

ROSEMONT COMMUNITY PARK BALLFIELD FENCE PROJECT MANUAL



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Section 1: Bid Documents

The scope of work for this project includes the replacement of the existing fence on the north little league field with a new fence at Rosemont Community Park. The working days for this contract shall be 30. The project shall be advertised according to the UPCCAA informal bidding requirements. The project is being funded with federal grants and requires compliance with the Davis-Bacon Act.

BID PROPOSAL

In compliance with the Contract Documents, the undersigned hereby proposes to furnish all required labor, materials, supervision, transportation, equipment, services, taxes and incidentals required for:

Rosemont Community Park Ballfield Fence Project

Item No.	Item	Estimated Quantity	Unit	Unit Price	Total
1.	MOBILIZATION & SWPPP	1	LS	\$	\$
2.	DEMOLITION & DISPOSAL	1	LS	\$	\$
3.	FENCING	1	LS	\$	\$
BASE BID TOTAL				\$	

Bids are due on or before: **Thursday August 24th at 2 PM at the Cordova Recreation and Park District Offices** Attn: Cristina James, Cjames@crpd.com, (916) 842-3312, 11070 White Rock Road Suite 130, Rancho Cordova, CA 95670. This project must be bid by a C13 Fence Contractor. The Cordova Recreation & Park District requires "Prevailing Wage" for all public projects. Contractor warrants compliance with all federal, state, local laws, ordinances, rules and regulations applicable to the performance of this Request for Quote. Representations contained within this bid are made under penalty of perjury.

Contractor's Name & Phone: _____

Contractor's License: _____

Date: _____

INSTRUCTIONS TO BIDDERS

To be considered, sealed proposals (bids) must be made in accordance with the following instructions:

1. Proposals/Bids: Proposals must be made on the form included in these bid documents. All items on the form shall be filled out, numbers shall be stated in writing and in figures, and the signatures of all individuals shall be in longhand. When requested by the District, satisfactory evidence of the authority of the person signing on behalf of the company shall be furnished. A party's failure to properly sign required forms may result in rejection of the proposal. Each proposal must give the full name and business address of the proposing party.
 - 1.1 No telegraphic or telephone proposal or modifications to the form will be considered. Proposals shall not contain any recapitulation of the work to be done, and alternative proposals will not be considered unless called for.
 - 1.2 Should a bidder find a discrepancy in or omissions from the documents or should he/she be in doubt as to any meaning, he/she shall immediately notify the District, who will send written instructions to all bidders. The District will not be responsible for giving any oral instructions. All inquiries will be answered in writing and distributed to all bidders in the form of addenda to the contract prior to the opening bid date.
 - 1.3 All addenda or bulletins issued during the bidding period shall be included in the proposal and will become a part of the contract for the project.
 - 1.4 Pursuant to provisions of Section 4100 et seq. of the Public Contract Code, every bidder shall in his/her bid set forth:
 - a. The name and location of the place of business of each subcontractor who will perform work or labor or render service to the bidder in or about the work in an amount more than one-half of one percent of the bidder's total work.
 - b. The portion of the work that will be done by each subcontractor. If the bidder fails to specify a subcontractor for any portion of the work to be performed under the contract more than one-half of one percent of the bidder's total bid, he/she agrees to perform that portion himself/herself. The successful bidder shall not, without the consent of the District, either:
 - i. Permit any subcontract to be assigned or transferred or allow the work to be performed by anyone other than the original subcontractor listed in the bid.
 - ii. Other than in the performance of a change order, sub-let or subcontract any portion of the work more than one-half of one percent of the total bid as to which his/her original bid did not designate a subcontractor.
 - c. Proposals must include all applicable taxes in the proposal amount.
2. Deadline for receipt of proposals: proposals must be received in a sealed envelope by the Cordova Recreation and Park District by or before **Thursday August 24th at 2 PM**. Proposals received after this time will not be considered.
3. Award or Rejection of Bids/Alternates: The Contract, if awarded, will be awarded to the lowest responsible bidder. The lowest responsible bidder shall be determined based on the lowest base bid, including consideration of the prices on the additive or deductive items that are to be awarded and follow these instructions and the advertised Notice Inviting Bids. The competency and the responsibility of bidders and of their proposed subcontractors will be considered in making the award of the Contract. Any bidder before being awarded a contract may be required to furnish evidence satisfactory to District

that he/she and his/her proposed Contractors have sufficient means and experience in the type of work called for and to assure completion of the contract in a satisfactory manner.

4.1 The District reserves the right to reject the bid of any bidder based on non-responsibility and/or who has previously failed to perform properly, contracts with the District. The District reserves the right to reject any or all bids or alternates and waive any informality or irregularity in the bids or in the bidding.

4. Bonds: The successful bidder shall furnish a Faithful Performance Bond and Payment Bond in the form set forth in the contract documents and included herewith.
5. Execution of Contract: The successful bidder shall, within ten (10) calendar days of receiving a notification of award of the contract, sign and deliver to the District the executed contract and any required submittals. In the event the party to whom an award is made fails or refuses to execute the contract within ten (10) calendar days, the District may seek damages for breach of the contract and may award the contract to one of the other responsible parties.
6. Withdrawal of Proposal: Proposals may be withdrawn by the bidder prior to the time fixed for opening of proposals. Thereafter the proposals may not be withdrawn for a period of sixty (60) days.
7. Worker's Compensation: In accordance with the provisions of Section 3700 of the Labor Code, every Contractor is required to secure payment of compensation to his employees.

8.1 Each Contractor to whom a public works contract is awarded is required to sign and file with the awarding body the following certification prior to performing the work of the contract, a copy of which is enclosed. This certification states,

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions".

8. Compliance with Laws and Regulations: The successful bidder/Contractor shall comply with all laws and regulations governing Contractor's performance on a public project including, but not limited to, anti-discrimination laws, workers' compensation laws, prevailing wage laws set forth in Labor Code Section 1770 et seq., and licensing laws.
9. License Information: Each bidder shall list his/her license number, license type and expiration date. Each bidder must be a Contractor properly licensed to perform the work covered by the bid documents upon which it is bidding with an active license in good standing as of the date of receipt of bids. The license must be issued by the Contractors' State License Board (CSLB) of California and must be maintained in good standing throughout the term of the Contract.
 - 10.1 All subcontractors must be properly licensed by the CSLB to perform the work they will be undertaking and must maintain their licenses in good standing throughout the terms of the Contract.
 - 10.2 If two or more business entities submit a bid on a Project as a Joint Venture or expect to submit a bid as part of a Joint Venture, each entity within the Joint Venture must be properly licensed by the CSLB and the bid proposal must list each entities license number, license type and expiration date on the bid proposal.
10. Non-Collusion Affidavit: Bidders shall submit a completed non-collusion affidavit, in a form acceptable to District, a copy of which is attached hereto, with their bid.

11. Child Support Compliance: For every contract more than \$100,000.00, only the successful bidder will be required to acknowledge that he/she is aware of the State's policy regarding the importance of child and family support obligations and that to the best of his/her knowledge, he/she is fully complying with the earnings assignment order of all employees and providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department. Bidders shall submit a completed child support compliance acknowledgment; form is included within this manual.
12. Estimated Quantities: If the Bidding Documents provide information concerning estimated quantities of work to be performed, the estimated quantities are approximate only, being given as a basis for the comparison of bids. District does not, expressly or by implication, agree that the actual amount of work will correspond with the estimate, and District reserves the right to increase or decrease the amount of any class or portion of the work, as may be deemed necessary or advisable by District, with no adjustment to the unit price except as expressly provided in the Contract Documents.
13. Bid Protest Procedure: Any protest relating to the form or content of the bidding or Contract Documents must be submitted in writing to District at least ten (10) business days before the original date set for bid opening in the Notice to Bidders. Any bidder who submits a bid shall be deemed to have waived any protest to the form or content of the bidding or Contract Documents.
 - 14.1 Any bid protest relating to the award of the Contract for the Project, other than a protest addressing the form or content of the bidding or Contract Documents, must be submitted in writing to District so that it is received by District before 5:00 p.m. on the third business day following the bid opening. Failure to deliver a written protest within the designated period shall constitute a waiver of the bidder's right to protest District's determination and intended action, whether administratively or through legal proceedings, and shall render District's action relative to the bids final, binding, and un-appealable by such bidder.
 - 14.2 The initial protest document shall contain a complete statement of the basis for the protest, including the legal and factual basis for the action requested. The protest shall refer to the specific portion(s) of the Contract Documents upon which the bidder relies in support of the protest and include as exhibits all documents relied upon in support of the protest. The protest shall include the name, address, telephone, and fax numbers of the protesting party and any person representing the protesting party.
 - 14.3 The party filing the protest shall concurrently transmit a copy of the initial protest document and any attached documentation or exhibits to all other known bidders at the address specified on District's plan holder list. The documents shall be transmitted by fax or overnight delivery service.
 - 14.4 The procedure and time limits set forth in this paragraph are mandatory and are the bidder's sole and exclusive remedy in the event of bid protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing a Government Code claim or legal proceedings.

14. Certification of All Claims Submitted/Notification of Enforcement of False Claims Act
The successful Bidder will be required to certify the accuracy of all claims submitted to the District, as part of the submission of such claim(s). Each claim must be accompanied by the following certification:

I have personal knowledge of the contents of the claim being submitted to the District. I have personal knowledge that the facts contained within this claim and any supporting documentation are true and/or I am informed and believe that they are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 20__ in _____ California.

In addition, Contractor expressly acknowledges that it is aware of the provisions of the state and federal False Claims Act and is also aware that if a false claim is knowingly submitted (as the term "Claim" and "Knowingly" are defined in California Government Code Section 12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the Contractor may be subject to criminal prosecution.

The False claims listed in the California FCA are as follows:

1. Knowingly presents or causes to be presented to an officer or an employee of the state or any political subdivision thereof, a false claim for payment or approval. (Cal. Government Code 12651(a)(1))
2. Knowingly makes, uses or causes to be made a false record or statement to get a false claim paid or approved by the state or by any political subdivision. (Cal. Government Code 1265(a)(2))
3. Conspires to commit a violation of the False Claims Act. (Cal. Government Code 12651(a)(3))
4. Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt. (Cal. Government Code 12651(a)(4))
5. Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property used or to be used. (Cal. Government Code 12651(a)(5))
6. Knowingly buys or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property. (Cal. Government Code 12651(a)(6))
7. Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state or to any political subdivision. (Cal. Government Code 12651(a)(7))
8. Is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim." (Cal. Government Code 12651(a)(8)) (Note: This places a burden on general Contractors to exercise due diligence in reviewing subcontractor claims before passing them through to the district. If a general Contractor passes through a claim and then later discovers that it is false, the general Contractor must notify the district and either withdraw the claim or be subject to false claims liability.)

For illustrative purposes only, the following may constitute a violation of the False Claims Act:

1. Falsification of hours set forth in timecards;
2. Overstating wage rates;
3. Submitting billings for costs or services not actually incurred on the project;
4. Altering invoices submitted by subcontractors or suppliers;
5. Double billing for the same work;
6. Colluding with third parties to submit overstated charges;

7. Substitution of cheaper or substandard materials;
 8. Invoicing for unallowable costs;
 9. Submitting false subcontractor pass through claims;
 10. False certifications in any area required by contract, state or federal law;
 11. Deductive change orders (reverse false claim);
 12. False certifications for equitable reimbursement of change orders;
 13. Misrepresenting that work meets contract requirements;
 14. Misrepresenting that Contractor is paying applicable prevailing wages;
 15. Misrepresenting that Contractor is paying all of its subcontractors appropriately;
 16. Misrepresenting that work is subject to reimbursement, etc.
16. Indemnity: The successful proposing party must hold harmless and fully indemnify the District, its Board of Directors, officers, employees, and agents from all damages or claims for damages, costs, or expenses that may at any time arise out of the party's performance of, or failure to perform, acts required by the contract documents.
17. Inspection of Site Work: Contractors are required to inspect the site of the work in order to satisfy themselves, by personal examination or by such other means as they may prefer, of the location of the proposed work and the actual conditions of and at the site. Contractors may apply to CRPD for additional information and explanation before submitting bids. However, no supplemental information requested or furnished shall vary the terms of the Contract Documents or affect the Contractor's sole responsibility to satisfy him or herself as to the conditions of the work to be performed. No claim for additional compensation will be allowed which is based upon a lack of knowledge of the actual conditions or location of the work.
- 17.1 Submission of a bid by a Contractor shall constitute acknowledgment that the Contractor has relied, and is relying, on its own examination of (a) the site of the work; (b) access to the site; (c) all other data, matters, and things requisite to the fulfillment of the work and, on their own knowledge of existing facilities on and in the vicinity of the site of the work and not on any representation or warranty of the lack of knowledge of the above items.

NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

STATE OF CALIFORNIA)
) ss.
County of _____)

_____, being first duly sworn, deposes and says that he or she is _____ of _____ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or a sham bid; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member of agent thereof to effectuate a collusive or sham bid.

Subscribed and sworn to (or affirmed) before me
this _____ day of _____, 20__ by _____
personally known to me, or proved to me on the basis of satisfactory evidence, to be the person(s) who
appeared before me.

Signature _____

BID BOND

Know All Men by These Presents: That _____ as Principal and _____ as Surety, are held and firmly bound unto the Cordova Recreation and Park District as Obligee, in the sum of (amount must be ten percent (10%) or more of total bid) _____ Dollars (\$_____) lawful money of the United States for payment whereof, well and truly to be made, above bonded Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, firmly by these present.

THE CONDITION OF THE ABOVE OBLIGATION is such that whereas the Principal is herewith submitting a proposal for_____.

NOW, THEREFORE, if the Principal shall, within ten (10) calendar days after receipt of written notification of acceptance of his/her proposal, enter into contract and execute and deliver to said Obligee a bond for faithful performance of said contract and payment (labor and materials) bond, then Obligee may provide Surety with written notice of Principal's failure and Surety shall thereafter, within seven (7) calendar days of receipt of written notification, remit full payment of the bond amount to Obligee. In the event Principal, Surety or Obligee becomes involved in litigation arising out of his/her/its obligations pursuant to this bond, the court in such litigation or any separate suit, shall award reasonable cost and expenses, including attorney's fees, to the prevailing party. This bond shall be governed by the laws of the State of California in the event of legal action, Surety, Principal, and co-signer(s), if any, shall submit to the jurisdiction of the appropriate court in the State of California.

IN WITNESS WHEREOF, Principal and Surety have hereunto set their hands and seals on this _____ day of _____ 20__.

Principal

(Seal)

(This bond must be signed and Acknowledged by both Principal and Surety before a Notary Public, and acknowledgements With notarial Seals, attached Hereto)

Surety _____

By: _____
Attorney in Fact

GENERAL CONDITIONS

1. **ACCEPTANCE OF NON-CONFORMING WORK:** District reserves the right to accept non-conforming work, and in such case, acceptance of non-conforming work shall result in an equitable adjustment in the total contract price reflecting the reduced value of the non-conforming work as determined by agreement between District and Contractor.
 - 1.1 **REJECTION OF NON-CONFORMING WORK:** The Contractor shall promptly correct all work rejected by the District as defective or failing to conform to the Contract Documents. The Contractor shall bear all costs of correcting such rejected work.
 - 1.2 **ADDITIONAL WORK:** CRPD has the authority to direct additional work including work for vandalism, CRPD initiated improvements, and the addition of new sites. Additional work outside the Scope of Services will require written approval from CRPD prior to the commencement of work. Costs for additional work completed by the Contractor prior to receiving written approval from CRPD shall be the responsibility of the Contractor.
2. **ACCIDENT PREVENTION:** Caution shall always be exercised for the protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery and equipment shall be guarded, and other hazards shall be eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.
3. **ARBITRATION:** This contract is subject to Public Contracts Code §20104. Specifically, claims for three hundred and seventy-five thousand (\$375,000.00) dollars or less which arise between the Contractor and the District shall be resolved as follows:
 - 3.1. Definition: "Claim" means a separate demand by the Contractor for:
 - a. a time extension;
 - b. payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or
 - c. an amount the payment of which is disputed by the District.
 - 3.2. For any claim subject to this article, the following requirements apply:
 - a. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. This provision shall not extend the time limit or otherwise supersede notice requirements set forth in other provisions of the contract documents.
 - b. For claims of less than fifty thousand (\$50,000.00) dollars, the District shall respond in writing to any written claim within forty-five (45) days receipt of the claim or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have against the claimant. If additional information is thereafter required, it shall be requested and provided upon mutual agreement by the District and the claimant. The District's written response to the claim, as further

documented, shall be submitted to the claimant within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

- c. For claims over fifty thousand (\$50,000.00) dollars and less than or equal to three hundred and seventy-five thousand (\$375,000.00) dollars, the District shall respond in writing to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the District may have against the claimant. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the District and the claimant. The District's written response to the claim as further documented shall be submitted to the claimant within thirty (30) days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.
- d. If the claimant disputes the District's written response, or if the District fails to respond within the time prescribed, the claimant may so notify the District in writing either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days.
- e. If, following the meet and confer conference, the claim or any portion remains in dispute, the claimant may file a claim pursuant to Government Code §900 et seq.
- f. If claimant's claim is not resolved pursuant to his/her filing of the claim pursuant to Government Code §900 et seq., claimant may proceed with a civil action which shall be governed by the provisions of Public Contracts Code §20104.4. Specifically, the court will submit the matter to non-binding mediation unless the District and claimant waive non-binding mediation and thereafter, if the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure.

4. **ASSIGNMENT:** Neither party to the Contract shall assign the Contract without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him/her hereunder, without the previous written consent of the District. Assignment of this contract or any part thereof without the prior written consent of the District shall constitute a material breach of this Agreement and entitle District to exercise any and all rights provided for by this Agreement or by law for such material breach.

5. **ATTORNEYS' FEES:** In the event of any action or proceeding, brought by any party against any other party pursuant to this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including the actual fees of its attorneys, incurred for prosecution, defense, consultation or advice in such action or proceeding, not limited to but including cost of expert witnesses, attorney preparation, and cost of discovery and investigation. In awarding attorney fees, the court will not be bound by any court fee schedule but shall, if it is in the interest of justice to do so, award the full amount

of cost, expenses, attorney fees paid or incurred in good faith. This provision shall not be applicable to the alternative dispute resolution set forth in Public Contracts Code §20104 et seq., until the case is assigned to judicial arbitration, by a court of competent jurisdiction or, if not assigned for judicial arbitration, when the case is heard before a court of competent jurisdiction.

6. **AUDIT:** District may always review, and audit Contractor's cost accounting records and other job records and Contractor will afford District reasonable facilities for such audits. Contractor shall preserve all job records for at least five (5) years after the completion of the project.
7. **BINDING AGREEMENT:** This Agreement, including all documents comprising the complete construction contract, shall be binding upon the District and Contractor and upon their successors and assigns and shall inure to the benefit of the District and Contractor and their successors and assigns.
8. **COMPLIANCE WITH APPLICABLE LAWS:** Prior to award of a contract resulting from this solicitation, the Contractor shall furnish, upon CRPD's request, verification of payment to its employees California's prevailing wages as required by law. In addition, upon CRPD's request, Contractor shall promptly furnish verification that its employees have legal rights to work in the United States of America and in the State of California.
9. **BONDS:** The Contractor shall furnish the District, within three (3) days after award of the Contract by the Governing Board and prior to execution of the Contract and the beginning of work, with the following separate surety bonds (in form set forth in these documents):
 - 9.1 **Faithful Performance Bond:** Said bond shall be in an amount equal to one hundred percent (100%) of the Contract price, shall be for the faithful performance of the Contract, shall be approved by the District, and shall be secured from an admitted surety or sureties satisfactory to District. An admitted surety is an insurance organization authorized by the Insurance Commissioner to transact surety business in the State of California during this calendar year.
 - 9.2 **Payment Bond:** Said bond shall be in an amount equal to one hundred percent (100%) of the Contract price, shall be approved by the District, and shall be secured from an admitted surety or sureties satisfactory to District. An admitted surety is an insurance organization authorized by the Insurance Commissioner to transact surety business in the State of California during this calendar year.
10. **CHANGE ORDERS:**
 - 10.1 District, without invalidating contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from work, contract sum being adjusted accordingly. All such work shall be executed under conditions of original contract. Contractor shall increase the amounts of his payment and performance bonds in proportion to any increase in price. In giving instructions, the District, shall have authority to make minor changes in work not involving change in cost and not inconsistent with purposes of building. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made except in pursuance of a written change order from the District, and no claim for addition to contract sum shall be valid unless so ordered.
 - 10.2 All change orders shall be signed by District and the Contractor.

10.3 Value of any such extra work, change, or deduction shall be determined at the sole discretion of the District in either of the two following ways set forth in subsection 10.6.a. or 10.6.b. Contractor understands and agrees that regardless of which process District elects to utilize that when submitting any change order proposal that such change order shall be broken down separately to itemize labor, by trade and hourly rate, for any trade performing work on the project and materials for any one activity. Contractor also understands and agrees that when submitting an itemized change order proposal, the Contractor shall only be allowed to submit a cost proposal for labor that reflects the wage rates for the trade that is currently on file with the District at the time the change order proposal is submitted.

- a. Acceptable lump sum proposal from Contractor properly itemized and supported by sufficient substantiating data to permit evaluation with a combined mark-up for all overhead and profit based on the formula set forth in section B. (5) of this Article. Contractor's written proposal must be broken down and submitted, in writing, in the format set forth in these documents.
- b. Time and Material: "Force Account" for direct costs for labor, material, and equipment rental plus markups for overhead and profit for Prime Contract, Subcontractor, and Sub-subcontractors as applicable. (Supervision is to be included in markup unless specifically agreed to in advance that special supervision is required.)

- 1. Labor: Attach itemized direct hourly rates in accordance with certified payroll records times total hours expended. Separately show dollar amount for employer-paid payroll taxes/insurance benefits.

Enter total as direct labor item. _____

- 2. Material: Attach receipts, invoices or itemized quantity units costs plus tax and delivery.

Enter total as material item. _____

- 3. Equipment: Attach receipts, invoices, or tear tickets indicating unit costs and total hours or loads charged. (Small tools with a value of less than \$500.00 are to be included in markup.)

Enter total as rental item. _____

- 4. SUBTOTAL (Lines 1+2+3)

- 5. Combined Markup: FOR ALL OVERHEAD AND PROFIT SHALL BE BASED ON THE FOLLOWING:

- a. For the Prime Contractor, for work performed by his forces, fifteen (15%) percent of his direct subtotal cost. This fifteen (15%) markup represents payment for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs incurred by Contractor in connection therewith.

- b. For the Prime Contractor, for work performed by a Subcontractor's forces, five (5%) percent of the direct subtotal cost due the Subcontractor, with no mark-up on mark-up. This five (5%) markup represents payment for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs incurred by Contractor in connection therewith.
- c. For a Subcontractor or Sub-subcontractor, for work performed by their own forces, fifteen (15%) percent of their own direct subtotal costs. This fifteen (15%) markup represents payment for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs incurred by sub-Contractor in connection therewith.
- d. For a Subcontractor, for work performed by a Sub-subcontractor, five (5%) percent of the direct subtotal cost due the Sub-subcontractor. This five (5%) markup represents payment for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs incurred by Contractor in connection therewith.

6. SUBTOTAL (Lines 4+5) _____

7. TOTAL CHANGE ORDER REQUEST: _____

- c. If the Contractor should claim that any instruction, request, drawing, specification, action, condition, omission, default or other situation obligates the District to pay additional compensation to the Contractor or to grant an extension of time for the completion of the contract, or constitutes a waiver of any provision in the contract, he shall notify the District, in writing, of such claim within ten (10) days from the date he has actual or constructive notice of the factual basis supporting the claim. The Contractor's failure to notify the District within such period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure shall be as stated above in this Article.
- d. Contractor Initiated Change Orders: Contractor understands that with respect to Contractor initiated change orders, that Contractor shall be solely responsible for all costs associated with the review process.
- e. Back Charge for Failure to Timely Submit Information for Proposed Change Orders: Contractor understands that it shall, within ten (10) calendar days of receipt of a demand by District, provide to District, in writing, an itemized list of all costs and/or credits (as applicable) for any Contractor initiated change orders. Contractor further understands that a failure to comply with this provision will result in the District obtaining the necessary information and back charging the Contractor for all costs incurred in having to take this action.
- f. All costs for supervision shall be part of the Contractor's or subcontractor's overhead including, but not limited to, cost of bond, office/clerical support, home office overhead,

administrative expenses, profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs incurred by Contractor in connection therewith.

11. CLEANUP:

11.1 The Contractor shall protect and preserve any adjoining property of the District or others affected by the work of the Contractor.

11.2 In the event work performed by the Contractor or any subcontractor creates dust or other airborne debris, Contractor shall provide daily "dust control" sufficient to prevent dust accumulation on grounds or buildings occupied or used by the public or district staff.

12. COMMENCEMENT OF WORK AND TIMELY COMPLETION: Contractor understands and acknowledges that **time is of the essence** for completion of this project. The Contractor shall attend a "Pre-Construction Meeting" with the District Representative and designated staff. Immediately after the "Pre-Construction Meeting" the Contractor shall begin work and shall prosecute the work diligently to completion. No work shall be commenced before the contract is signed.

13. COMPLETE AGREEMENT: This contract supersedes all agreements either oral or in writing, between the District and Contractor with respect to the subject matter herein. The District and Contractor acknowledge that no representation by any party which is not embodied herein or any other agreement, statement or promise not contained in the contract documents shall be valid and binding.

14. COMPLIANCE WITH LAWS AND REGULATIONS: Contractor shall be familiar with, and comply with, the various federal, state and local laws affecting public works, including but not limited to the following:

14.1 Prevailing Wage Law:

a. Pursuant to SB 854 Public Works requirements for Contractors and public agencies a) no Contractor or subcontractor may be listed on a bid proposal for a public works project unless they are registered with the Department of Industrial Relations; b) no Contractor or subcontractor may be awarded a public works contract unless registered with the Department of Industrial Relations; and c) work performed on the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

14.2 Permits and Licenses:

a. The Contractor shall obtain and keep current (including his/her Contractor's license) all permits and licenses that are required for the performance of his/hers work by all laws, ordinances, rules and regulations, or orders of any office and/or body lawfully empowered to make or issue the same.

b. In addition, Contractor shall obtain and keep current all permits, and licenses required for the work of improvement and pay all fees relating thereto, including, but not limited to, utility fees and shall provide the District with documentation of the actual costs expended by Contractor with regard to these items.

14.3 Sales and Payroll Taxes: Each Contractor, subcontractor and material supplier shall include all sales tax and payroll taxes required by law.

14.4 Responsibility for Compliance with CAL/OSHA:

- a. All work, materials, work safety procedures and equipment shall be in full accordance with the latest Cal/OSHA rules and regulations.
- b. Contractor warrants that he/she and each of his/her subcontractors shall, in performance of this Contract, comply with each and every compliance order issued pursuant to Cal/OSHA. The Contractor assumes full and total responsibility for compliance with Cal/OSHA standards by his/her subcontractors as well as himself/herself. The cost of complying with any compliance order and/or payment of any penalty assessed pursuant to Cal/OSHA shall be borne by the Contractor. Contractor shall defend, save, keep and hold harmless the District, and all officers, employees, and agents thereof, from all liabilities, costs, or expenses, in law or in equity, that may at any time arise or be set up because of Contractor's or a subcontractor's non-compliance or alleged non-compliance with Cal/OSHA requirements. Nothing contained herein shall be deemed to prevent the Contractor and his/her subcontractors from otherwise allocating between themselves responsibility for compliance with Cal/OSHA requirements; provided, however, that the Contractor shall not thereby be, in any manner whatsoever, relieved of his/her responsibility to the District as hereinabove set forth.

14.5 Apprentices: Contractor agrees to be bound by and comply with the provisions of Sections 1777.5 et seq. of the Labor code in respect to apprentices.

14.6 Hours of Work:

- a. The Contractor shall be allowed to work on the site from 7 AM until 6 PM Monday through Friday. Any request for changes to work hours shall be addressed in writing to the Project Manager. Contractor understands that the Project may dictate a non-standard work week, and if required the Project schedule and the scheduling of employees or subcontractors should be adjusted to provide for scheduled work during the non-standard work week schedule, without the incurrence of any additional charges, such as over-time, et cetera.

14.7 Codes and Regulations: All work and materials shall be in full accord with the latest codes, rules and regulations, including but not limited to the following:

- Rules of Local Utilities
- Calif. Electrical Code
- National Board of Fire Underwriters &/or State or local Fire Marshall Requirements
- State Codes and Ordinances
- State Industrial Accident Commission's Safety Orders
- Calif. Plumbing Code
- Calif. Building Code

Contractor shall hold the District harmless for Contractor's failure to comply with any law or regulation affecting Contractor's performance on this project. Certain provisions are set forth herein however, the existence of these provisions does not excuse the Contractor from

complying with other statutory requirements or provisions which are not set forth in these contract documents and it is Contractor's responsibility to be, or become familiar with the various federal, state and local laws which govern Contractor's performance.

15. **CONCEALED CONDITIONS:** Contractor has examined the job site, the contract documents, and the applicable building codes, laws, and regulations that govern the conduct of the work and has made such investigation as he/she deems appropriate and therefore assumes all risk and expense in dealing with subsequently discovered concealed conditions that could have been discovered through reasonable and diligent inspection and investigation. In the event Contractor encounters rock, ground water, underground structures, or utilities or other underground or concealed conditions or any hazardous material or condition in the site or existing structures if any, unknown to Contractor, Contractor shall immediately notify District of such condition in writing. Contractor shall discontinue any work affected by the concealed conditions, shall immediately cover, barricade and protect the subject area and shall obtain further direction from District prior to continuing any work affected by the discovered condition. Should Contractor, his/her subcontractors, or officers, agents or employees proceed without further direction from the District, Contractor does so at his/her own risk and expense.
16. **CONDUCT OF WORK:** The Contractor shall permit the District to do other work in connection with the project by contract or otherwise, and Contractor shall always conduct his/her work so as not to impose hardship on the District or others engaged in the work. Contractor shall adjust, correct and coordinate his/her work with the work of others so that no discrepancies shall result in the whole work.
17. **CONVICT MADE MATERIALS:** No materials manufactured or produced in a penal or correctional institution shall be incorporated in the project under this Contract, except as permitted by California law.
18. **DEFINITIONS:**
 - 18.1 **Action of the Board of Directors** is a vote of a majority of the District's governing board.
 - 18.2 **Addenda** are the changes in specifications, drawings, contract documents, and plans which have been authorized in writing by the Construction Manager, District or Architect, and which alter, explain, or clarify the contract documents. Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda unless otherwise specified in the addenda.
 - 18.3 **Approval** means written authorization through action of the governing board. The board has delegated to the District Administrator the authority to approve certain modifications and Construction Change Directives.
 - 18.4 **The Contract Documents** The Contract Documents consist of the Agreement between District and Contractor (hereinafter the Agreement or Contract), Conditions of the contract (General, Supplementary and other Conditions), Maps, Specifications, Addenda issued prior to bid, instructions to bidders, invitation to bidders, and the requirements contained in the Bid Documents, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by both parties, a Change Order, or a written order for a minor change in the Work issued by the District. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the District and any Subcontractor or Sub-Subcontractor, or between any persons or entities other than the District

and the Contractor.

- 18.5 Inspector is the individual retained by the District to inspect the work for compliance with plans and specifications and laws and regulations.
 - 18.6 The Drawings are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, where located and whenever issued, showing location, and scope of work.
 - 18.7 Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.
 - 18.8 The Project is the complete Work performed in accordance with these Contract Documents.
 - 18.9 The Project Manual is the volume assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Conditions of the Contract, and Specifications.
 - 18.10 Safety Orders are those issued by any cognizant city, county, state or federal agency
19. DEFERRED APPROVALS: Contract Documents which require deferred approval items are meant to be for illustration purposes only. Contractor is responsible for all deferred approval requirements set forth in the Contract Documents. Contractor is responsible to comply with all laws, building codes, and regulations necessary to obtain all necessary approvals. Contractor shall not be granted an extension of time for failure to obtain necessary approvals due to failure to comply with laws, building codes, and other regulations. Contractor shall schedule all deferred approval items in its progress schedule pursuant to Article 37. If Contractor fails to include deferred-approval items in its schedule which results in a critical path delay, then Contractor shall be subject to the assessment of liquidated damages.
20. DISTRICT'S REMEDIES FOR DEFECTIVE CONSTRUCTION AND/OR DEFICIENT PERFORMANCE: In addition to any other remedy afforded to District by law, the District, may exercise, at its option, any remedy, or combination thereof, set forth herein as follows:
- 20.1 Faulty Labor and Materials:
 - a. No provision in the Contract documents shall relieve the Contractor of responsibility for faulty materials or workmanship, and unless otherwise specified, he/she shall remedy any defects due thereto and pay for any damages to other work, resulting therefrom which shall appear within the warranty period.
 - b. If it is necessary in order to protect persons or property or, in the alternative, if the District deems it expedient to correct work damaged or not done in accordance with the contract, District may correct said work and deduct from monies otherwise due Contractor, a sum sufficient to compensate District for correction of the damage or improperly installed work.
 - 20.2 Condemned Materials:
 - a. The Contractor shall promptly remove from the premises all work condemned by the Inspector as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the District and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.

- b. If the Contractor does not remove such condemned work within a reasonable time, fixed by written notice, the District may remove it and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten (10) days thereafter, the District may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor. In the event the net proceeds are not sufficient to compensate for the costs and expenses that should have been borne by Contractor, District may deduct from monies otherwise due Contractor a sum sufficient to compensate for the costs and expenses that should have been borne by the Contractor.

20.3 The District's Right to Perform Work: If the Contractor neglects to execute the work properly or fails to perform any provision of, or fails to correct work in accordance with the contract documents, the District, by written order, may order the Contractor to stop the work or any portion thereof, until the cause for such order has been eliminated; however, if Contractor fails to correct the cause, or fails to make satisfactory arrangements with the District to correct the cause for the order within seven (7) calendar days of the written order, the District may, without prejudice to any other remedy District may have, correct such deficiencies or causes for said order and may deduct the cost thereof from the payment then or thereafter due the Contract. The right of the District to stop work shall not give rise to a duty on the part of the District to exercise its right for the benefit of the Contractor or for any other person or entity and in times of such work stoppage, Contractor shall be responsible for continuing job safety and job security.

20.4 Termination of Contract:

- a. If the Contractor refuses or fails to execute the work or any separable part thereof with such diligence that will ensure its completion within the time specified, or any extension thereof, or fails to complete said work within such time, or withholds, or threatens to withhold continued work regardless of the reason for same, or if the Contractor should be adjudged bankrupt or if he/she makes a general assignment for the benefit for his/her creditors, or if he/she shall make an assignment for any other reason without the express written consent of the District, or if a receiver should be appointed on account of Contractor's insolvency or if Contractor refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workers or proper material to complete the work at the time specified, or if Contractor fails to make prompt payment to subcontractors or for material or labor, or disregards laws, ordinances, or instructions of District, District's inspector, or if Contractor or any of his/her subcontractors should otherwise violate a provision of the contract, or if Contractor or any of his/hers subcontractors should perform work in a negligent or dangerous manner, or install or construct any portion thereof so that the work does not comply with the drawings and specifications, including any amendments thereto, or does not meet generally recognized industry standards for workmanlike quality, District may, without prejudice to any other rights or remedy, serve written notice upon Contractor of District's intention to terminate Contractor's control over the project, terminate Contractor's right to complete the contract or terminate this contract. Such notice shall contain the reasons for such intention to terminate, and Contractor shall immediately cease all violations of the terms of this contract, ordinances, or laws and shall correct to the District's satisfaction, or make satisfactory arrangements to correct to District's satisfaction, within seven (7) days, from the date of said notice, all deficient conditions. If Contractor, after

proper notice, fails to cease and desist or fails to cure deficiencies within the said seven (7) day period, District may terminate Contractor's control over the project, terminate Contractor's right to complete the contract or terminate this agreement by written notice to Contractor, said termination shall be effective upon delivery of written notice to Contractor, his/her officers, agents or employees, or notice by certified mail to Contractor's business address. Thereafter, District may exercise all remedies as provided for in this agreement or by law.

- b. In the case of termination, Contractor shall not be entitled to receive any further payment until the project is completed. In the event of termination, District shall immediately serve written notice thereof upon the Surety consistent with the terms and conditions set forth in the performance bond incorporated within these contract documents. Surety shall not be entitled to reappoint or contract with Contractor to complete this project without the express written consent of the District. Upon termination, Contractor shall be ejected from the project and District may without liability for so doing, take possession of and utilize in completing the work, such materials, appliances, plant, and other property belonging to Contractor as may be on the site of the work and necessary, therefore.
- c. If the unpaid balance of the contract price exceeds the expense of finishing the work, including compensation to District for additional managerial, legal, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to the District. Notwithstanding the foregoing provision, this contract may not be terminated or modified where a trustee in bankruptcy has assumed the contract pursuant to 11 U.S.C., Section 365 of the Federal Bankruptcy Act.

20.5 Additional Remedies: The foregoing provisions are in addition to and not in limitation of any other rights and remedies available to the District. The District may, at any time Contractor's performance or any subcontractor's performance is such to call into question Contractor's or the subcontractor's ability or capacity to properly, and in good workmanlike manner, perform his/her obligations in accordance with the plans and specifications and within the stated time for completion, demand assurances from the Contractor in any form acceptable to District (i.e., additional bond, written addendum, modification of the contract, additional staffing, etc.) and Contractor's failure to provide adequate assurance shall constitute a material breach of the contract and the District may suspend its performance and exercise any other right or remedy provided within the contract documents or by law.

20.6 Termination by the District for Convenience:

- a. The District may terminate the performance of Work under this Contract in accordance with this clause in whole, or from time to time in part, whenever the District shall determine that such termination is in the best interest of the District. Any such termination shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of the Work under the contract is terminated, and the date upon which such termination becomes effective. After receipt of a Notice of Termination, and except as otherwise directed by the District, the Contractor shall:
 - i. Stop Work under the contract on the date and to the extent specified in the Notice of Termination;

- ii. Place no further orders or subcontracts for materials, services or facilities except as necessary to complete the portion of the Work under the contract which is not terminated;
 - iii. Terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by the Notice of Termination;
 - iv. Assign to the District, in the manner and at the times, and to the extent directed by the District, all the right, title and interest of the Contractor under the orders and subcontracts so terminated. The District shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - v. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the District, in writing, and to the extent it may require. Its approval or ratification shall be final for all the purposes of this clause;
 - vi. Transfer title to the District, and deliver in the manner, at the times, and the extent, if any, directed by the District, (a) the fabricated and unfabricated parts, Work in process, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination; and (b) the completed or partially completed drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the District;
 - vii. Use its best efforts to sell, in the manner, at the times, to the extent, and at the prices or prices that the District directs or authorizes, any property of the types previously referred to herein, but the Contractor (a) shall not be required to extend credit to any purchaser; and (b) may acquire such property under the conditions and at a price or prices approved by the District. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the District to the Contractor under this contract or shall otherwise be credited to the price or cost of the Work covered by this contract or paid in such other manner as the District may direct;
 - viii. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
 - ix. Take such action as may be necessary, or as the District may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the District has or may acquire an interest.
- b. After receipt of a Notice of Termination, the Contractor shall submit to the District its termination claim, in the form and with the certification the District prescribes. Such claim shall be submitted promptly but in no event later than one (1) year from the

effective date of termination, unless one or more extensions in writing are granted by the District upon request of the Contractor made in writing within such 1-year period or authorized extensions. However, if the District determines that the facts justify such action, it may receive and act upon any such termination claim at any time after such 1-year period or extension. If the Contractor fails to submit his/her/its termination claim within the time allowed, the District may determine, based on information available to the District, the amount, if any, due to the Contractor because of the termination. The District shall then pay to the Contractor the amount so determined.

- c. Subject to the previous provisions, the Contractor and the District may agree upon the whole or any part of the amount or amounts to be paid to the Contractor because of the total or partial termination of the Work under this Paragraph. The amount or amounts may not include profit on Work not performed to date, but may include profit on Work completed up to the time of Notice of Termination. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of Work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed upon amount.
- d. If the Contractor and District fail to agree, as the previous subparagraph provides, on the whole amount to be paid to the Contractor because of the termination of Work hereunder, the District shall determine, based on information available to the District, the amount, if any, due to the Contractor by the reason of the termination and shall pay to the Contractor the amounts determined as follows:
- i. For all Contract Work performed before effective date of Notice of Termination, the total (without duplication of any items) of:
- The cost of such Work;
 - The cost of settling and paying claims arising out of the termination of Work under subcontractors or orders as previously provided. This cost is exclusive of the amounts paid or payable because supplies or materials delivered, or services furnished by the Contractor before the effective date of the Notice of Termination. These amounts shall be included in the cost because which payment is made for the cost of Work previously provided; and
 - A sum, as profit on the cost of the Work completed to the time of receipt of the Notice of Termination, that the District determines to be fair and reasonable. But, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- ii. The reasonable cost of the preservation and protection of property incurred as previously provided. The total sum to be paid to the Contractor shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Except for

normal spoilage, and except to the extent that the District shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the District, of property which is destroyed, lost or stolen or damaged to the extent that it is undeliverable to the District, or to a buyer as previously provided.

- e. The Contractor shall have the right to dispute as provided hereinafter in the subparagraph entitled "remedies" from any determination the District makes under the previous subparagraphs. But, if the Contractor has failed to submit its claim within the time provided and has failed to request an extension of such time, it shall have no such right of appeal. In any case where the District has determined the amount owed, the District shall pay to the Contractor the following:
 - i. If there is no right of appeal hereunder or if timely appeal has been taken, the amount so determination by the District; or
 - ii. If a "remedies" proceeding is initiated, the amount finally determined in such "remedies" proceeding.
- f. In arriving at the amount due the Contractor under this clause there shall be deducted:
 - i. All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the contract;
 - ii. Any claim which the District may have against the Contractor about the Work; and
 - iii. The agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold under the provisions of this clause and not otherwise recovered by or credited to the District.
- g. If the termination hereunder be partial, before the settlement of the terminated portion of this contract, the Contractor may file with the District a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract. Such equitable adjustment as may be agreed upon shall be made in the price or prices. Nothing contained herein shall limit the right of the District and the Contractor to agree upon the amount or amounts to be paid to the continued portion of the contract when the contract does not contain an establishes contract price for the continued portion.
- h. Remedies: All claims, counter-claims, disputes and other matters in question between the District and Contract arising out of or relating to this Contract or its breach will be decided by way of arbitration as set forth herein or in a court of competent jurisdiction within the State of California.

- i. The Contractor understands and agrees that the forgoing termination of Contract for convenience provisions shall be interpreted and enforced pursuant to cases interpreting and enforcing similar provisions in federal procurement contracts.

21. **INDEPENDENT CONTRACTOR**: Contractor and District agree that there is no agency or employment relationship between District and Contractor, or any of Contractor's officers, agents or employees or subcontractors and that Contractor in performing its contractual obligations acts entirely as an independent Contractor.
22. **INSPECTION BY DISTRICT**: The Contractor shall always maintain proper facilities and provide safe access for inspection by the District to all parts of the work. Where the Specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the District of its readiness for inspection and without the approval thereof or consent thereto by the latter. Should any such work be covered up without such notice, approval, or consent, it must, if required by District, be uncovered at Contractor's expense for examination. Contractor shall pay for any necessary retesting and/or re-inspection required because of work that fails to comply with the requirements of the contract documents.
23. **INSURANCE**: The Contractor shall not commence work under this Contract until he/she has obtained all insurance required by these General Conditions and which insurance has been approved by the District and copies of certificates of such insurance are filed with the District. The Contractor shall not allow any subcontractor to commence work on a subcontract until such insurance has been obtained. Three (3) copies of insurance certificates evidencing the required coverage shall be furnished to the District. Certificates of insurance must indicate that the coverage cannot be reduced or canceled until THIRTY (30) days written notice has been furnished District. Such insurance shall name District, its officers, agents, and employees as additional insured. Contractor's liability insurance policy shall be endorsed as primary insurance.
 - 23.1 **Liability Insurance**: The Contractor shall carry Bodily Injury Liability Insurance in an amount not less than \$2,000,000 combined single limit, per occurrence, \$3,000,000 aggregate. Contractor shall carry Automobile Liability Insurance in an amount not less than \$1,000,000. Contractor's insurance SHALL BE ENDORSED AS PRIMARY. **District, its officers, agents, and employees shall be named as ADDITIONAL INSURED.**
 - 23.2 **Workers' Compensation Insurance**: The Contractor shall comply with the Workers' Compensation Insurance requirements of the State of California. The Contractor shall take out and maintain during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all his/her employees employed at the site of the project and, in case any work is sublet, the Contractor shall require all subcontractors to provide Workers' Compensation Insurance and Employer's Liability Insurance for all the latter's employees unless such employees are covered by protection afforded by the Contractor. In signing this Contract, the Contractor makes the following certification:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

- 23.3 All policies and certificates of insurance of the Contractor shall contain the following clauses:
- a. Insurers have no right of recovery or subrogation against the District (including its agents and agencies as aforesaid), it being the intention of the parties that the insurance policies so affected shall protect both parties and be the primary coverage for all losses covered by the above-described insurance.
 - b. The clause "other insurance provisions" in a policy in which the District is named as an insured, shall not apply to the District.
 - c. The insurance companies issuing the policy or policies shall have no recourse against the District (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.
 - d. All deductibles in the above described insurance policies shall be assumed by and be the account of, the Contractor.

23.4 Indemnification:

- a. Contractor will indemnify and hold harmless Cordova Recreation and Park District, its Board of Directors, and its officers, agents, and employees from and against all claims, damages, losses, demands, liability, costs and expenses including attorney fees arising out of or resulting from the performance of this Contract or the prosecution of work under it, whether such claims, damages, losses, demands, liabilities, costs and expenses are caused by the Contractor, Contractor's agents, servants or employees or subcontractors employed on the project, the agents, servants or employees or any person or persons or products installed on the project by the Contractor or subcontractors.
- b. Contractor at his/her own expense and risk shall defend all actions, suites, or other legal proceedings that may be brought or instituted against Cordova Recreation and Park District, the members of its governing body, its officers, agents, employees, or any such claims, damages, losses, demands, liabilities, costs or expenses.
- c. The indemnification obligations hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractors under workers' compensation acts, disability benefit acts or other employee benefits acts.
- d. This indemnification provision shall be applicable to any infringement or alleged infringement of the patent rights of any person or persons, firm or corporation in consequence of the use thereof by the Contractor. Notwithstanding any of the above, the Contractor shall whenever it is necessary keep and maintain at his/her sole cost and expense during his/her operations under this Contract such warnings, signs, and barriers as may be required to protect the public. The provisions of the preceding sentence shall not impose any liability upon Cordova Recreation and Park District or the members of the Cordova Recreation and Park District governing body or the officers, agents and employees of either of them.
- e. This indemnification provision shall also extend to claims, damages, losses, demands, liabilities, costs and expenses for injury, harm, or damages occurring after completion of

the project as well as during the work's progress. In each instance in which the Contract is required to indemnify or hold the District harmless, that obligation includes the obligation to defend the District.

24. **MANUFACTURER'S MAINTENANCE INSTRUCTIONS, MANUAL AND WARRANTIES:** Notwithstanding Contractor's warranties as identified in these contract documents, Contractor shall provide to District all relevant manuals, instructions and manufacturer warranties for all equipment. In addition, Contractor or his/her manufacturer, representative or other agent shall provide District designee(s) with initial, basic instruction in the operation of any installed equipment/system(s).
25. **MATERIALS:** Materials shall be new and of quality equal to that specified. When not particularly specified, materials shall be the best of their class or kind. The Contractor shall, if required, submit satisfactory evidence as to the kind and quality of material. Price, fitness and quality being equal, preference shall be given to products made in California. If a conflict(s) exists in the drawings or specifications regarding the type, kind or quality of materials to be used, the conflict shall be resolved in favor of using the superior type, kind or quality material unless use of the inferior type, kind or quality of material is authorized in writing by the District.
26. **MODIFICATION:** The contract, including all contract documents therein, may be modified by mutual consent and in writing only.
27. **NOTICE AND SERVICE THEREOF:** Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner, (a) if the notice is given to the District, by personal delivery thereof to the Facility Planner of said District, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to the District, postage prepaid and registered; (b) If the notice is given to the Contractor, by personal delivery thereof to said Contractor or to his/her duly authorized representative at the site of the project, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to Contractor's business address, postage prepaid and registered; and (c) if the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing same in the United States mail, enclosed in a sealed envelope, postage prepaid and registered.
28. **OVERLOADING:** If the Contractor shall cause, permit, or allow any part of the landscape to be overloaded by storing, piling or setting thereon any material or equipment, or by performing thereon any of his/her work, he/she shall do so at his/her sole risk, and he/she shall be solely responsible for all loss, damage, and/or injury arising or resulting therefrom. All materials brought onto the site shall be stacked up in an orderly manner in a designated area not in conflict with the area where work is being performed.
29. **PAYMENT/INVOICING:** Contractor understands and agrees that all invoices must be submitted in the required format. A sample invoice is included in this project manual. Monthly invoices shall include: 1) certified payroll 3) weekly reports 4) approved change orders (if applicable).
- 29.1. **Inspector's Confirmation:** All estimates of work performed during the preceding calendar month and all requests for payment thereof or for partial payment because equipment delivered but not

installed, as herein provided for, shall be certified by the Inspector. If errors are found in a request for payment, the errors shall be corrected by the Contractor, and the request resubmitted to the Inspector for approval, bearing the date of same as corrected.

- 29.2. Stop Notices: District shall withhold, from the next following payment to Contractor, 150% of any amount claimed in a stop notice timely filed with the District. Amounts withheld shall only be paid upon a valid release of stop notice or other resolution pursuant to governing law. Disputes regarding the validity of stop notices shall be resolved pursuant to governing law and shall not be subject to the dispute resolution provisions set forth in Public Contracts Code Section 20104 and these contract documents. Neither the final payment nor any part of the retained percentage shall become due until the Contractor delivers to the District a complete release of all stop notices arising out of this Contract, but the Contractor may, if any subcontractor refuses to furnish a release, furnish a bond satisfactory to the District, to indemnify District against any stop notice.

Contractor understands and acknowledges that public property may not be liened but that a subcontractor may file a stop notice with the District. Contractor shall inform all subcontractors regarding the invalidity of liens on public property and in the event a subcontractor erroneously records a lien against public property, Contractor shall remove or bear the expense incurred by District in removing the invalid lien, including all costs and reasonable attorney fees.

- 29.3. Payments Withheld: The District may withhold or, because subsequently discovered evidence, nullify the whole or a part of any certificate of payment to such extent as may be necessary to protect the District from loss because:
- a. Defective work not remedied;
 - i. Payment for defective work shall not be made unless and until Contractor provides written notice from its surety that surety waives the right to claim exoneration based on payment for defective work.
 - b. Claims filed or reasonable evidence indicating probable filing of claims;
 - c. Failure of the Contractor to make payments properly to subcontractors or for material or labor;
 - d. Conditions indicating that the Contract cannot be completed for the balance then unpaid;
 - e. Damage to another Contractor.
 - f. Delays in progress toward completion of the work, with the stipulated amount of liquidated damages being withheld for each day of delay for which no extension is granted.

30. PRE-CONSTRUCTION MEETING: Prior to start of construction a meeting will be called for reviewing the scope of work with the Contractor's representative. At the meeting, detailed program, sequence of work, and methods of access shall be reviewed. Representatives of the District and Contractor shall be

named, and District will establish requirements for request of payments, procedures for correspondence, etc.

31. **PROTECTION OF WORK AND PROPERTY:** The Contractor shall continuously maintain adequate protection of all his/her work from damage and shall protect the District's property from injury or loss arising about this Contract. Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract documents or caused by agents or employees of the District. Contractor shall adequately protect adjacent property as provided by law and the Contract documents.
32. **QUALIFICATIONS FOR EMPLOYMENT:**
- 32.1 No person under the age of 16 years of age and no person currently serving sentence in a penal or correctional institution shall be employed to perform any work under this Contract, unless, under the discretion of District, the safety of facility users is protected by one or more of the following methods:
- a. The installation of a physical barrier at the worksite to limit contact with community users of District facilities.
 - b. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.
 - c. Surveillance of employees of the entity by District personnel.
- 32.2 No person whose age or physical condition is such to make his/her employment dangerous to his/her health or safety or to the health or safety of others shall be employed to perform work under this Contract; provided that this sentence shall not operate against any physically handicapped person otherwise employable where such persons may be safely assigned to work which they can ably perform.
33. **SEPARATE CONTRACTS:** The District reserves the right to let other contracts in connection with the work including, but not limited to, work covered by a proposed change order that is not acceptable to the District. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his/her work with theirs.
34. **SEVERABILITY:** In the event any provision(s) of the contract documents is deemed to be invalid or unenforceable, that (those) provision(s) shall be severable from the remainder of the contract documents and shall not cause the invalidity or unenforceability of the remainder of the contract.
35. **SUBCONTRACTORS:**
- 35.1 The Contractor agrees that he/she is as fully responsible to the District for the acts and omissions of his/her subcontractors and of persons either directly or indirectly employed by them, as he/she is for the acts and omissions of persons directly employed by him. Nothing contained in the Contract documents shall create any contractual (including third party beneficiary) relation between any subcontractor and District.

- a. A subcontractor is a person or organization who has a direct contract with the Contractor to perform any of the work at the site. Subcontractor shall be listed in the Bid Proposal according to the instructions contained therein.
- b. The Contractor agrees to bind every subcontractor to the terms of this contract, including the General Conditions, the Maps and Technical Specifications as far as applicable to the Contractor's work.

The following provisions shall be included in the Contractor's contracts with his/her subcontractors, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the District.

The subcontractor agrees:

- i. To be bound to the Contractor by the terms of the Agreement, General Conditions, Maps, and Specifications, and to assume toward him/her all the obligations and responsibilities that he/she, by those documents, assumes toward the District.
- ii. To submit to the Contractor, applications for payment, in such reasonable time as to enable the Contractor to apply for payment under terms of the General Conditions.
- iii. To make all claims for extras, for extensions of time and for damages to the Contractor in the manner provided in the contract documents for claims by the Contractor upon the District.

35.2 Contractor shall hold District harmless and defend and indemnify District from damages, if any, incurred as a result of Contractor's failure to include the required conditions in Contractor's subcontracts.

35.3 Contractor shall:

- a. Pay the subcontractor, upon the payment of certificates, the amount allowed to the Contractor because the subcontractor's work to the extent of the subcontractor's interest therein.
- b. Pay the subcontractor to such extent as may be provided by the Contract documents or the subcontract, if either of these provides for earlier or larger payments than the above.

35.4 Pursuant to the provisions of Sections 4100 et seq., of the Public Contracts Code of the State of California, the Contractor shall not without the consent of the District, either:

- a. Substitute any persons as subcontractors in place of the subcontractors designated in his/her original bid.

- b. Permit any subcontractor to be assigned or transferred or allow any work to be performed by anyone other than the original subcontractor listed in his/her bid.
- c. Other than in the performance of change orders, sublet or subcontract any portion of the work more than one-half of one percent of his/her bid for which his/her original bid did not designate a subcontractor.
- d. Contractor's violation of any of the provisions of sections 4100 et seq., of the Public Contracts Code, shall be deemed a material breach of this Contract, and the District may terminate the Contract, or may assess the Contractor a penalty in the amount of not more than ten percent (10%) of the amount of the subcontract involved, or may both cancel the Contract and assess the penalty.

36. **CONTRACTOR STAFF:** Contractor shall keep a full-time Project Manager physically on each project site always that work is being performed on the project and shall keep during the progress of the project any necessary assistants to the Project Manager. Contractor understands and agrees that the project manager and/or foreman cannot be removed from any assigned project, without the express written consent of the District, which District agrees shall not be unreasonably withheld. Contractor understands, however, that District will not approve any substitution if the basis of such request is to merely assign these employees to other Projects being maintained by Contractor before the completion of the Project that is the subject of this Contract.

36.1 The Project Manager shall represent the Contractor in his/her absence and all directions given to him/her shall be as binding as if given to the Contractor.

36.2 The Contractor shall give efficient supervision to the work, using his/her best skill and attention. Contractor shall carefully study and compare all maps, specifications and other instructions and shall at once report to the District any error, inconsistency, or omission which he/she may discover but he/she shall not be held responsible for their existence or discovery, unless there is a situation in which interpretation is doubtful or the error is sufficiently apparent as to place a reasonably prudent Contractor on notice that an error exists.

36.3 Any time Contractor's personnel or personnel of subcontractors or material suppliers are on the project site, Contractor shall have a designated person on site to be responsible for the work.

36.4 Contractor understands that it is solely responsible for giving directions to its subcontractors and/or responding to any requests for information from its subcontractors. Contractor also understands that it shall be its sole responsibility to coordinate the work of all its subcontractors. Neither District, Inspector, or any officer, agent or employee thereof, shall provide direction to Contractor's subcontractors or respond to requests for information from subcontractors or coordinate subcontractor work.

37. **THIRD PARTY BENEFICIARIES:** This contract is by and between the District and Contractor and/or their successors or assigns and no third party is intended expressly or by implication to be benefited by this Agreement.

38. **UTILITIES:**

- 38.1 Contractor shall send proper notices, make necessary arrangements, perform other services required in care and maintenance of all public utilities and assume all responsibility concerning same. Notify proper utility if damage occurs. Observe all rules and regulations of the respective utilities in executing the work.
 - 38.2 Contractor shall carefully check areas where operations of the Contract are to be performed and observe any existing overhead wires, equipment and other obstructions. Any such work shall be moved, replaced or protected, as required, if shown or specified.
 - 38.3 Contractor shall exercise extreme care in locating and identifying underground lines before starting work.
 - 38.4 Contractor shall exercise all reasonable precautions to preserve and protect any existing underground improvements.
 - 38.5 Contractor shall repair, to the satisfaction of and without additional cost to District, any damage to utility lines that occur because of operations of this work if such utility lines are indicated.
39. WARRANTIES: Where the specifications require the Contractor to provide a written guarantee, it is the intention of this Contract that such guarantee shall run in favor of District, shall be made out to District, and shall be delivered in writing, in the form set forth in these contract documents, to the District prior to final payment.
- 39.1 Contractor's Guarantee of Quality: Contractor unqualifiedly guarantees the "first-class" quality of all workmanship and of all materials, apparatus, and equipment used or installed by him/her or by any subcontractor or supplier in the project which is the subject of this Contract unless a lesser quality is expressly authorized in the Drawings and Specifications, in which event Contractor unqualifiedly guarantees such lesser quality and that the work as performed by Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom.

PAYMENT BOND TO ACCOMPANY CONTRACT

Contractors must use this form, not a Surety Company form. Bond shall be issued by a Surety Company which is rated Best's A or better.

Know All Men by These Presents:

THAT WHEREAS, The Cordova Recreation and Park District has awarded to _____
as principal, hereinafter designated as the "Contractor", a contract for the work described as follows:

Rosemont Community Park Ballfield Fence Project

AND WHEREAS, Contractor is required by the provisions of Section 9950 et seq., Civil Code, to furnish a bond in connection with the contract;

NOW, THEREFORE, We the undersigned Contractor and surety are held and firmly bound unto the Cordova Recreation and Park District in the sum of _____ Dollars (\$ _____), said sum is consistent with the provisions of Section 9554 of the Civil Code, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if Contractor, his/her/its heirs, executors, administrators, successors or assigns, or subcontractors, shall fail to pay any materials, provisions, provender, or other supplies or teams, implements or machinery used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, as required by the provisions of Section 9950 et seq. of the Civil Code, and provided that the claimant shall have complied with the provisions of said Code, the surety or sureties hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond the surety or sureties will pay all court costs, expenses and the reasonable attorneys' fees fixed by the court and the application and interpretation of the rights and obligations hereunder shall be pursuant to California law. Surety's obligation to the Cordova Recreation & Park District pursuant to this bond is subject to the covenant of good faith and fair dealing.

This bond shall inure to the benefit of all persons, companies or corporations entitled to file claims under Section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety, for value received, hereby stipulates and agrees that in accordance with California Civil Code section 8152 no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same or payment for defective work or materials, except for final payment upon contract completion, shall in any way affect Surety's obligations or exonerate Surety on this bond, and Surety hereby waives notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications of, or payment for defective work or materials.

IN WITNESS WHEREOF, three (3) identical counterparts of this instruction, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above-named on the _____ day of _____, 20__.

CONTRACTOR (Name and Address)

DISTRICT:

Cordova Recreation and Park District
2729 Prospect Park Drive, Suite 230
Rancho Cordova, CA 95670

SURETY (Name and Principal place of business)

CONTRACTOR AS PRINCIPAL

COMPANY: _____ (Corporate Seal)

By: _____

Name: _____

Title: _____

SURETY COMPANY: _____ (Corporate Seal)

By: _____

Name: _____

Title: _____

Attorney in Fact

PERFORMANCE BOND TO ACCOMPANY CONTRACT

Contractors must use this form, not a Surety Company form. Bond shall be issued by a Surety Company which is rated Best's A or better.

KNOW ALL MEN BY THESE PRESENTS: that where, the Cordova Recreation and Park District (hereinafter designated as "District") has awarded to _____ (hereinafter designated as "Principal" or "Contractor") a contract for the work described as follows:

Rosemont Community Park Ballfield Fence Project

WHEREAS, Principal is required to furnish a bond in connection with the contract, guaranteeing the faithful performance of the contract;

NOW, THEREFORE, we, the undersigned Principal and Surety are held and firmly bound unto the District in the sum of _____ dollars (\$_____), lawful money of the United States of America, for payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

The **condition** of this obligation is such that if the Contractor, his/her/its heirs, executors, administrators, successors or assigns, shall abide by and in well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof as therein provided, on his/her/their part to be kept and performed at the time and in the manner therein specified, the Surety shall have no obligation pursuant to this bond except to participate in conferences provided in subparagraph 1.1, otherwise, the Surety's obligation under this bond shall arise after:

1. The Surety's obligation:

1.1 The District has notified the Contractor and the Surety that the District is considering declaring the Contractor in default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than seven (7) calendar days after receipt of such notice to discuss methods of performing the construction contract. If the District, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the construction contract, but such agreement shall not waive the District's right to subsequently declare the Contractor in default; and

1.2 The District has declared the Contractor in default and formally terminated the Contractor's right to complete the contract. Default shall not be declared early than seven (7) calendar days after the Contractor and the Surety have received notice as provided in subparagraph 1.1; and

1.3 The District has agreed to pay the balance of the contract price to the Surety in accordance with the terms of the construction contract or to a Contractor selected to perform the construction contract in accordance with the terms of the contract with the District.

2. When the District has satisfied the conditions of paragraph 1, the Surety shall immediately and at the Surety's expense take the following actions:

2.1 Undertake to perform and complete the construction contract itself, through its agents or through independent Contractors. Surety shall not undertake to perform and complete the construction contract by employing, authorizing or utilizing the services of the principal Contractor or affiliated organization without the written consent of the District; or

- 2.2 Retain a qualified Contractor acceptable to the District for performance and completion of the construction project/contract. The Contractor shall be selected with the District's concurrence and his/her/its performance shall be secured with performance and payment bonds executed by a qualified Surety equivalent to the bonds issued for the original construction contract, and sufficient to pay to District the amount of damages as described in paragraph 4 et seq. resulting from the Contractor's default; or
- 2.3 Waive its right to perform and complete, arrange for completion, or obtain a new Contractor by determining the amount of which it may be liable to the District and as soon as practicable after the amount is determined, tender payment thereof to the District.
- 2.4 Surety shall proceed in accordance with paragraph 2 not later than fifteen (15) calendar days after written notice that Contractor is declared to be in default. In an emergency situation, or if time is of the essence in the underlying contract, District may take all reasonable actions necessary to protect the work of improvement and/or to continue the construction process pending Surety's investigation and action pursuant to paragraph 2. Cost incurred by District in protecting the work of improvement or continuing the construction process pending Surety action shall be the joint responsibility of Surety and Contractor.
3. If Surety does not proceed as provided in paragraph 2 et seq., Surety shall be in default on this bond and the District shall be entitled to enforce any remedy available to District. In the event suit is brought upon this bond, Surety or Sureties will pay all court costs, expenses, and reasonable attorney fees fixed by the court.
4. After District terminates the Contractor's right to complete the construction contract, the responsibilities of the Surety to the District shall not be greater than those of the Contractor under the construction contract, and responsibilities of the District to the Surety shall not be greater than those of the District under the construction contract. To the limit of the amount of this bond, but subject to commitment by the District of the balance of the contract price to mitigation of costs and damages on the construction contract, the Surety is obligated without duplication for:
- 4.1 The responsibilities of the Contractor for correction of defective work and completion of the contract.
- 4.2 Additional legal and administrative costs resulting from the Contractor's default and resulting from the actions or failure to act as required in paragraphs 2 and 3.
- 4.3 Liquidated damages, or if no liquidated damages are specified in the construction contract, then actual damages caused by the delayed performance or non-performance of the Contractor.
5. Surety hereby waives notice of any change, including changes of time, to the construction contract or to related subcontracts, purchase orders and other obligations.
6. Notice to the Surety, the District or the Contractor shall be mailed or delivered to the address shown on the signature page.
7. This bond, the rights and obligations hereunder and the interpretation of any provision contained herein, shall be governed by the laws of the State of California and Surety, by submission of this bond to District, shall be deemed to have submitted to the jurisdiction of California courts. Surety's obligations to District pursuant to this bond are subject to the covenant of good faith and fair dealing and Surety's breach of said covenant shall give rise to a cause of action by District for damages caused by Surety's breach of said covenant.
8. For the purposes of this bond, the construction contract shall be defined as all of the documents in the agreement between District and Contractor.

9. Surety, for value received, hereby stipulates and agrees that in accordance with California Civil Code Section 8152 no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same or payment for non-conforming or defective work or materials, except for final payment upon contract completion shall in any way affect Surety's obligations or exonerate Surety on this bond, and Surety hereby waives notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications, or of payment for defective work or non-conforming work or materials.

IN WITNESS WHEREOF, three (3) identical counterparts of this instruction, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above-named on the _____ day of _____, 20__.

To be signed by Principal and Surety and Notarial Acknowledgment and Seal attached.

CONTRACTOR (Name and Address)

DISTRICT:

Cordova Recreation and Park District
2729 Prospect Park Drive, Suite 230
Rancho Cordova, CA 95670

SURETY (Name and Principal place of business)

CONTRACTOR AS PRINCIPAL

COMPANY: _____

(Corporate Seal)

By: _____

Name: _____

Title: _____

SURETY COMPANY: _____

(Corporate Seal)

By: _____

Name: _____

Title: _____

Attorney in Fact

CHILD SUPPORT COMPLIANCE FORM

For every contract in excess of \$100,000, only the successful bidder will be required to acknowledge that he/she is aware of the State's policy regarding the importance of child and family support obligations and that to the best of his/her knowledge, he/she is fully complying with the earnings assignment order of all employees and providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department. The successful bidder shall complete the child support compliance acknowledgment below.

TO BE EXECUTED BY WINNING BIDDER AND
SUBMITTED WITH SIGNED CONTRACT

I am aware of the State's policy regarding the importance of child and family support obligations and that to the best of my knowledge, I am fully complying with the earnings assignment order of all employees and providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

By: _____
Name: _____
Title _____
Date: _____

CONTRACTOR'S CERTIFICATION REGARDING WORKERS' COMPENSATION

TO BE EXECUTED BY WINNING BIDDER AND
SUBMITTED WITH SIGNED CONTRACT

In accordance with the provisions of Section 3700 of the Labor Code, every Contractor is required to secure payment of compensation to the Contractor's employees.
Each Contractor to whom a public works contract is awarded is required to sign and file with the awarding body the following certification prior to performing the work of the contract.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work on this contract.

By: _____
Name: _____
Title _____
Date: _____

GUARANTEE FORM

_____ (“Contractor”) hereby agrees that the work which the contractor has installed for the Cordova Recreation & Park District for the following project:

Rosemont Community Park Ballfield Fence Project

(“project” or “contract”) has been performed in accordance with the requirements of the Contract Documents and that the Work as installed will fulfill the requirements of the Contract Documents.

Where the specifications require the Contractor to provide a written guarantee, it is the intention of this Contract that such guarantee shall run in favor of Owner, shall be made out to Owner, and shall be delivered in writing, in the form set forth in these Contract documents, to the Owner prior to final payment.

Contractor's Guarantee During Construction: The Owner shall not, in any way or manner, be answerable or suffer loss, damage, expense or liability for any loss or damage that may happen to Owner improvement, work or equipment or any part thereof, or in, on, or about the same during its construction and before acceptance. Contractor assumes the risk of loss from destruction of, or damage to the Owner improvement work and in the event the work is damaged or destroyed in whole or in part by fire or other peril, the time for the completion of the Contract will be extended, and Contractor shall rebuild at no expense to Owner. This obligation shall not replace Contractor's obligation to carry insurance as set forth in the Contract documents.

Contractor's Guarantee of Quality: Contractor unqualifiedly guarantees the "first-class" quality of all workmanship and of all materials, apparatus, and equipment used or installed by him/her or by any subcontractor or supplier in the project which is the subject of this Contract unless a lesser quality is expressly authorized in the Drawings and Specifications, in which event Contractor unqualifiedly guarantees such lesser quality and that the work as performed by Contractor will conform with the Plans and Specifications or any written authorized deviations therefrom.

Guarantees: Besides guarantees required elsewhere, Contractor shall and does hereby guarantee all workmanship and material for a period of one (1) year from the date of acceptance of the work by the Owner (special or extended guarantees as noted shall be honored as specified under specific items) and shall repair or replace any or all material and workmanship (together with any other work which may be damaged in so doing) that is or becomes defective during the period of said guarantees without expense whatsoever to Owner. For purposes of this Contract the date of acceptance shall be the date of the notice of Owner accepting work excepting work, which is incomplete upon date of said resolution, and then the date of acceptance shall be the date of final payment under this Contract. In the event the Contractor fails to comply with the requirements of any guarantee required by this Contract within seven (7) days after being notified in writing, Owner is authorized to proceed to have the defects repaired and made good at the expense of Contractor who shall pay the costs and charges therefor immediately on demand. In the event the defective condition giving rise to repairs pursuant to this warranty endangers persons or property, or otherwise substantially interferes with Owner's ability to conduct its business or provide services for which the Owner is responsible, Owner may immediately make repairs after reasonable attempts to notify Contractor and Contractor shall pay the costs and charges of said repairs immediately upon demand. Early occupancy by Owner or early use of a guaranteed item or system by Owner, Contractor, subcontractor or any other person or agency shall not modify the period of guarantee which shall commence as set forth above.

The undersigned agrees to repair or replace any or all such Work that may prove to be defective in workmanship or material together with any other adjacent Work that may be displaced in connection with such replacement

within a period of one (1) year from the date of completion, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the undersigned's failure to comply with the above-mentioned conditions within a reasonable period of time, as determined by the , but not later than seven (7) days after being notified in writing by the , the undersigned authorizes the to proceed to have said defects repaired and made good at the expense of the undersigned. The undersigned shall pay the costs and charges therefor upon demand.

Date: _____

Signature of Contractor: _____

Printed Name and Title of Contractor: _____

Representatives to be contacted for service subject to terms of contract:

Name: _____

Address: _____

Phone Number: _____

E-Mail: _____

SAMPLE INVOICE (TO BE ATTACHED TO SCHEDULE OF VALUES)



PAY REQUEST APPLICATION

PROJECT NAME:

CONTRACTOR:

INVOICE #:

PERIOD ENDING DATE:

ORIGINAL CONTRACT AMOUNT:

CHANGE ORDER NO. 1:

NET CHANGE BY CHANGE ORDERS:

TOTAL ADJUSTED CONTRACT AMOUNT TO DATE:

BALANCE OF CONTRACT TO FINISH:

LESS 5% RETENTION:

LESS PREVIOUS PAYMENTS:

AMOUNT DUE THIS INVOICE:

SUBMITTED BY: _____, CONTRACTOR

DATE: _____

SUBMIT TO: Cristina James, Park Planner

11070 White Rock Road, Ste. 130

Rancho Cordova, CA 95670

APPROVED: _____, Construction Inspector

APPROVED: _____, Project Manager

APPROVED: _____, Park Planning Manager

Technical Specifications