

SECTION 4 - AGREEMENT

PROJECT AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2020, by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and **California Landscape & Design, 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 Fencing at Atlantis Play Center, 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 Three Hundred Forty Nine Thousand Three Hundred Twenty Dollars Only (\$349,320.00), 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. Within 45 day of delivery of goods or completion of performance of services, CONTRACTOR must promptly render an invoice to CITY or payment may be significantly delayed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on pricing included in Bid Pricing (Attachment "B"). All work shall be in accordance with Bid No. S-1262 and Bid Specifications/Drawings (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 Fencing at Atlantis Play Center, located at 13630 Atlantis Way, Garden Grove, CA 92844, 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 Fencing at Atlantis Play Center, located at 13630 Atlantis Way, Garden Grove, CA 92844, 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 according to the Bid Specifications, Section 3.10, CONSTRUCTION SCHEDULE, 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 seq.) 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 by 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 Landscape & Design, Inc.,
 Attention: Joseph M. Ciaglia, Jr., President
 273 N. Benson Avenue
 Upland, CA 91786

\\ \\ \\

(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 Landscape & Design, Inc.

Contractor's State Lic. No. 597267

DIR Registration Number 1000002521

Expiration Date: 09/30/2021

By: _____ Joseph M. Ciaglia, Jr.

Title: President

Date: 01/14/2020

Tax ID No. 33-0840384

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:

Jenna H. Effert for
Garden Grove City Attorney

ATTACHMENT "A"
BID SPECIFICATIONS

IFB S-1262

**Provide all Materials, Labor, and Equipment for the Installation of Fencing
at Atlantis Play Center**

ORNAMENTAL STEEL FENCES AND GATES

PART 1 GENERAL

1.01 WORK INCLUDED

- A. Conceptual plan, materials, testing, installation, adjustments, repair, and cleaning of Clearvu manufacturer decorative fences and gates or equal. Protection of installed product and adjacent materials

1.02 RELATED WORK

- A. Master Format Section 03 30 00: Cast-in-Place Concrete: Concrete post footings.

1.03 SYSTEM DESCRIPTION

- A. Furnish, install, make adjustments, and test complete fencing system where shown, including appurtenant footings, hardware, mountings, or connections required for compliance with Manufacturer's installation requirements and compliance with applicable building codes and standards. Repair and clean if needed.

1.04 Quality Assurance

- A. Use adequate numbers of skilled workmen trained and experienced in necessary trades and crafts and completely familiar with specified requirements and methods for proper performance of Work of this section.
- B. Qualifications:
 - 1. Manufacturer:
 - (a) 5 years' experience manufacturing components similar to or exceeding requirements of project.
 - (b) Having sufficient capacity to produce and deliver required materials without causing delay in work.
 - (c) Capable of providing field service representation during construction.
 - 2. Licensed Professional: A Professional Structural Engineer, experienced in security fencing design, and licensed in the State in which the Project is located.

3. Installer: Acceptable to the manufacturer, experienced in performing work of this section and has specialized in installation of work similar to that required for this project.

1.05 ADMINISTRATIVE REQUIREMENTS

- A. Coordinate with work of other trades for proper time and sequence to avoid construction delays. Comply with Section [01 31 00 – Project Management and Coordination].
- B. Conduct preinstallation meeting prior to commencing work of this Section and on-site installations to verify project requirements, substrate conditions and coordination with other building subtrades, and to review manufacturer's installation instructions and manufacturer's warranty requirements. Comply with Section [01 31 19 - Project Meetings].

1.06 REQUIRED LICENSES

- A. Class A General Contractors License

1.07 REFERENCES

- A. ASTM International (ASTM):
 1. ASTM A36 Standard Specification for Carbon Structural Steel.
 2. ASTM A53 Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless.
 3. ASTM A653 Standard Specification for Steel Sheet, Zinc-Coated Galvanized or Zinc-Iron Alloy-Coated Galvannealed by the Hot-Dip Process.
 4. ASTM B117 Standard Practice for Operating Salt Spray (Fog) Apparatus.
 5. ASTM D3359 Standard Test Methods for Measuring Adhesion by Tape Test.
 6. ASTM F2453 Standard Specification for Welded Wire Mesh Fence Fabric.
 7. ASTM F626 Standard Specification for Fence Fittings.
 8. ASTM F668 Standard Specification for Polyvinyl Chloride (PVC), Polyolefin and Other Polymer-Coated Steel Chain Link Fence Fabric.
 9. ASTM G26 Practice for Operating Light Exposure Apparatus (Xenon Arc Type) With and Without Water for Exposure of Nonmetallic Materials (Withdrawn 2000).
 10. ASTM G53 Practice for Operating Light and Water Exposure Apparatus (Fluorescent UV Condensation Type) for Exposure of Nonmetallic Materials (Withdrawn 2000).

1.08 SUBMITTALS

A. Furnish the following submittals in accordance with Contract Conditions and Section [01 33 00 - Submittal Procedures]:

Submittal	Description
ACTION	
Product Data	<ol style="list-style-type: none"> 1. Manufacturer's product data. 2. Catalog pages illustrating products to be incorporated into project. 3. Material Safety Data Sheets (MSDS).
Shop Drawings	<ol style="list-style-type: none"> 1. Layout of fencing, include types and locations of gates. 2. Footing details. 3. Fastening details, gate details, and relationships to adjacent construction.
Material Samples	Required on request, full-size actual products. Samples can be returned to Contractor for incorporation in work/project.
Design Data	Submit engineering data illustrating compliance with specified design and performance criteria. Have submittal signed and sealed by the Licensed Professional.
INFORMATION	
Test and Evaluation Reports	Certified test reports showing compliance with specified performance characteristics and physical properties.
Manufacturer's Instructions	Submit manufacturer's storage and installation instructions and requirements.
Source Quality Control	Submit documentation verifying that components and materials specified in this Section are from single manufacturer.
Manufacturer's Field Reports	Submit manufacturer's field reports.
Qualification Letters or Certificates	Required for Manufacturer, Licensed Professionals, and Installers performing work on this project. Also submit certifications of procedure qualifications for each procedure used.
CLOSEOUT	
Operation and Maintenance Data	Submit operation and maintenance data for installed products in accordance with Section [01 78 23 - Operation and Maintenance Data].

Submittal	Description
	<p>Include: Manufacturer's instructions detailing maintenance requirements. Parts catalog giving complete list of available parts. Replacement parts with cuts and identifying numbers.</p>
Warranty	<p>Refer to Contract Conditions and Section [01 78 36 - Warranties] for project warranty provisions. Manufacturer's Warranty: Submit, for Owner's acceptance, manufacturer's standard warranty document executed by authorized company official. Manufacturer's warranty is in addition to, and does not limit, other rights Owner may have under other Contract Documents. Warranty Term: 5 years commencing on date of completion.</p>

1.09 DELIVERY, STORAGE, AND HANDLING

A. Delivery and Acceptance Requirements:

1. Deliver material in accordance with Section [01 61 00 - Common Product Requirements] and in accordance with manufacturer's written instructions.
2. Deliver materials in manufacturer's original packaging with identification labels intact and in sizes to suit project.

B. Storage and Handling Requirements

1. Store materials protected from exposure to harmful weather conditions and at temperature conditions recommended by manufacturer.

PART 2 PRODUCTS

2.01 MANUFACTURER

- A. Single Source Responsibility: Provide components and materials specified in this section from a single manufacturer.
- B. Substitution Limitations: Substitutions: [In accordance with [Contract Conditions] [Section 01 25 00 - Substitution Procedures] [No substitutions permitted].
- C. Acceptable Manufacturer include the following or equal:
 1. Manufacturer: Cochrane USA.
Contact: 1012 14th Street, NW, #1400, Washington, DC 20005;
Phone: 202-434-8163, Fax: 202-639-8238; E-

mail:jmishoe@cochraneusa.com Website:
www.cochraneusa.com

2.02 DESCRIPTION

- A. Regulatory Requirements: In accordance with Section [01 41 00 - Regulatory Requirements].
- B. Compatibility: Ensure components and materials are compatible with specified accessories and adjacent materials.

2.03 MATERIALS/COMPONENTS/FINISHES

- A. Contractor is responsible for providing their own measurements of the perimeter fence line. The perimeter measurements provided in this document and on attached site plans provided by the city are approximations.
- B. Posts - Cochrane Taper Locking Post:
 - 1. Length: 10' - 10 1/8" [As indicated on the drawings].
 - 2. Post width shall be 3.5 inches (85 mm), tapering to 2 inches (45 mm) with a depth of 3.5 inches (85 mm).
 - 3. Post Locking Recess Mechanism to secure panel edge.
 - 4. Fittings: Locking Recess Mechanism, UV stabilized polymer cap.
 - 5. Post finish: Hot Dipped Galvanized then Marine Fusion Bond Coated.
- C. Panels-Cochrane ClearVu or equal:
 - 1. Panel shall be of 10 feet 10 inches width and 8 feet in height from ground level with 1 foot extended mesh at 40 degree outward angle
 - 2. Aperture Size (Centers): 3 × 1/2 inches.
 - 3. Reinforcing (Rigidity): 4 × 2 inches by 50 mm deep-V formation horizontal recessed bands.
 - 4. Side Flanges: 2 × 2 1/2 inch flanges at 70 degrees along sides of panel (internal fixtures—all fixtures shall be on the inside of fence line.
 - 5. Anti-scale locking devices: located on post panel connection.
 - 6. Top and Toe Flanges: 2 × 2 1/2 inch flanges, integrated rigid angle.
 - 7. Panel post shall have a flush panel post finish with no climbing aid and no external locking devices or components exposed to attack side of the fence line.
- D. Swinging Gates:
 - 1. Pedestrian Single Leaf Swing Gate:
 - (a) South west Gate 4 feet wide - 8 feet in height from ground level - with one foot extended mesh at a 40

degree outward angle. See "4ft pedestrian Swing Gate" drawings.

2. Double Leaf Swing Gates:

- (a) West-end Gate: 12 feet wide by 8 feet in height from ground level with 1 foot extended mesh at a 40 degree outward angle. No drawings*
- (b) North-end Gate: 19 feet wide by 8 feet in height from ground level with 1 foot extended mesh at a 40 degree outward angle. No drawings*
- (c) South-East-end Gate: 10 feet wide by 8 feet in height from ground level with 1 foot extended mesh at a 40 degree outward angle. See "10ft Double Leaf Swing Gate" drawings.

E. Anti-burrow

- 1. 12 inch anti burrow is to be installed on the north side of park fence system. The "North side" of park begins on north side of the "West-end 12 foot Double Leaf Swing Gate" and continues until it reaches the soccer arena. Approximately 706 feet. Refer to attached aerial map referred to in section 3.09 of park for specification.

F. Shutter Mesh

- 1. Install Shutter Mesh on fence panel at designated area to block view of splash pad pump equipment. Quantity of mesh to equal mesh that is on the perimeter of current fence (approximately 28 linear feet). See "10 foot panel with shutter mesh" drawing for more specifications.

G. Atlantis sign

- 1. Design, fabricate and install, custom steel laser cut sign to match Atlantis park logo. The city will provide logo.
- 2. City to approve design, color, dimensions and final location of sign.
- 3. Contractor to use ClearVu manufacture or equal to produce custom Atlantis sign.
- 4. Approximate location of sign is indicated on the attached map of park with a "star."

H. Materials

- 1. Steel Pipe (ASTM A53): Zinc-coated and seamless.
- 2. Steel (ASTM A36): Carbon structural steel.
- 3. Panel Fabric (ASTM F2453): Welded wire mesh.
- 4. Fittings (ASTM F626): Zinc-coated.

I. Fabrication

1. Panels: Fabricate panel posts with a flush panel post finish with no climbing aid.
2. Swinging Gates:
 - (a) Weld all connections and joints to form rigid frames or assembled with corner fittings.
 - (b) Fabricate hinges so that they will not twist or turn under the action of the gate, and arranged so that a closed gate cannot be lifted off the hinges to obtain entry.

J. Finishes

1. Galvanize: Hot-dip galvanize in accordance with ASTM A653.
2. Finish: Manufacturer's standard Marine Fusion Bond Coating.
 - (a) Performance:
 - (1) Loss of Adhesion (ASTM D3359): Zero loss.
 - (2) Corrosion: (ASTM B117): Under-film scribe tested for 1000 hours: 0-0.5 mm.
 - (3) Salt Resistance (ASTM B117): 20,000 hours with no blistering, cracking, corrosion or flaking.
 - (4) UV Performance (ASTM G26 and G53): No appreciable loss of color, gloss or mechanical properties for 2000 hours or five years in Florida at 45 degrees by the sea in the sun.
3. Color: Navy Blue, palette needs to be approved by City.

2.04 SOURCE QUALITY CONTROL

- A. Contractor to describe each test to be conducted that is required by fence manufacture. Include test method, sampling requirements, observation by independent authorities (if any) and reporting requirements. Describe each inspection to be conducted, including method, personnel and reporting requirements.

PART 3 EXECUTION

3.01 EXAMINATION

- A. Verification of Conditions: Verify that conditions of substrates previously installed under other sections or contracts are acceptable for product installation in accordance with manufacturer's instructions prior to security fencing and gate installation.
 1. Inform City of unacceptable conditions immediately upon discovery.
 2. Proceed with installation only after unacceptable conditions have been remedied and after receipt of written approval from City.

3.02 PREPARATION

- A. Surface Preparation: Prepare surface in accordance with manufacturer's written recommendations and coordinate with Section [01 71 00 - Examination and Preparation].
- B. Demolition/Removal:
 - 1. Removal of existing fence and gates material.
 - 2. Removal of plant material intertwined with existing fence. Preserve plant material that does not interfere with the removal of the existing fence. City staff will supervise and advise.
 - 3. Removal of existing trees and/or branches that may interfere with the installation of the new fence. Tree/branch removal to be approved by City staff.

3.03 INSTALLATION

- A. Coordinate installation of Clearvu fence and gates system in accordance with [01 73 19 - Installation].
- B. Coordinate security fencing and gate work with work of other trades for proper time and sequence to avoid construction delays.
- C. Install security fencing and gates plumb and level.
- D. Accurately fit, align, securely fasten and install free from distortion or defects.
- E. Furnish and install fencing and gate materials at locations shown on Submittals.
- F. The following installation standards shall be followed:
 - 1. Applicable OSHA and Cal OSHA regulations
 - 2. Applicable building and fire code requirements
 - 3. Manufacturer's installation and warranty requirements
- G. Refer variances between above documents and Contract Documents to City's Representative.
- H. Install fencing and gates according to Manufacturer's installation and warranty requirements.
- I. Fencing and gate materials shall be furnished and installed by Contractor at locations shown on Submittals.
- J. Install fencing and gate materials to tolerances recommended by Manufacturer. Unless otherwise shown, install fencing true, plumb, and level using precision gauges and levels.
- K. Built-up parts shall be free of warp.

3.04 REPAIR/RESTORATION

- A. Coordinate repair, restoration of systems components, and products in accordance with Section [01 73 13 - Application].
- B. Irrigation, turf and hardscape to be repaired and restored to original condition by Contractor.
- C. Manufacturer Services

1. Coordinate manufacturer's services with Section [01 45 00 - Quality Control]. Have manufacturer review work involved in handling, installation/application, protection and cleaning of product[s], and submit written reports in acceptable format to verify compliance of work with Contract.
2. Manufacturer's Field Services: Provide manufacturer's field services consisting of product use recommendations and periodic site visits for product installation inspection in accordance with manufacturer's instructions.
3. Schedule site visits to review work at stages listed:
 - (a) After delivery and storage of products, and when preparatory work on which work of this Section depends is complete, but before installation begins.
 - (b) Twice during progress of work at 25% and 60% complete.
 - (c) Upon completion of work, after cleaning is carried out.
 - (d) Obtain reports within three (3) days of review and submit immediately to the City.

3.05 ADJUSTING

- A. Adjust components and systems for correct function and operation in accordance with manufacturer's written Instructions. Coordinate with Section [01 75 00 - Starting and Adjusting].
- B. Lubricate moving parts to operate smoothly and fit accurately.

3.06 FIELD QUALITY CONTROL

- A. Field testing shall include the following:

Item	Test for	Test Standard (ASTM or Other Test Standard)	Frequency	First Test Paid for by	Retests Paid for by
Ornamental Steel Fences and Gates	No bends, twists or open joints No projecting edges or corners at intersections	Visual inspection	All fence work and gates	City	Contractor
	Field Performance	Demonstrate compliance to Contract Documents and	1 test	City	Contractor

Item	Test for	Test Standard (ASTM or Other Test Standard)	Frequency	First Test Paid for by	Retests Paid for by
		Manufacturer's printed literature			
	11-month Warranty Inspection	Demonstrate compliance to Contract Documents and Manufacturer's printed literature	1 test	City	Contractor

3.07 CLEANING

- A. Perform cleanup in accordance with Section [01 74 00 - Cleaning and Waste Management] and Section [01 74 13 - Progress Cleaning].
- B. Upon completion, remove surplus materials, rubbish, tools and equipment in accordance with Section [01 74 23 - Final Cleaning].
- C. Waste Management:
 - 1. Coordinate recycling of waste materials with [01 74 19 - Construction Waste Management and Disposal]. Contractor to follow Best Management Practices for waste removal.
 - 2. Collect recyclable waste and dispose of or recycle field generated construction waste created during demolition, construction or final cleaning.
 - 3. Remove recycling containers and waste bins from site.

3.08 PROTECTION

- A. Protect installed product from damage during construction in accordance with Section [01 76 00 - Protecting Installed Construction].
- B. Repair damage to adjacent materials caused by installation of decorative metal fence and gates system

3.09 ATTACHMENTS

- A. See Site plan for aerial view of proposed fence line approximate measurements.

3.10 CONSTRUCTION SCHEDULE

- A. Project to begin no sooner than April 14, 2020
- B. Project to be completed no later than June 12, 2020.

END OF SECTION

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 Bid Specifications to Provide all Materials, Labor, and Equipment for the Installation of fencing at Atlantis Play Center, located at 13630 Atlantis Way, Garden Grove, CA 92844. 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:

BID PROPOSAL			
Item	Address	Description	Total Cost
1.	13630 Atlantis Way, Garden Grove, CA 92844	Provide all Materials, Labor, and Equipment for the Installation of Fencing at Atlantis Play Center in Garden Grove, CA	\$ 349,320.00
PARTIAL BIDS WILL NOT BE ACCEPTED! TOTAL COST of Project in Written Words Three Hundred Forty Nine Thousand Three Hundred Twenty Dollars Lump Sum (Including all applicable sales tax)			
The above bid price includes all applicable taxes for the pricing proposed in this submittal. Note: In case of discrepancy between the words and figures, the words prevail.			

It is understood and agreed that:

- (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>
<u>1</u>	<u>12/11/2019</u>
<u>2</u>	<u>12/16/2019</u>
<u>3</u>	<u>12/17/2019</u>
<u>4</u>	<u>12/19/2019</u>

(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 Joseph M Ciaglia Jr of
(President or Secretary)

California Landscape & Design Inc.
(Name of Corporation) makes the accompanying proposal.

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

Date: 12/23/2019

California Landscape & Design Inc.
Company Name

273 N Benson Avenue
Address

Upland, CA 91786

City - State - Zip

(909) 949 -1601

Telephone Number

admin@calandscape.com

Email Address

597267

CA Contractors License Number

1000002521

DIR Registration Number

Joseph M Ciaglia Jr

Bidder's Name (Please Print)

Authorized Signature

Attachment "A"

PROJECT: ATLANTIS PLAY CENTER FENCING
PROJECT OWNER: CITY OF GARDEN GROVE

DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1 MOBILIZATION & DEMOBILIZATION	1	LS	\$51,000.00	\$51,000.00
2 CLEARING ALONG LINE OF NEW FENCING	1	LS	\$12,500.00	\$12,500.00
3 REMOVAL OF EXISTING FENCE, GATES & MOW CURBS	1	LS	\$20,500.00	\$20,500.00
4 INSTALLATION OF NEW GATES	4	EA	\$10,125.00	\$40,500.00
5 INSTALLATION OF NEW FENCE	1400	LF	\$159.00	\$222,600.00
6 CUSTOM ATLANTIS STEEL SIGN	1	EA	\$2,220.00	\$2,220.00
TOTAL BID	1	EA		\$349,320.00



**City of Garden Grove
Compliance Summary Report**

Vendor Number	Vendor Name	AM Best Rating	Insurance Carrier	Policy #	Eff. Date	Exp. Date	Coverage
12750-160940	CALIFORNIA LANDSCAPE & DESIGN, INC.	A , XIII	California Automobile Insurance Company	BA040000040708	4/12/2019	4/12/2020	Auto Liability
		A+r , XV	Maxum Indemnity Company	EXC602844104	3/30/2019	3/30/2020	Excess Liability
		A+r , XV	Maxum Indemnity Company	GLP601844508	3/30/2019	3/30/2020	General Liability
		A++g , XV	Travelers Property Casualty Company of America	UB1N2737701926G	2/1/2019	2/1/2020	Workers Comp

Risk Profile : Standard (not professional services or construction)

Required Additional Insured : City of Garden Grove, its officers, officials, agents, employees and volunteers