

## **SECTION 4 - AGREEMENT**

### **PROJECT AGREEMENT**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2019, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and **California Facility Specialties, Inc.**, hereinafter referred to as ("CONTRACTOR").

#### **RECITALS:**

The following recitals are a substantive part of this Agreement:

This Agreement is entered into pursuant to Garden Grove COUNCIL AUTHORIZATION, DATED \_\_\_\_\_.

CITY desires to utilize the services of Provide all Materials, Labor, and Equipment for the Installation of wall attached telescoping bleachers in the gymnasium at the Garden Grove Sports and Recreation Center, located at 13641 Deodara Avenue, Garden Grove CA 92840, per the Bid Specifications.

CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish services.

#### **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 4.0 **Compensation.** CONTRACTOR shall be compensated as follows: Compensation under this agreement shall be a Not to exceed (NTE) amount of Fifty Seven Thousand Five Hundred Dollars Only (\$57,500.00), payable in arrears and in accordance with Bid Pricing Sheet (Attachment B), which is attached and is hereby incorporated by reference. Payment for work under this Agreement shall be made per invoice or request for work completed subject to Section 4.11 hereof. All work shall be in accordance with Bid No. S-1255 and Bid Specifications (Attachment A), which are attached and are hereby incorporated by reference.
- 4.1 **General Conditions.** CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR'S investigation of all such matters and is in no way relying upon any opinions or representations of CITY. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents including the Notice Inviting Bids, Special Instructions to Bidders, if any, Plans and Specifications, and Contractor's Proposal, are incorporated in this

Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its subcontractors, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the work covered by this Contract.

**"Project"** as used herein defines the entire scope of the work covered by all the Contract Documents. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to City's Engineer, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR'S own risk and expense. The decision of the Engineer shall be final.

**4.2 Materials and Labor.** CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by the CITY, to complete the project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, CITY may settle such claims by making demand upon the surety to this Agreement. In the event of the failure or refusal of the surety to satisfy said claims, CITY may settle them directly and deduct the amount of payments from the Contract price and any amounts due to CONTRACTOR. In the event CITY receives a stop notice from any laborer or material supplier alleging non-payment by CONTRACTOR, CITY shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

**4.3 Project.** The PROJECT is described as Provide all Materials, Labor, and Equipment for the Installation of wall attached telescoping bleachers in the gymnasium at the Garden Grove Sports and Recreation Center, located at 13641 Deodara Avenue, Garden Grove CA 92840, per the Bid Specifications.

**4.4 Plans and Specifications.** The work to be done is described in a set of detailed Plans and Specifications for: Provide all Materials, Labor, and Equipment for the Installation of wall attached telescoping bleachers in the gymnasium at the Garden Grove Sports and Recreation Center, located at 13641 Deodara Avenue, Garden Grove CA 92840, per the Bid Specifications.

Said Plans and Specifications and any revisions, amendments or addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference. The work to be done must also be in accordance with the General Provisions, Standard Specifications and Standard Plans of City which are also incorporated herein and referred to by reference.

**4.5 Time of Commencement and Completion.** CONTRACTOR agrees to commence the Project with TEN (10) calendar days from the date set forth in the "Notice to Proceed" sent by City and shall diligently prosecute the work to completion within **10 calendar days** of the Notice to Proceed, excluding delays caused or authorized by the CITY as set forth in Sections 4.7, 4.8 and 4.9 hereof.

**4.6 Time is of the Essence.** Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR'S work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the work covered by this Contract with that of all other contractors, subcontractors and of the CITY, in a manner that will facilitate the efficient completion of the entire work in accordance with Section 4.5 herein. CITY shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of CONTRACTOR on the premises.

**4.7 Excusable Delays.** CONTRACTOR shall be excused for any delay in the prosecution or completion of the Project caused by acts of God; inclement weather; damages caused by fire or other casualty for which CONTRACTOR is not responsible; and act, neglect or default of CITY; failure of CITY to make timely payments to CONTRACTOR; late delivery of materials required by this CONTRACT to be furnished by CITY; combined action of the workers in no way caused by or resulting from default or collusion on the part of CONTRACTOR; a lockout by CITY; or any other delays unforeseen by CONTRACTOR and beyond CONTRACTOR'S reasonable control.

City shall extend the time fixed in Section 4.5 herein for completion of the Project by the number of days CONTRACTOR has thus been delayed, provided that CONTRACTOR presents a written request to CITY for such time extension within fifteen (15) days of the commencement of such delay and CITY finds that the delay is justified. CITY'S decision will be conclusive on the parties to this Contract. Failure to file such request within the time allowed shall be deemed a waiver of the claim by CONTRACTOR.

No claims by CONTRACTOR for additional compensation or damages for delays will be allowed unless CONTRACTOR satisfies CITY that such delays were unavoidable and not the result of any action or inaction of CONTRACTOR and that CONTRACTOR took all available measures to mitigate such damages. Extensions of time and extra compensation as a result of incurring undisclosed utilities will be determined in accordance with Section 9-103A of the State of California Department of Transportation Standard Specifications. The CITY'S decision will be conclusive on all parties to this Contract.

**4.8 Extra Work.** The Contract price includes compensation for all work performed by CONTRACTOR, unless CONTRACTOR obtains a written change order signed by a designated representative of CITY specifying the exact nature of the extra work and the amount of extra compensation to be paid all as more particularly set forth in Section 4.9 hereof. CITY shall extend the time fixed in Section 4.5 for completion of the Project by the number of days reasonably required for CONTRACTOR to perform the extra work, as determined by CITY'S Engineer. The decision of the Engineer shall be final.

## **4.9 Changes in Project.**

- 4.9.1** CITY may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:
- a. in the Specifications (including drawings and designs);
  - b. in the time, method or manner of performance of the work;
  - c. in the City-furnished facilities, equipment, materials, services or site; or
  - d. directing acceleration in the performance of the work.
- 4.9.2** A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the CITY which causes any change, provided CONTRACTOR gives the CITY written notice stating the date, circumstances and source of the order and that CONTRACTOR regards the order as a change order.
- 4.9.3** Except as provided in this Section 4.9, no order, statement or conduct of the CITY or its representatives shall be treated as a change under this Section 9 or entitle CONTRACTOR to an equitable adjustment.
- 4.9.4** If any change under this Section 4.9 causes an increase or decrease in CONTRACTOR'S actual, direct cost or the time required to perform any part of the work under this Contract, whether or not changed by any order, the CITY shall make an equitable adjustment and modify the Contract in writing. Except for claims based on defective specifications, no claim for any change under paragraph (4.9.2) above shall be allowed for any costs incurred more than 20 days before the CONTRACTOR gives written notice as required in paragraph (4.9.2). In the case of defective specifications for which the CITY is responsible, the equitable adjustment shall include any increased direct cost CONTRACTOR reasonably incurred in attempting to comply with those defective specifications.
- 4.9.5** If CONTRACTOR intends to assert a claim for an equitable adjustment under this Section 4.9, it must, within thirty (30) days after receipt of a written change order under paragraph (4.9.1) or the furnishing of a written notice under paragraph (4.9.2), submit a written statement to the CITY setting forth the general nature and monetary extent of such claim. The CITY may extend the 30-day period. CONTRACTOR may include the statement of claim in the notice under paragraph (4.9.2) of this Section 4.9.
- 4.9.6** No claim by CONTRACTOR for an equitable adjustment shall be allowed if made after final payment under this Agreement.

**4.9.7** CONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that CITY may require without nullifying this Contract. CONTRACTOR shall adhere strictly to the Plans and Specifications unless a change therefrom is authorized in writing by the CITY. Under no condition shall CONTRACTOR make any changes to the Project, either in additions or deduction, without the written order of the CITY and the CITY shall not pay for any extra charges made by CONTRACTOR that have not been agreed upon in advance in writing by the CITY. CONTRACTOR shall submit immediately to the CITY written copies of its firm's cost or credit proposal for change in the work. Disputed work shall be performed as ordered in writing by the CITY and the proper cost or credit breakdowns therefor shall be submitted without delay by CONTRACTOR to CITY.

**4.10 Liquidated Damages for Delay.** The parties agree that if the total work called for under this Contract, in all parts and requirements, is not completed within the time specified in Section 4.5 herein, plus the allowance made for delays or extensions authorized under Section 4.7, 4.8 and 4.9 herein, the CITY will sustain damage which would be extremely difficult and impractical to ascertain. The parties therefore agree that CONTRACTOR will pay to CITY the sum of two hundred and fifty dollars (\$250.00) per day for each and every calendar day during which completion of the Project is so delayed. CONTRACTOR agrees to pay such liquidated damages and further agrees that CITY may offset the amount of liquidated damages from any moneys due or that may become due CONTRACTOR under the Contract.

**4.11 Contract Price and Method of Payment.** CITY agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any subsequent additions or deductions as provided in approved change orders, the sum as itemized in the bid proposal. Progress payments shall be made to the CONTRACTOR per month for each successive month as the work progresses. The CONTRACTOR shall be paid such sum as will bring the total payments received since the commencement of the work up to ninety five percent (95%) of the value of the work completed, less all previous payments, provided that the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule. The CITY will retain five percent (5%) of the amount of each such progress estimate and material cost until 30 days after the recordation of the Notice of Completion.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the CITY'S Engineer, stating that the work for which payment is demanded has been performed in accordance with the terms of the Contract. Partial payments of the Contract price shall not be considered as an acceptance of any part of the work.

**4.12 Substitution of Securities in Lieu of Retention of Funds.** Pursuant to California Public Contract Code Section 22300, the CONTRACTOR will be entitled to post approved securities with the CITY or an approved financial institution in order to have the CITY release funds retained by the CITY to ensure performance of the Contract. CONTRACTOR shall be required to execute an addendum to this Contract together with escrow instructions and any other documents in order to effect this substitution.

**4.13 Completion.** CITY may require affidavits or certificates of payment and/or releases from any subcontractor, laborer or material supplier in connection with Stop Notices, which have been filed under the provisions of the statutes of the State of California.

**4.14 Contractor's Employee Compensation.**

**4.14.1 General Prevailing Rate.** CITY has ascertained CONTRACTOR shall comply with all applicable requirements of Division 2, Part 7, Chapter 1 of the California Labor Code and all applicable federal requirements respecting the payment of prevailing wages. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the prevailing wage rates determined by the Director of the Department of Industrial Relations (DIR) for similar classifications of labor, the CONTRACTOR and its Subcontractors shall pay not less than the higher wage rate. The DIR will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal Wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the CONTRACTOR and Subcontractors, the CONTRACTOR and its Subcontractors shall pay not less than the Federal Minimum wage rate which most closely approximates the duties of the employees in question.

**4.14.2 Forfeiture for Violation.** CONTRACTOR shall, as a penalty to the CITY, forfeit one hundred dollars (\$100.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR or any subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.

**4.14.3 Apprentices.** Section 1777.5, 1777.6 and 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices is applicable to this Contract and the CONTRACTOR shall comply therewith; provided, however, that this requirement shall not apply if and/or to the extent that the Contract of the general CONTRACTOR, or the contracts of specialty contractors not bidding for work through a general or prime contractor involves less than thirty thousand dollars (\$30,000.00).

**4.14.4 Workday.** In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him thereunder except as provided in paragraph (4.14.1) above. CONTRACTOR shall conform to Article 3, Chapter 1, Part 7 (Sections 1810 et sep.) of the Labor Code of the State of California and shall forfeit to the CITY as a penalty, the sum of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR or any subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.

**4.14.5 Record of Wages: Inspection.** CONTRACTOR agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by it in connection with the Project and agrees to require that each of its subcontractors does the same. The applicable CONTRACTOR or subcontractor or its agent having authority over such matters shall certify all payroll records as accurate. CONTRACTOR further agrees that its payroll records and those of its subcontractors shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all of the provisions of Labor Code Section 1776, in general. CONTRACTOR shall comply with all of the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3).

**4.14.6 CONTRACTOR REGISTRATION; MAINTENANCE OF PAYROLL RECORDS; JOB SITE POSTING**

**4.14.6.1 Contractor Registration.** CONTRACTOR and its subcontractors must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement shall not be effective until CONTRACTOR provides proof of registration to the CITY.

**4.14.6.2 Payroll Records.** CONTRACTOR shall maintain accurate payroll records and shall comply with all of the provisions of Labor Code Section 1776, and shall submit payroll records to the Labor Commissioner pursuant to Labor Code section 1771.4(a)(3).

**4.14.6.3 Posting of Job Site Notices.** CONTRACTOR shall comply with the job site notices posting requirements established by the Labor Commissioner pursuant to Title 8, California Code of Regulations Section 16461(e) or other

regulation promulgated pursuant to Labor Code Section 1771.4(a)(2).

**4.14.6.4 Notice of DIR Compliance Monitoring and Enforcement.** Pursuant to Labor Code Section 1771.4, this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

**4.15 Surety Bonds.** CONTRACTOR shall, upon entering into performance of this Agreement, furnish bonds in the amount of one hundred percent (100%) of the Contract price bid, to guarantee the faithful performance of the work, and the other in the amount of one hundred percent (100%) of the Contract price bid to guarantee payment of all claims for labor and materials furnished. This Contract shall not become effective until such bonds are supplied to and approved by the CITY. The Surety Company must have an AM Best rating of A- VII or better.

**4.16 Insurance.**

**4.16.1** CONTRACTOR is also aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or undertake self-insurance with provisions of that Code and will comply with such provisions before commencing the performance of the work of this Contract.

**4.16.2** CONTRACTOR and all subcontractors will carry and provide Workers' Compensation insurance for the protection of its employees during the progress of the work and *provide Employers Liability in an amount not less than \$1,000,000*. The insurer shall waive its rights of subrogation against the CITY, its officers, agents and employees and shall issue a certificate to the policy evidencing same.

**4.16.3** For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be in excess of the CONTRACTOR'S insurance and shall not contribute with it.

**4.16.4** Before CONTRACTOR performs any work at, or prepares or delivers materials to, the site of construction, CONTRACTOR shall furnish certificates of insurance and endorsements evidencing the foregoing insurance coverage and such certificates of insurance and endorsements shall provide the name and policy number of each carrier and that the insurance is in force and will not be cancelled without 30 days written notice to the CITY. CONTRACTOR shall maintain all of the foregoing insurance in force until the work under this contract is satisfactorily and fully completed to the satisfaction of the CITY. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of CITY by Contractor under Section 4.17 of this Contract.



Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and issued by a company having a Best's Guide Rate of A-, Class VII or better (claims made and modified occurrence policies are not acceptable).

**4.16.5 COMMENCEMENT OF WORK.** CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance. Contractor shall also provide a waiver of subrogation for each policy.

**4.16.6 INSURANCE AMOUNTS.** CONTRACTOR and all subcontractors shall maintain the following insurance in the amount and type for the duration of this Agreement:

- (a) Commercial general liability in an amount not less than \$1,000,000 per occurrence, and not excluding XCU; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (b) Automobile liability in an amount not less than \$1,000,000 combined single limit; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

An Additional Insured Endorsement, **ongoing and products-completed operations**, for the policy under section 4.16.6 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the CITY, as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.16.6 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the CITY, as additional insureds for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers, for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the CITY shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

**4.17 Risk and Indemnification.** All work covered by this Contract done at the site of the Project or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR agrees to save, indemnify and keep CITY, its Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their directors, Officers, Agents and Employees harmless against any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons (CONTRACTOR'S employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by CONTRACTOR, save and except claims or litigation arising through the *active negligence* or sole willful misconduct of CITY and will make good to reimburse CITY for any expenditures, including reasonable attorneys' fees CITY may incur by reason of such matters, and if requested by CITY, will defend any such suits at the sole cost and expense of CONTRACTOR.

**4.18 Termination.**

**4.18.1** This Contract may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONTRACTOR is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Termination of contract shall conform to Section 8-1.11 of the State of California, Department of Transportation Standard Specifications.

**4.18.2** If termination for default or convenience is effected by the CITY, an equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONTRACTOR'S default. The equitable adjustment for any termination shall provide for payment to the CONTRACTOR for services rendered and expenses incurred in accordance with section 8-1.11 of the State of California, Department of Transportation Standard Specifications.

**4.18.3** Upon receipt of a termination action under paragraph (4.18.1) or (4.18.2) above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONTRACTOR in performing this Contract whether completed or in process.

**4.18.4** Upon termination under paragraphs (4.18.1) and (4.18.2) above, the CITY may take over the work and may award another party an agreement to complete the work under this Contract.

**4.19 Warranty.** The CONTRACTOR agrees to perform all work under this Contract in accordance with the CITY'S designs, drawings and specifications.

The CONTRACTOR guarantees for a period of one (1) year from the date of the notice of completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs or any damage to other parts of the system resulting from such defects. The CITY shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, the CITY may do so and charge the CONTRACTOR the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR'S obligations under this clause are in addition to the CONTRACTOR'S other express or implied assurances provided under this Contract and in no way diminish any other rights that the CITY may have against the CONTRACTOR for faulty materials, equipment or work.

**4.20 Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, *each party shall be responsible for their own attorneys' fees, costs and necessary expenses.* If any action is brought against the CONTRACTOR or any subcontractor to enforce a Stop Notice or Notice to Withhold, which named the CITY as a party to said action, the CITY shall be entitled to all attorneys' fees, costs and necessary disbursements arising out of the defense or such action by the CITY. The CITY shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

**4.21 Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the CITY.

**4.22 Notices.** Any notice required or permitted under this Contract may be given by ordinary mail at the address set forth below. Any party whose address changes shall notify the other party in writing.

To CITY:                   City of Garden Grove  
                                  City Attorney  
                                  11222 Acacia Parkway  
                                  Garden Grove, California 92840

To CONTRACTOR: California Facility Specialties, Inc.  
                                  Attention: Mike Kurnik, Vice President  
                                  161 Mercury Circle  
                                  Pomona, CA 91768

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(Agreement Signature Block on Next Page)

**IN WITNESS THEREOF**, these parties have executed this Project Agreement on the day and year shown below.

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

**"CITY"**  
**CITY OF GARDEN GROVE**

**By:** \_\_\_\_\_  
City Manager

**ATTEST:**

\_\_\_\_\_  
City Clerk

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

**"CONTRACTOR"**  
**California Facility Specialties, Inc.**

Contractor's State Lic. No. \_\_\_\_\_

DIR Registration Number \_\_\_\_\_

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

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

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

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

Tax ID No. \_\_\_\_\_

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to the CITY.

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Garden Grove City Atto

## **IFB S-1255**

### **Provide all Materials, Labor, and Equipment for the Installation of Wall Attached Telescoping Bleachers in the gymnasium at the Garden Grove Sports and Recreation Center**

#### **BID SPECIFICATIONS (PAGE 1 OF 3)**

The Garden Grove Community Services Department is seeking qualified contractors to Provide all Materials, Labor, and Equipment for the Installation of wall attached telescoping bleachers in the gymnasium at the Garden Grove Sports and Recreation Center, located at 13641 Deodara Avenue, Garden Grove CA 92840, per the Bid Specifications "The City is requiring the earliest installation start date to be no earlier than August 19, 2019. It is highly preferable that the installation and completion be performed between August 19, 2019 and August 30, 2019.

A mandatory pre-bid meeting and site inspection will be held to allow prospective Contractors to inspect, take field measurements for drawing preparation and to familiarize themselves with the building/site and all conditions that may affect the performance and cost of the Contractor. Contractor must deliver and install a fully functional and operational unit in order for the project to be deemed complete by the City.

#### **PRODUCT SPECIFICATIONS:**

- The bleacher system needs to be comprised of multiple tiers, closed deck seating rows operating in a telescopic manner, incorporating the most quantity of sections while still complying with all loading requirements.
- 2 Sections 78'9" 3 tier seating and 2 Sections 33'7 1/2" 3 tier seating. Total height of bleachers to be no lower than 36".
- Bleachers are to be designed to accommodate the multiple vertical pilasters (pillars) to minimize seating loss. The top row(s) are to be cut out and scribe fitted to meet the pilaster conditions, allowing the middle and bottom row(s) of seats in front of the pilasters to still be utilized.
- Highly desired Manufacturers, Makes, and Models:
  - Interkal Spectator Seating World Wide – ESM Telescopic Seating or equal
  - Hussey Seating Company – Maxam or equal
- Bleachers are to be manual operation.
- Handicap Seating Provisions: Provide first tier handicap cutouts per requirements of (ADA) Americans with Disability Act.
- Seating color to be selected by the City from manufacturers "standard offering."

## **IFB S-1255**

### **Provide all Materials, Labor, and Equipment for the Installation of Wall Attached Telescoping Bleachers in the gymnasium at the Garden Grove Sports and Recreation Center**

#### **BID SPECIFICATIONS (PAGE 2 OF 3)**

##### **CONTRACTOR REQUIREMENTS:**

- Awarded contractor must provide engineered certified/stamped plans, drawing(s), and specifications for approval.
- Contractor must provide all design plans, specifications and proposal.
- Contractor must complete design layout, permitting application and approval process, fabrication, delivery and offloading, security and on-site storage.
- Contractor is responsible for repairing any damage to facility caused by said contractor during entirety of project.
- Contractor must complete the project within 10 working days unless otherwise agreed upon in writing by the City.
- Contractor must be able to meet and provide the required insurance in the amounts and types specified.
- **Requests for Substitution or Proposed Equals:** The bidder shall note in his submittal any and all "alternatives" or "proposed equals" that it proposes to use in lieu of any named or designated material, product or thing that is named in the specifications and followed by the words "or equal." In the event there are "alternatives" or "proposed equals", the bidder shall specifically itemize them in his bid under a heading entitled "Proposed Equals". Failure to do so shall render the bidder's bid non-responsive. In addition, if any "alternatives" or "proposed equals" are proposed by the bidder, the bidder must submit a request for substitution of proposed equal to the City within ten (10) working days of the bid closing date. This request shall include any and all appropriate data substantiating that the proposed item is "equal" to the item listed in the specifications. Failure to submit said request within the required timeframe shall be cause for its immediate rejection by the City. The City shall review the bidder's submission and shall render a decision no later than five (5) business days before the bid closing date. The bidder shall be notified in writing of the City's decision. The City reserves the right to reject any and all bids that do not meet the bid requirements and/or those bids submitted with "alternatives" or "proposed equals" that have not been previously approved by the City. All requests

## **IFB S-1255**

### **Provide all Materials, Labor, and Equipment for the Installation of Wall Attached Telescoping Bleachers in the gymnasium at the Garden Grove Sports and Recreation Center**

#### **BID SPECIFICATIONS (PAGE 3 OF 3)**

for substitution or proposed equals shall be submitted via email to Sandra Segawa (sandras@ggcity.org).

#### **REQUIRED PERMITS/LICENSES:**

- Prospective Contractors must possess a valid State of California Class A General Contractor license or C61-D34 Specialty License to perform the work herein.
- The successful bidder must obtain a City of Garden Grove business license before the work can commence.
- Contractor and all sub-contractors must be registered with the Department of Industrial Relations at the date and time that a bid is submitted.

#### **REMOVAL AND DISPOSAL OF EXISTING EQUIPMENT:**

- The existing bleachers in the gymnasium have already been removed so please do NOT include this work in the bid pricing.

#### **WARRANTY:**

- Bid proposal to include information on the warranty of the product including length of the warranty, parts and labor, and exclusions to the policy. If an extended warranty is available please include the cost on the Bid Pricing Sheet (ATTACHMENT "B"). Adding the extended warranty to the contract will be an additional option, which will be at the sole option of the City based on available funds. This Option A will NOT be used to determine the lowest responsible bidder.

#### **EQUIPMENT:**

- Any equipment needed/rented for this project shall be at the expense of the Contractor and included in the bid pricing.

#### **BID PRICING:**

- Contractor must include prevailing wage and include all materials, equipment, labor, delivery required to perform all aspects of the work herein.
- Contractor must include a Schedule of Values which includes the price breakdown of labor and cost of materials of the total bid amount submitted. Partial bids will NOT be accepted for any reason and will be deemed as non-responsive by the City.



**ATTACHMENT "B"**

**(BID PRICING)**

**SECTION 2 - BID PRICING  
THE HONORABLE MAYOR AND CITY COUNCIL  
CITY OF GARDEN GROVE  
11222 ACACIA PARKWAY  
GARDEN GROVE, CALIFORNIA 92840**

**To: THE HONORABLE MAYOR AND CITY COUNCIL**

The undersigned having carefully examined the Plans and Specifications to Provide all Materials, Labor, and Equipment for the Installation of wall attached telescoping bleachers in the gymnasium at the Garden Grove Sports and Recreation Center, located at 13641 Deodara Avenue, Garden Grove CA 92840. HEREBY PROPOSE to furnish all labor, materials, and equipment and do all the work required to complete work in accordance with the Plans and Specifications for the sum of:

<b>BID PROPOSAL</b>			
<b>Item</b>	<b>Address</b>	<b>Description</b>	<b>Total Cost</b>
1.	13641 Deodara Ave. Garden Grove, CA 92840	Provide all Materials, Labor, and Equipment for the Installation of Gymnasium Bleachers at the Garden Grove Sports and Recreation Center	\$ 57,500.00
<b>PARTIAL BIDS WILL NOT BE ACCEPTED!</b>			
<b>TOTAL COST of Project In Written Words</b>			
Fifty-seven thousand - five hundred dollars + 00/100¢			
<b>Lump Sum (Including all applicable sales tax)</b>			
The above bid price includes all applicable taxes for the pricing proposed in this submittal. <b>Note: In case of discrepancy between the words and figures, the words prevail.</b>			

**OPTION A: EXTENDED WARRANTY:** \$ 0.00

It is understood and agreed that:

*- No added cost for 5 year warranty based on yearly service and inspection performed by certified Interkol installer, hired by city -*

- (a) No verbal agreement or conversation with any officer, agent or employee of CITY, either before or after the execution of the Agreement shall affect or modify any of the terms or obligations of this Proposal.
- (b) CITY will not be responsible for any errors or omissions on the part of the undersigned in making up his bid, nor will bidders be released on account of errors.

(c) The undersigned hereby certifies that this Proposal is genuine and is not sham or collusive, or made in the interest or in behalf of any person not herein named, and that the undersigned has not directly or indirectly induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the undersigned has not in any manner sought, by collusion, to secure for himself an advantage over any other bidder.

(d) The Bidder acknowledges receipt of amendments to the Solicitation and related documents numbered and dated:

<u>Amendment No.</u>	<u>Date</u>
# 1	June 11, 2019

(e) undersigned has not in any manner sought, by collusion, to secure for himself an advantage over any other bidder.

Check below where appropriate:

Partnership: That \_\_\_\_\_ are partners, doing  
(Names of all Partners)

business under the firm name of \_\_\_\_\_ and  
that the co-partnership makes the accompanying proposal.

Corporation: That Mike Kurnik, Vice President <sup>\*\*\*See attached authorization</sup> of  
(President or Secretary)

California Facility Specialties, Inc.  
(Name of Corporation) makes the accompanying proposal.

Individual: That \_\_\_\_\_ is the bidder and makes the  
(Name of Individual)  
accompanying proposal.

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

California Facility Specialties, Inc.  
Company Name

161 Mercury Circle  
Address

Pomona CA 91768

**City - State - Zip**

909-599-1200

**Telephone Number**

mkurnik@cafacilityspec.com

**Email Address**

944687

**CA Contractors License Number**

100000519

**DIR Registration Number**

California Facility Specialties, Inc.

**Bidder's Name (Please Print)**



**Authorized Signature**

**CALIFORNIA FACILITY SPECIALTIES, INC.  
SPECIAL DIRECTORS' MEETING**

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The undersigned, being all of the Directors of California Facility Specialties, Inc. (the "Company"), a California corporation, held a special meeting of the corporation on the first Friday of April, 2017 for the purposes of electing a vice president of the Company.

**RESOLVED**, that Michael Kurnik will continue as Vice President of the Company effective as of the date of the signing of this Action to serve for a three year term to expire upon the earlier of the April 2020 Annual Meeting of the Board of Directors or his resignation as Vice President of the Company.

**RESOLVED, FURTHER** that the Vice President is hereby authorized to sign such documents for the Company as may be required, including but not limited to performance and payment bonds, bank documents, checks and contracts on behalf of the Company as may be required.

Dated this 1st day of April, 2017.

  
\_\_\_\_\_  
Michael J. Ferrara