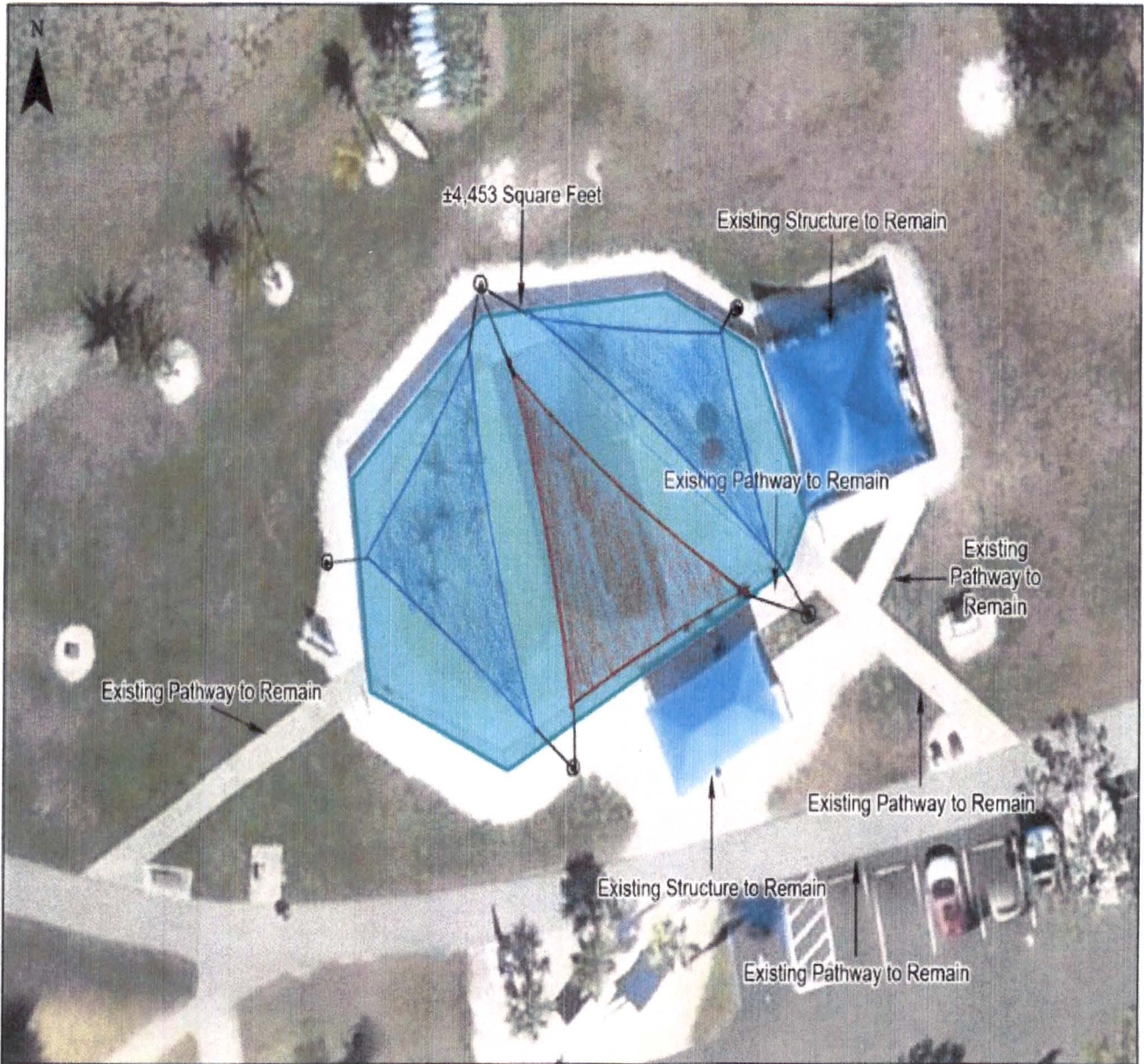
*OPTION 9 - Dome Roof
32' x 26'*

Hunter Park | 1526 Oak Dr | Fort Myers | FL | 33907









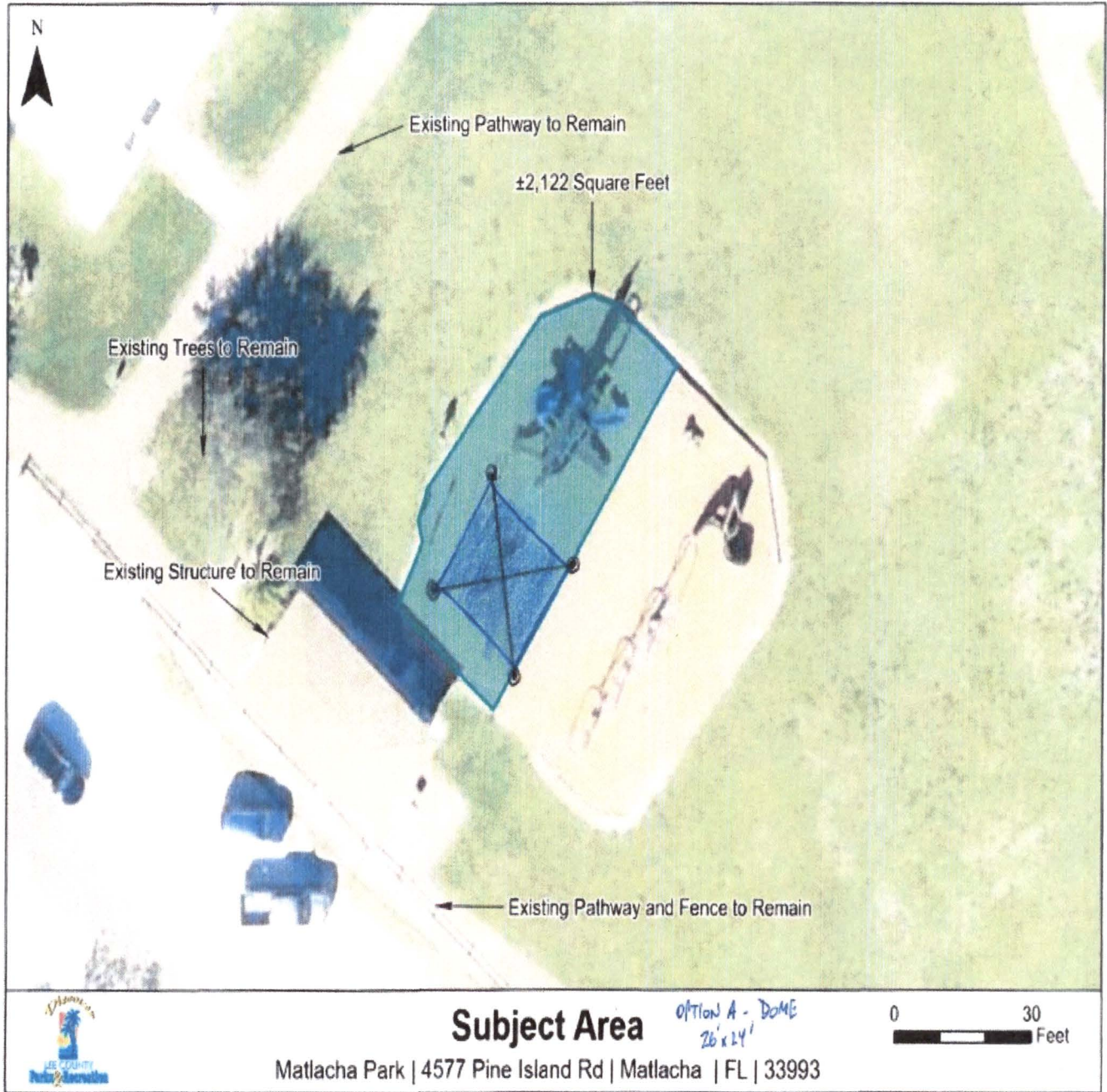
EAST SPLASH PAD

Subject Area

OPTION B - SALES
±270,527 12/4 - 2/24

Lakes Park | 7330 Gladiolus Dr | Fort Myers | FL | 33908







Subject Area

*option A - DOME
30' x 23'*

0 30
Feet

Veterans Park | 55 Homestead Rd S | Lehigh Acres | FL | 33936







EXHIBIT C

CONTRACTOR'S BACKGROUND SCREENING AFFIDAVIT



CONTRACTOR BACKGROUND SCREENING AFFIDAVIT

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Contractor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Contractor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Contractor will be solely responsible for complying with such legal requirements. Furthermore, the Contractor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

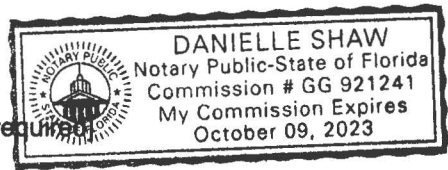
Date: 9-27-2021

[Handwritten signature]
Signature

STATE OF Florida
COUNTY OF Broward

Stanley Breitwieser
Name/Title President/owner

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of [X] physical presence or [] online notarization, this 27 day of September, 2021, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following as identification:



[Stamp/seal required]

[Handwritten signature]
Signature, Notary Public

CONTRACT REVIEW CHECKLIST

CONTRACT TYPE: Construction

SUBJECT: Project known as: Parks Playground Shade Structures

Between Lee County and Industrial Shadeports, Inc.

Reference: Board action approving contract/agreement

Board Date: 12/7/21

Agenda Item No.: A3

Please sign the attached documents on appropriate signature lines. When complete, please send entire packet to the next Department on the numbered list below. Please return to Procurement Management when fully completed.

The subject contract is forwarded herewith for review and/or endorsements:

(1) **By the Director of:** Routed by Procurement

Project Sponsoring Department

Recommendation to execute

Not recommending execution for the following reason(s):

Date received:

Date returned/forwarded:

Signed:

2021 DEC -9 PM 1:15
RECEIVED BY
LEE CO. ATTORNEY

(2) **By Procurement Management:**

X Recommending execution

Not recommending execution for the following reason(s):

Procurement Contract Reviewed by: *Ernie Brevette*

Date: *12-8-21*

Date received:

Date returned/forwarded:

Signed:

(3) **By the Risk Management**

X Recommending execution

Not recommending execution for the following reason(s)

** Please note COI (Auto Liability) set to expire on 12/15/21, will need renew*

Date received: *12/8/2021*

Date returned/forwarded: *Dec 8, 2021*

Signed:

(4) **By the County Attorney:**

X Recommending execution

Not recommending execution for the following reason(s)

Date received: *12/9/2021*

Date returned/forwarded: *12/13/2021*

Signed:

(5) **Board**

(6) **Clerk's Office, Minutes Department**

(7) **Procurement Management**

12/13/21

Willie Dennard

Commissioner Cecil L. Pendergrass, Chairman
Lee County Board of County Commissioners

District 2
2021 DEC 10 2:55 PM

RECEIVED
MINUTES OFFICE



AGENDA ITEM REPORT

DATE: December 7, 2021
DEPARTMENT: Parks and Recreation
REQUESTER: Jesse Lavender
TITLE: Award Contract for New Shade Structures at Multiple Lee County Parks

I. MOTION REQUESTED

- A) Award Request for Proposal No. RFP210282WCD, Parks Shade Structures to Industrial Shadeports, Inc., to provide design/visual concept build-out, equipment, labor, materials, and incidentals for the construction of shade structures at multiple Lee County Parks and Recreation facilities in the amount of \$341,119.00.
- B) Authorize the Chair to execute the contract documents on behalf of the Board of County Commissioners.

II. ITEM SUMMARY

This item awards a contract to Industrial Shadeports, Inc. to install shade structures at Buckingham, Lakes, Matlacha, Veterans and Hunter Parks. The new shade structures will provide relief and comfort to the patrons that visit the various playgrounds and water features where the shade structures will be installed. These shade structures are anticipated to be installed during this fiscal year at a cost of \$341,119.00. Funding is included in the budget.

III. BACKGROUND AND IMPLICATIONS OF ACTION

- A) Board Action and Other History
Procurement Management obtained proposals for the project known as Request for Proposal No. RFP210282WCD Parks Playground Shade Structures. On the solicitation deadline of July 28, 2021, Procurement Management received two submittals. An evaluation meeting was held on August 10, 2021 during which time the Evaluation Committee considered criterion as listed in the solicitation request including such items as: Qualifications of Company, Company Relevant Experience & Reference, Plan of Approach, Personnel and Price Proposal. Based on the information submitted by the proposers, the Committee reached a consensus to negotiate with and recommend the award of a contract to Industrial Shadeports, Inc.
- B) Policy Issues
- C) BoCC Goals
- D) Analysis
- E) Options

IV. FINANCIAL INFORMATION

A)	Current year dollar amount of item:	\$341,119
B)	Is this item approved in the current budget?	Yes
C)	Is this a revenue or expense item?	Expense
D)	Is this Discretionary or Mandatory?	Discretionary
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	No
F)	Fund: Capital Improvement Program Program: Parks and Recreation Project Project: Playground and Splashpad Shade Enhancements Account Strings: 20073238651, 20073238652, 20073238653 and 20073238700	
G)	Fund Type?	Other: Regional and Community Park Impact Fees
H)	Comments:	

V. RECOMMENDATION

Approve

VI. TIMING/IMPLEMENTATION

VII. FOLLOW UP

REVIEWERS:

Department	Reviewer	Action	Date
Parks and Recreation	Lavender, Jesse	Approved	11/17/2021 - 1:20 PM
Budget Services	Guttery, Angela	Approved	11/18/2021 - 2:21 PM
Budget Services	Winton, Peter	Approved	11/18/2021 - 3:51 PM
County Attorney	Swindle, Amanda	Approved	11/22/2021 - 4:41 PM
County Manager	Brady, Christine	Approved	11/23/2021 - 2:09 PM