

CITY OF IMPERIAL BEACH



CONTRACT DOCUMENTS FOR:

**Veterans Park Soccer Field Netting Project
(P16-301)**

TABLE OF CONTENTS
CITY OF IMPERIAL BEACH
Veterans Park Soccer Field Netting Project (P16-301)

SECTION I	3
BIDDERS INFORMATION	3
NOTICE ADVERTISING FOR BIDS	4
INSTRUCTIONS TO BIDDERS	6
PROPOSAL REQUIREMENTS	9
SECTION II	17
DOCUMENTS TO BE EXECUTED PRIOR TO BID OPENING	17
BID VERIFICATION	18
BIDDER'S PROPOSAL (1/2)	19
BIDDER'S PROPOSAL (2/2)	20
BID FORM.....	21
BIDDERS BOND.....	23
ACKNOWLEDGEMENT.....	24
CONTRACTOR'S CERTIFICATION (1/2)	25
CONTRACTOR'S CERTIFICATION (2/2)	26
NON-COLLUSION AFFIDAVIT TO BE EXECUTED	27
SECTION III	28
DOCUMENTS TO BE EXECUTED AFTER AWARD OF CONTRACT	28
PUBLIC WORKS CONTRACT	29
CORPORATE CERTIFICATE	40
PARTNERSHIP CERTIFICATE	41
CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION.....	42
PERFORMANCE BOND	43
ACKNOWLEDGEMENT.....	44
BOND FOR MATERIALS AND LABOR.....	45
SECTION IV	47
SPECIAL PROVISIONS.....	47
SPECIAL PROVISIONS.....	48

SECTION I

BIDDERS INFORMATION

Notice Advertising for Bids

Instructions to Bidders

Proposal Requirements

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

NOTICE ADVERTISING FOR BIDS

Sealed proposals will be received at the office of the Administrative Services Department, 825 Imperial Beach Boulevard, Imperial Beach, California, up to the hour of **2:00 p.m. on November 24, 2015** for performing work as follows:

**CITY OF IMPERIAL BEACH
Veterans Park Soccer Field Netting Project (P16-301)
ENGINEERS ESTIMATE: \$50,000**

The proposal shall be enclosed in a sealed envelope addressed to the City of Imperial Beach, California, or if sent by messenger, shall be delivered to the Administrative Services Department, City Hall, 825 Imperial Beach Boulevard, Imperial Beach, California. **The envelope shall be plainly marked on the upper left hand corner with the name and address of the bidder and bear the words "Proposal For" followed by the name of the item and the date and hour of the bid opening.**

The proposals received will be publicly opened and read in the City Council Chambers, 825 Imperial Beach Boulevard, Imperial Beach, California at the time above stated. Award will be made by the City Council at a meeting subsequent to the date above set for the opening of bids. Proposals received shall remain valid for 60 days from the bid opening date.

Electronic copies of the bid package may be acquired at no cost, (1) from the City's website (www.imperialbeachca.gov), or (2) from Construction Bidboard (www.ebidboard.com).

In accordance with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California, the City Council of the City of Imperial Beach has ascertained the general prevailing rate of wages in the City of Imperial Beach of each craft or type of workman needed to execute the contract; also, the general prevailing rate for legal holiday and overtime work, applicable to the work to be done. The prevailing Wage Schedule is on file in the Public Works Department.

The special attention of prospective bidders is called to Section I, "Instructions to Bidders" and "Proposal Requirements," for instructions regarding bidding.

The City Council reserves the right to reject any or all bids and to waive any irregularity or informality in any bid to the extent permitted by law.

No bid will be accepted from a Contractor who has not been licensed in accordance with both the provisions of Division 3, Chapter 9 of Business and Professions Code. Contractors shall possess the following California Contractor's licenses, or such other licenses as may be allowed by law, at the time of award of the prime contract in order to perform the work: Class "A" or "C-13". Subcontractors must possess the appropriate licenses for each specialty subcontracted. Each bidder shall submit a copy of its active contractor's licenses with the bid documents. All electricians who work on this project shall be State-certified and show proof of certification, prior to commencement of work.

In addition to professional licensure, no bid will be accepted from a Contractor, or its subcontractors, without proof of current registration with the California Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5 of each Contractor and subcontractor identified in the bid. It is the responsibility of the Contractor to ensure that its business name appears in the DIR's Public Works Contractor Registration

database prior to submitting a bid package. The DIR Public Works Contractor Registration database can be found online at <https://efiling.dir.ca.gov/PWCR/Search>. This project is subject to continuing compliance monitoring and enforcement by the DIR.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

INSTRUCTIONS TO BIDDERS

Sealed proposals will be received at the office of the Administrative Services Department, 825 Imperial Beach Boulevard, Imperial Beach, California pursuant to the Notice Advertising for Bids.

1. Preparation of the Bid Proposal

Each bidder shall observe the following in preparing a bid proposal:

1.1 Federal Excise Taxes

The prices quoted by the bidder shall be exclusive of Federal excise taxes pursuant to the exemption of political subdivisions in the "Revenue Act of 1935" or any other acts of Congress.

1.2 Retail Sales Tax or Use Tax

Prices quoted by the bidder in his proposal shall include any sales or use tax levied by the California Revenue and Taxation Code.

1.3 Proposal Form

All proposals must be made upon blank forms attached herein. All proposals must give the prices proposed, both in writing and figures, and must be signed by the bidder, with his address. If the proposal is made by an individual, his name and post office address must be shown. If made by a firm or partnership, the name and post office address of each member of the firm or partnership must be shown. If made by a corporation, the proposal must show the name of the state under the laws, of which the corporation was chartered, and the names, titles and business addresses of the president, secretary and treasurer. If the form is deemed inadequate, additional descriptive matter may be submitted with the proposal by the attachment of catalogs, drawings, photographs or a letter.

1.4 Rejection of Proposals Containing Alterations. Erasures or Irregularities

Proposals may be rejected if they show any alterations of form, additions not called for, conditional or alternative bids, incomplete bids, erasures or irregularities of any kind. Any explanation or alternative offered shall be set forth in a letter attached to the front cover of the specifications. Alternatives which do not substantially comply with the City's specifications cannot be considered. Bids subject to conditions or limitations may be irregular and rejected.

The right is reserved by the City to reject any and all proposals.

1.5 Interpretations and Addenda

Should a bidder find discrepancies in, or omissions from the specifications, or other proposed Contract documents, or should bidder be in doubt as to their true meaning, bidders may submit to the Public Works Director a request for an interpretation thereof. Any interpretation of, or change in, the proposed documents will be made only by addendum issued to each person to whom specifications have been issued, and shall become a part of any Contract awarded. The City will not be responsible for any other explanation or interpretations. In the event that an addendum or bulletin, setting forth material

changes, additions or deletions is issued when there is 72 hours or less to the bid deadline, the City will extend the bidding deadline by at least 72 hours.

No person is authorized to make any oral interpretation of any provision in the Contract documents to any bidder, and no bidder is authorized to rely on any such unauthorized oral interpretation.

1.6 Delivery of Proposal

The proposal shall be enclosed in a sealed envelope addressed to the City of Imperial Beach, California, or if sent by messenger, shall be delivered to the Administrative Services Department, City Hall, 825 Imperial Beach Boulevard, Imperial Beach, California. The envelope shall be plainly marked on the upper left hand corner with the name and address of the bidder and bear the words "Proposal For" followed by the name of the item and the date and hour of the bid opening.

1.7 Any Withdrawal of Bids

Any bidder may withdraw his bid, either personally or by written request, or by telegraphic request confirmed in the manner specified above, at any time prior to the scheduled time for the opening of bids.

1.8 Late Bids

Bids received after the scheduled time for the opening of bids shall be accepted over the counter, clocked in, and received as late bids. They shall be returned UNOPENED to the vendor after City Council action on the project.

1.9 Bid Evaluation

The City reserves the right of being sole judge of bid meeting specifications.

Evaluation of the bids will be based on a combination of the total cost of the work including equipment, warranty included with the purchase, its compliance with design criteria and City's minimum requirements, maintenance history and ease of service, durability and safety of equipment, availability of parts and service, delivery/installation time period, financial standing and responsibility of the contractor and their subcontractors, if any, as judged by technical background and experience verified by reference checks.

1.10 Bidders Interested In More Than One Bid

No person, firm or corporation shall be allowed to make or file or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a Bidder, or that has quoted installation prices or materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or making a prime proposal.

1.11 Examination of Plans. Specifications and Site of the Work

Each Bidder shall visit the site of the proposed equipment and its installation, and fully acquaint himself with the conditions relating to the proposed design, its layout, use, construction and labor so that he may fully understand the facilities, difficulties and restrictions attending the execution of the work under the Contract. Bidders shall thoroughly examine and be familiar with the proposal plans, specifications and area measurements. The failure or omission of any Bidder to receive or examine any form, instrument or other documents, or to visit the site, verify measurements and acquaint himself with conditions there existing, shall in no way relieve any Bidder from obligation with respect to his bid or to the Contract. The submission of a bid shall be taken as prima facie evidence of compliance with this section. Each Bidder shall report to the City any errors or omissions in the architectural or engineering plans and specifications prior to submission of a bid.

1.12 Business License

The successful vendor, including all subcontractors, shall obtain a business license for work within the City of Imperial Beach.

No Contracts shall be issued to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and subcontractors. Business License applications and information may be obtained from the Imperial Beach Administrative Services Department, 825 Imperial Beach Boulevard, Imperial Beach, California 91932, (619) 628-1423.

1.13 Guarantee

The Contractor shall guarantee all work against defective workmanship for a period of 1 year from the date the Notice of Completion is filed (Greenbook, section 6-8).

The Contractor shall provide extended 8 year warrantee for materials furnished.

1.14 Installation

All materials, parts, and equipment furnished by the Contractor in the Work shall be new, high grade, and free from defects. Quality of work shall be in accordance with the generally accepted standards. Material work quality shall be subject to the Engineer's approval.

1.15 Award of Contract

The award of the Contract, as made by the City, will be made to the lowest responsive, responsible, qualified bidder whose proposal most closely meets the City's requirements and bid evaluation criteria. The award, if made, may be made within 30 days after the opening of the proposals. (The City Manager shall determine whether a Bidder is qualified to perform the Contract and what bid is lowest and whether it is in the interest of the City to accept the bid, subject to approval by the City Council.)

The Contract shall be signed by the successful Bidder and returned, together with the Contract bonds, within ten (10) days after the Notice of Award of a Contract has been mailed. No proposal shall be considered binding upon the City until the execution of the Contract.

Failure to execute a Contract within ten (10) days after the Notice of Award of a Contract has been mailed shall be just cause for cancellation and award to the next lowest Bidder.

1.16 Items To Be Submitted

Items to be submitted with the bid are set forth in Section II of these bid documents (except as otherwise specifically provided therein).

1.17 Bid Forms

Bid forms must be filled in completely by Bidder. Do not leave any blanks. If you need more space, use an additional sheet of paper, mark the block with "See Attachment" and reference the block on the additional sheet of paper. Any and all deviations from the design criteria and proposal requirements shall be clearly defined on attachments to the Bid Form.

1.18 For Questions or More Information

Contact:

Vicki Madrid, CIP Manager, at (619) 424-2214 or email vmadrid@imperialbeachca.gov

Hank Levien, Public Works Director, at (619) 628-1369

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

PROPOSAL REQUIREMENTS

1. Acceptance of Bid

In the event that this bid is duly accepted, the City shall purchase, and does hereby purchase, from Contractor said products, materials and/or services above described according to the terms and conditions herein contained and referred to for the prices aforesaid and hereby contracts to pay for the above set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained and as set forth in the Public Works Contract ("Contract").

2. Compliance

Contractor does hereby warrant that Contractor will comply with all the laws, rules, regulations and ordinances of the City of Imperial Beach, County of San Diego, State of California, and the Federal Government, respecting this sale of said goods or services and does further warrant that Contractor has good and sufficient title to the same and will supply title to the same, and does further warrant that the said goods or services sold hereunder are good merchantable and are suited for the use for which they are intended.

3. Payments

Final payments shall not be made to Contractor until after all work is completed and inspected by the Public Works Director. Progress payments may be made at the discretion of the Public Works Director.

4. Loss or Damage

Contractor shall be liable for loss or damage to said goods until completion and acceptance by the City of Imperial Beach and its designated officer.

5. Bidder Guarantee

Contractor shall guarantee the bid by securing a bid bond, certified check, or cashier's check in the amount of 10% of the of the contractor's bid price. All bids shall be presented under sealed cover and be properly identified as a bid.

6. Project Completion

Project completion shall be no later than 30 calendar days from the date of the Notice to Proceed. In case of non-completion by the installation deadline date by the Contractor, the Contractor agrees to reimburse the City at the rate of \$250.00 per calendar day for each day beyond the installation deadline date until the project is complete.

7. Resolution of Claims

Except for tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code, for all claims between the City and the Contractor of three hundred seventy-five thousand dollars (\$375,000) or less, the following claims process shall be followed:

- A. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment as provided for in the Public Works Contract Between the City of Imperial Beach and contractor ("Contract"). Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided by the Contract for the filing of claims.
- B. For claims of less than fifty thousand dollars (\$50,000):
 - 1. The City shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.
 - 2. If additional information is thereafter required, it shall be requested and provided pursuant to this Section, upon mutual agreement of the City and the Contractor.
 - a. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
- C. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000):
 - 1. The City shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.
 - 2. If additional information is thereafter required, it shall be requested and provided pursuant to this Section, upon mutual agreement of the City and the Contractor.
 - 3. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
- D. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- E. Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits its written claim pursuant to Subsection A. above until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
- F. For all civil actions filed to resolve claims subject to Public Contract Code section 20104 et seq., the matter shall comply with the mediation process and judicial arbitration process as set forth in Public Contract Code section 20104.4.
- G. For purposes of this Section, "claim" means a separate demand by the Contractor for either of the following:

1. A time extension;
2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to; or
3. An amount the payment of which is disputed by the City.

This Section shall not apply to tort claims and nothing in this Section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

8. Unfair Business Practice Claims

In entering into the Contract or a subcontract to supply goods, services, or materials pursuant to the Contract, the Contractor or Subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or the subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties.

9. Change Orders

The City reserves the right to make such alteration in the plans as may be necessary to improve the overall project or other features that may have been overlooked in the Proposal Requirements – Continued preparation of plans and specifications. Such alterations or changes will be in writing and shall not be considered a waiver of any conditions of the Contract nor to invalidate any of the provisions thereof.

Changes initiated by the Contractor due to unforeseen conditions at the jobsite shall be reported immediately and approved by the Public Works Director prior to commencing work.

10. Contractor Responsibility - Property Damages within Project Area

The Contractor and his subcontractors shall be responsible for, and hold the City harmless from, any and all damages which occur by reason of the Contractor's or subcontractor's operation within the limits of the project area, and shall be responsible for restoring them at no cost to the City to their original condition.

11. Safety Provisions

Precaution shall be exercised at all times by the Contractor, his subcontractors and all workers for the safeguard of life and property. Observation of the safety provisions of applicable laws and building, construction codes and OSHA regulations shall be the responsibility of the Contractor who shall also be responsible for all personnel working or visiting the job site.

12. Public Convenience and Safety

The successful Bidder will take all measures that are practical to minimize inconvenience to City personnel and the public. The successful Bidder shall conform with all governing safety regulations.

13. Installation Clean-Up

The successful Bidder will remove from the site DAILY all rubbish, debris and all material and debris resulting from the work performed daily throughout the installation period. Extra precautions will be taken to clean-up debris in a timely fashion in order to maintain a safe condition at all times. When

leaving a work area, the work area shall be vacated in a completely safe and clean condition, free from all debris, tools and equipment.

14. Subcontract For Work or Services

No contract shall be made by the Contractor with any other party for furnishing any other work or services herein contained without the prior written approval of the City. This provision shall not require the approval of contracts of employment between the Contractor and personnel assigned for services thereunder.

15. Designation of Subcontractors

Each bidder shall set forth on the form provided herein, and submit with its sealed bid at the time bids are due, the name and address of the place of business of each subcontractor who will perform work, labor, furnish materials, or render service to the bidder on said Contract in excess of one-half (1/2) of one percent (1%) of the total bid, or in the case of streets and highways work, one-half (1/2) of one percent (1%) or ten thousand dollars (\$10,000) whichever is greater. Bidders are required to submit the phone number, license number and license expiration date of each subcontractor listed in its bid within twenty-four (24) hours of bid opening. No time extension will be allowed for submission of additional information required by this Section. If no subcontractors are to be designated, enter the word "NONE."

16. Independent Contractor

The Contractor, manufacturer and supplier, and their respective employees, agents and subcontractors ("Contractor") are, for all purposes arising out of the Contract, an independent contractor and shall not be deemed an employee of the City. It is expressly understood and agreed that the Contractor shall in no event as a result of the Contract be entitled to any benefits to which the City employees are entitled, including, but not limited to overtime, retirement benefits, workers' compensation benefits, and injury leave or other leave benefits.

17. Workers' Compensation

The Contractor is required to comply with Section 3700 of the Labor Code regarding Workers' Compensation in accordance with the statutory limits of coverage. The successful Contractor shall provide the City as additional insured in regards to this project.

18. Public Liability, Product Liability and Property Damage Insurance

The Contractor shall take out and shall furnish satisfactory proof by certificate or otherwise as may be required by the City of Imperial Beach that he has taken out public liability, product liability and property damage insurance with insurance carriers satisfactory to the City of Imperial Beach and in such form as shall be satisfactory. The insurance shall protect the Contractor and the City of Imperial Beach, its officers and agents against loss from liability imposed by law for damages on account of bodily injury, including death resulting therefrom suffered or alleged to have been suffered by any person or persons other than employees resulting directly or indirectly from the design, manufacture, construction of the proposed equipment and its performance of installation or execution of this contract or any subcontract thereunder.

The insurance shall also protect the Contractor and the City of Imperial Beach, its officers, employees and agents against loss from liability imposed by law for damage to any property caused directly or indirectly by the performance of execution of this contract or any subcontract thereunder.

Contractor shall maintain this public liability, product liability and property damage insurance in full force and effect during the entire period of performance under this contract in amounts not less than the following:

18a. Liability Insurance

Liability insurance policy or policies shall contain the following provisions:

- (1) Coverage for owned and non-owned automobiles.
- (2) Manufacturers and Contractors liability.
- (3) Broad form property damage in any case where the Contractor has any property belonging to the City in his care, custody or control.
- (4) Owners and Contractors protective liability.
- (5) Blanket contractual liability.
- (6) Products and complete operations coverage.
- (7) Coverage for collapse, explosion, and where any excavation, digging, and trenching is done with power equipment, the liability insurance shall cover such operations.
- (8) An endorsement containing the following provisions.

"Solely as respects work done by and on behalf of the named insured for the City of Imperial Beach, it is agreed that the City of Imperial Beach, its officers, agents and employees including the Private Engineer as an Agent or Representative of the City, is added as an additional insured under this policy and the coverage provided hereunder shall be primary insurance available to the City of Imperial Beach, California, including the Private Engineer, under any other third party liability policy. It is agreed that any insurance or self-insurance maintained by the City shall apply in excess of, and not contribute with, insurance provided by this policy. It is further agreed that the other insurance conditions of the policy are amended to conform therewith."

All liability insurance policies shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration, material alteration, or proposed cancellation of such policies for any reason whatsoever, the City shall be notified by registered or certified mail not less than 30 days before expiration, material alteration or cancellation is effective.

All liability insurance shall cover comprehensive general and automobile liability for both bodily injury (including death) and property damage, including, but not limited to, aggregate products, aggregate operation, aggregate protective and aggregate contractual with the following minimum limits:

- a. **General Liability:**
 - \$1 Million each occurrence
 - \$2 Million general aggregate
 - \$1 Million products completed/operations aggregate
 - \$50,000 Fire Damage
 - \$5,000 Medical Expense
- b. **Automobile Liability:**
 - \$1 Million Bodily Injury Per Accident
 - \$1 Million Property Damage Per Accident
- c. **Workers Compensation and Employers' Liability:**
 - Workers Compensation - Statutory Limits
 - Employers Liability - \$1 Million Per Accident

All insurance policies required by this Section shall contain the following provision:

Contractor shall furnish City with original endorsements effecting coverage required by this Section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before work commences. Certificates of Insurance shall also be provided but will not be accepted as substitutes for endorsements required herein.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, and shall be "California-admitted carriers."

If the Contractor fails to maintain such insurance, the City of Imperial Beach may take out such public liability, product liability and property damage insurance to cover any damage which the City of Imperial Beach may be liable to pay through any of the operations under this contract and deduct and retain the amount of the premiums for such insurance from any sums under this contract.

Nothing herein contained shall be construed as limiting in any way the extent to which the Contractor may be held responsible for payment of damages to persons or property resulting from his products use or operations or any subcontractor under him.

19. Installation Guarantee

All work and materials shall be guaranteed by the installer as specified in Item 1.13, page 8 from the date of acceptance of the work, against defective workmanship and materials furnished by the Contractor or his subcontractors. The Contractor shall promptly replace or repair in a manner satisfactory to the City Public Works Director, any such defective work, after notice to do so from the Public Works Director, and upon the Contractor's failure to make such replacement or repairs promptly, the City may perform this work and the Contractor and his sureties shall be liable for the costs thereof.

20. Pre-Construction Conference

A Pre-Construction Conference shall be held with the Public Works Director and the successful Contractor within three (3) weeks after the date of the award.

21. Faithful Performance Bond and Bond for Materials and Labor

The successful Bidder is required to furnish the City with a surety bond executed by a surety company authorized to do business in the State of California, and approved by the City of Imperial Beach, in a sum equal to one hundred percent (100%) of the amount of the contract price, conditioned for the faithful performance, delivery and installation of said contract. The City will provide the form for this surety bond.

A bond for materials and labor is required in accordance with Civil Code section 3247. The City will provide the form for this bond.

22. Retention

Unless findings are made by the City Council or designee pursuant to Public Contracts Code section 7201(b)(3)-(4) allowing for a retention greater than five percent (5%), the City shall retain five percent 5% of the total project costs for thirty-five (35) days following final inspection and acceptance by the City of the Project. However, in the event of a dispute between the City and the Contractor, the City may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

Pursuant to California Public Contracts Code, Section 22300, the Contractor has the option, at its expense, to substitute for any money withheld by the City, securities equivalent to the amount being

withheld. Securities eligible for such substitution are those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City. As to any such security or securities so substituted for monies withheld, the Contractor shall be the beneficial owner of same and shall receive any interest thereon.

Such security shall, at the request and expense of the Contractor, be deposited with the City or with a State or Federally Chartered bank in this state as the escrow agent who shall pay such monies to the Contractor upon notification by the City that payment can be made. Such notification will be given at the expiration of 35 days from the date of acceptance of the work, or as prescribed by law, provide however, that there will be a continued retention of the necessary securities to cover such amounts as are required by law to be withheld by properly executed and filed notices to stop payment, or as may be authorized by the contract to be further retained.

Alternatively, the Contractor may request and the City shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities and the Contractor shall receive the interest earned on the investments upon the same terms provided for in Public Contracts Code, Section 22300 for securities deposited by the Contractor. Upon satisfactory completion of the contract, the Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of Public Contracts Code, Section 22300. The Escrow Agreement for Security Deposits in Lieu of Retention shall be substantially similar to the form contained in Public Contracts Code, Section 22300, and security deposits will be administered as specified therein.

23. Prevailing Wage

Contractor shall strictly adhere to the Labor Code provisions regarding minimum wage (City has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work and are on file at the office of the City Public Works Department), the eight (8) hour day (Labor Code § 1810) and forty (40) hour week, overtime, weekend and holiday work, the provisions of Labor Code §1777.5 relating to apprentices, and all other applicable Labor Code provisions.

24. California Department of Industrial Relations Registration, Monitoring, and Enforcement

To perform the work required for this Project, bidders must provide evidence of registration with the DIR pursuant to Labor Code §1725.5. Each Contractor and subcontractor identified in the bid must be separately registered with the DIR, and must maintain lawful DIR registration for the duration of the Contract. It is the responsibility of the bidder to ensure that: a) all Contractor and subcontractors are properly registered with the DIR prior to bid submission; and b) maintain lawful DIR registration for the duration of the Contract. Any Contractor or subcontractors who is not lawfully registered with the DIR at the time of bid submission shall be deemed unqualified to perform work under the Contract, shall not be listed in a bid proposal, and shall be prohibited from engaging in any work under the Contract. If, at the time the bids are opened, any Contractor or subcontractor identified in the bid is found not to be lawfully registered with the DIR, the bid will not be considered.

This Project shall be subject to continuous compliance monitoring and enforcement by the DIR. It is the responsibility of each Contractor and subcontractor during the performance of this Contract to comply with all requirements of Labor Code §1776, including but not limited to, the certification, retention, inspection, and timely submission to the California Labor Commissioner of accurate payroll records.

25. Debarment of Contractors and Subcontractors

In accordance with the provisions of the California Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a

public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the Project shall be returned to the City of Imperial Beach. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

26. Contractor's License

To perform the work required for this Project, bidders must possess the appropriate Contractor's License for the portion of the work bid upon, and bidders must maintain the license throughout the duration of the Contract. The Successful Bidder shall possess, pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, and all bidders must possess proper licenses for performance of this contract. Contractors shall possess the following California Contractor's licenses, or such other licenses as may be allowed by law, at the time of award of the prime contract in order to perform the work (see Notice Advertising for Bids) Subcontractors must possess the appropriate licenses for each specialty subcontracted. Contractors who are ineligible to perform work on a public works project pursuant to Section 1777.1 or Section 1777.7 of the Labor Code are prohibited from bidding on this Project. If, at the time the bids are opened, bidder is not licensed to perform the Project in accordance with Division 3, Chapter 9 of the Business and Professions Code of the State of California and these Proposal Requirements, the bid will not be considered.

27. Payments to Subcontractors

In accordance with Public Contracts Code §7108.5, the Contractor and any subcontractor shall comply with the following:

- (a) A prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.
- (b) Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.
- (c) In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.
- (d) The sanctions authorized under this section shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal.
- (e) This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

Pursuant to Civil Code §9358, the City shall have the right to perform the following:

On receipt of a stop payment notice, withhold from the Contractor sufficient funds due or to become due to the Contractor to pay the claim stated in the stop payment notice and to provide for the City's reasonable cost of any litigation pursuant to the stop payment notice.

Further, the City reserves the right to demand from the Contractor proof of any and all payments made by Contractor or subcontractor to any subcontractors, and investigate complaints of non-payment to subcontractors.

SECTION II

DOCUMENTS TO BE EXECUTED PRIOR TO BID OPENING

Bid Verification

Bidder's Proposal

Bid Form

Bidder's Bond

Attorney-in-Fact Acknowledgement of Surety

Contractor's Certification

Non Collusion Affidavit

CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)

BID VERIFICATION

The following documents must be completed by each bidder and shall accompany, and be a part of, the bidder's proposal. Proposals received without these documents shall be rejected as non-compliant.

1. **Bidder's Proposal (1/2)** [Section II, Page 19]
2. **Bidder's Proposal (2/2)** [Section II, Page 20]
3. **Bid Form** [Section II, Page 21]
4. **Bidder's Bond** [Section II, Page 23]
5. **Acknowledgement** [Section II, Page 24]
6. **Contractor's Certification (1/2)** [Section II, Page 25]
7. **Contractor's Certification (2/2)** [Section II, Page 26]
8. **Non-Collusion Affidavit** [Section II, Page 27]

ADDENDA (when applicable)

9. Addendum No. 1 [11/17/15]
10. Addendum No. 2 [11/19/15]

This Bid Verification **must** be acknowledged and attached to the bid when submitted.

Acknowledged:

Bidder's Signature

Date

Business/Agency

Bidder's DIR Registration #

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

BIDDER'S PROPOSAL (1/2)

TO THE HONORABLE CITY COUNCIL, CITY OF IMPERIAL BEACH

Pursuant to the provisions of the plans, specifications and Contract documents, the undersigned proposes, on award by the City of Imperial Beach, to do the work as described in a manner satisfactory to the Engineer. All material, equipment, tools, labor and services necessary to do the work will be furnished. The undersigned declares that the plans, specifications, contract documents and the site of the work have been thoroughly examined and that this proposal is made without collusion with any person, firm or corporation. As a guarantee that the terms of this proposal will be complied with, the undersigned submits herewith a proposal guarantee for an amount equal to at least ten percent (10%) of his total bid.

The undersigned agrees that in case of default in executing the required Contract, with necessary bonds, within ten (10) days after the Notice of Award of a Contract has been mailed, the proceeds of the check or bond accompanying his bid shall become the property of the City of Imperial Beach.

All licensed subcontractors who will perform work for the bidder on this project in an amount in excess of one half of one percent of the prime Contractor's total bid, shall be listed. They are as follows:

<u>Name and Address and Email of Subcontractor</u>	<u>Subcontractor's License</u>	<u>Subcontractor's DIR #</u>	<u>Type of Work</u>

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

BIDDER'S PROPOSAL (2/2)

The undersigned further agrees that, in the case of award to him of the Contract for the within described work and improvements, said work will be commenced within fifteen (15) calendar days after issuance of the Notice to Proceed. The work shall be prosecuted with diligence from day to day thereafter to completion within the time limits set forth in the "Special Provisions."

The undersigned are prepared to satisfy the City Council of the City of Imperial Beach of their ability, financial or otherwise to perform the Contract for the proposed work and improvements in accordance with the plans and specifications set forth.

The names of all persons, firms and corporations interested in the foregoing proposal as principals are as follows:

Signature of Bidder: _____

If an individual, so state. If a firm or co-partnership, state the firm name and give the names of all individual co-partners composing the firm. If a corporation, state legal name of corporation, also names of president, secretary, treasurer, and manager thereof.

Business Address: _____

Dated: _____, 20_____

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

BID FORM

The bid is submitted in response to Notice Advertising for Bids, attached hereto, and pursuant to all of the proceedings of the City Council of the City of Imperial Beach heretofore had and taken to date.

The undersigned bidder warrants that he/she is duly licensed in accordance with California Business and Professions Code providing for the registration of Contractors in the State of California, and that said License is numbered:

_____, Expiration Date _____.

THE CONTRACTORS LICENSE NUMBER AND EXPIRATION DATE STATED HEREIN ARE MADE
UNDER PENALTY OF PERJURY.

Signature of Bidder

The estimated quantities and total costs herein set forth are for the purpose of comparison of bids only, and final payment will be made upon the basis of actual quantities as per unit prices bid, as the same may be finally determined by the Engineer and confirmed by the City Council of the City of Imperial Beach.

A. PROPOSAL

Veterans Park Soccer Field Netting Project (P16-301)

The undersigned agrees to enter into a contract therefore in the time, form and manner provided by law at the following prices, to wit:

<u>Item</u>	<u>Quantity</u>	<u>Item with Unit Price Written in Words</u>	<u>Unit Price Written in Figures</u>	<u>Item Total Price</u>
1	1 LS	Mobilization at _____ _____ per LS	\$ _____ per LS	\$ _____
2	280 LF	Soccer Field Netting at _____ _____ per LF	\$ _____ per LF	\$ _____
TOTAL BID				\$ _____

SECTION II EXECUTED DOCUMENTS MUST BE SUBMITTED WITH THIS BID PACKAGE.

In case of discrepancy between words and figures, the words shall prevail.

- B. I understand that the Owner reserves the right to reject this bid, but that this bid shall remain open and not be withdrawn for a period of thirty (30) days from the date prescribed for its opening.
- C. If written notice of the acceptance of this bid is mailed or delivered to the undersigned within thirty (30) days after the date set for the opening of this bid, or at any other time thereafter before it is withdrawn, the undersigned will execute and deliver the Contract Documents to the Owner in accordance with this bid as accepted, and will also furnish and deliver to the Owner the Performance Bond, Payment Bond, and proof of insurance coverage, all within ten days after personal delivery or after deposit in the mails of the notification of acceptance of this bid.
- D. Notice of acceptance, or request for additional information, may be addressed to the undersigned at the address set forth below.
- E. The names of all persons interested in the foregoing bid as principals are:

(IMPORTANT NOTICE: If bidder or other interested person is a corporation, give legal name of corporation, state where incorporated, and names of president, secretary, treasurer and manager thereof; if a partnership, give name of firm and names of all individual co-partners composing the firm; if bidder or other interested person is an individual, give first and last names in full.)

licensed in accordance with an act for the registration of Contractors, and with license # _____

Signature of Bidder

Business Address

Telephone Number(s)

Date of Proposal

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting (P16-301)**

BIDDERS BOND

KNOW ALL MEN BY THESE PRESENTS

THAT WE _____
as Principal, and _____

as surety, are held and firmly bound unto the City Council of the City of Imperial Beach hereinafter called the "Council" in the penal sum of TEN PERCENT (10%) OF THE TOTAL AMOUNT OF THE BID or the principal above named, submitted by said Principal to the County for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

In no case shall the liability of the surety hereunder exceed the sum of:

THE CONDITION OF THIS OBLIGATION IS SUCH,
That whereas the Principal has submitted the above-mentioned bid to the Council for certain construction specifically described as follows, for which bids are to be opened on **November 24, 2015 at 2:00 p.m.** for:

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

NOW, THEREFORE, IF the aforesaid principal shall not withdraw said bid within the period specified therein after the opening of the same, or, if no period be specified, within thirty (30) days after said opening, and shall within the period specified therefore, or, if no period be specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into a written Contract with the Council in the prescribed form, in accordance with the bid as accepted, and file the two bonds with the Council, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise it shall be and remain in full force and virtue.

In the event suit is brought upon this bond by the Council and judgment is recovered, the surety shall pay all costs incurred by the Council in such suit, including a reasonable attorney's fee to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this

_____ day of _____ A.D. 20_____.

_____(SEAL)_____(SEAL)
_____(SEAL)_____(SEAL)
_____(SEAL)_____(SEAL)

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness.

STATE OF _____)
)ss
COUNTY OF _____)

On _____ before me, _____
personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)

CONTRACTOR'S CERTIFICATION (1/2)

_____ certifies that:
(Contractor)

1. It intends to employ the following listed construction trades in its work under the Contract

(Signature of authorized representative of Contractor)

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

CONTRACTOR'S CERTIFICATION (2/2)

Required at Bid Opening [Public Contract Code 4100]

In compliance with the provisions of the Subletting and Subcontracting Fair Practices Act (Section 4100 et seq of the Public Contract Code of the State of California) the undersigned Bidder has set forth below the full name and the location of the place of business of each Subcontractor who will perform work or labor or render service to the Prime Contractor in or about the construction of the work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the Prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications to which the attached bid is responsive, and the portion of the work which will be done by each Subcontractor for each subcontract in excess of one-half of one percent of the Prime Contractor's total bid.

The Bidder understands that if he fails to specify a subcontractor for any portion of the work to be performed under the Contract in excess of one-half of one percent of his bid, he shall be deemed to have agreed to perform such portion of the work except in cases of public emergency or necessity, and then only after a finding, reduced to writing as a public record of the Awarding Authority, setting forth the facts constituting the emergency or necessity. If no subcontractors are to be employed on the project, enter the word "NONE".

	<u>ITEM NO.</u>	<u>DESCRIPTION OF WORK</u>	<u>% TOTAL CONTRACT</u>	<u>SUBCONTRACTOR</u>	<u>ADDRESS</u>
1.	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____

TOTAL % SUBCONTRACTED _____

(Legal Name of Bidder)

By _____

Title _____

(This affidavit shall be executed by the bidder at the time of submitting his bid.)

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

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

State of California)
County of _____) ss.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness.

To the City of Imperial Beach, Department of Public Works:

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

Business Address

Signature of Bidder

Place of Residence

Subscribed and sworn to before me this _____ day of _____, 20____

Notary Public in and for the County of

_____, State of _____

SECTION III

*DOCUMENTS TO BE EXECUTED
AFTER AWARD OF CONTRACT*

Contract

Corporate Certificate

Partnership Certificate

Contractor's Certificate

Regarding Workmen's Compensation

Performance Bond

Bond for Materials and Labor

**PUBLIC WORKS CONTRACT
BETWEEN THE CITY OF IMPERIAL BEACH AND
SAMPLE**

This CONTRACT is entered into this _____ day of _____, 20____, by and between the CITY OF IMPERIAL BEACH, a municipal corporation ("CITY"), and _____, a California corporation ("CONTRACTOR").

1. CONSIDERATION.

- a. As partial consideration, CONTRACTOR agrees to perform the work listed in the SCOPE OF SERVICES, below;
- b. As additional consideration, CONTRACTOR and CITY agree to abide by the terms and conditions contained in this Contract;
- c. As additional consideration, CITY agrees to pay CONTRACTOR the sum of _____ Dollars and _____ Cents (\$_____) for full performance of the work listed in the SCOPE OF SERVICES, unless otherwise agreed to between the parties by written agreement. The approximate sum is based on the total cost of the various items as determined by multiplying the estimated units by the unit bid price, as set forth by the CONTRACTOR in the Bidder's Proposal for the work of this Contract, and as accepted by CITY in the Award of Contract. The actual contract amount will be based upon the actual units completed at the unit bid price, all as set forth in Paragraph 27, ENTIRE CONTRACT.

2. SCOPE OF SERVICES.

- a. CONTRACTOR will perform services specified in Paragraph 27 of this Agreement and the Plans (if applicable) for Veterans Park Soccer Field Netting Project which are incorporated herein as if fully set forth.
- b. The work to be performed pursuant to this Contract shall occur for the purpose of _____.
- c. CONTRACTOR shall at its own cost and expense, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, tools, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by CITY, necessary or proper to perform and complete the work and provide the services required of CONTRACTOR by this Contract.

- 3. PROJECT COORDINATION AND SUPERVISION.** The Director of Public Works, currently H. A. Levien, is designated as CITY's PROJECT COORDINATOR and will monitor the progress and execution of this Contract. CONTRACTOR's _____, currently _____, is designated as CONTRACTOR's PROJECT MANAGER and will provide supervision and have overall responsibility for the progress and execution of this Contract.

- 4. EFFECT OF ACCEPTANCE.** CITY's review or acceptance of, or payment for, work performed by CONTRACTOR under this Contract shall not be construed to operate as a waiver of any rights CITY may have under this Contract or of any cause of action arising from CONTRACTOR's performance.

- 5. CERTIFICATION.** CITY shall provide a final certificate of completion and make final payment to CONTRACTOR upon satisfactory completion of the work described in Paragraph 2. Such certificate and payment shall be the only conclusive evidence of contract performance, either in whole or in part,

CONTRACTOR agrees that its acceptance of the mutually agreed upon, and undisputed, final amount due under the contract, and payment for work done pursuant to project alterations, shall release CITY, its agents, employees, or representatives, from any claim or liability for the cost of work performed pursuant to this Contract, including overhead and profit.

notice of the breach from the other party. The party charged with breach shall have ten (10) days from the date of receiving such notice in which to cure the breach or otherwise respond. If the circumstances leading to the charge that the Agreement was breached have not been cured or explained to the satisfaction of the other party within ten (10) days from the date on which the party received notice of breach, the non-breaching party may terminate this Agreement.

10. **CHANGES.** CITY may order changes in the Scope of Services within the general scope of this Contract consisting of additions, deletions, or other revisions. The Contract amount and time shall be adjusted to reflect any such change. All such changes shall be authorized in writing and executed by CONTRACTOR and CITY. The cost or credit to CITY resulting from changes in the services shall be determined in accordance with the procedure described in Paragraph 11, below.
11. **COMPENSATION FOR CHANGES.** CONTRACTOR shall seek compensation for any change made by CITY pursuant to Paragraph 10, in the following manner:
 - a. CONTRACTOR shall submit a written claim for compensation in the form of a lump sum proposal (unless otherwise requested) with an itemized breakdown of all increases or decreases in the cost of CONTRACTOR's and all Subcontractors' work. Any or all of the following detail may be required by CITY:
 - i. Material quantities and unit costs;
 - ii. Labor costs (identified in terms of manhour by labor skill and labor class);
 - iii. Construction equipment;
 - iv. Worker's Compensation and Public Liability Insurance;
 - v. General and field overhead;
 - vi. Profit; and
 - vii. Employment taxes.
 - b. The overhead and profit percentages included in the proposal shall not exceed the maximums given in subparagraph (c), and shall be considered to include, without limitation, insurance other than that mentioned in this Paragraph, bond or bonds, use of small tools, incidental job burdens, and general office expense. Percentages for overhead or profit may vary according to the nature, extent, and complexity of the work involved. Not more than three percentages, not to exceed the maximum in subparagraph (c), will be allowed regardless of the number of subcontractors; that is, any markup of Subcontractor's work is limited to one overhead percentage and one profit percentage in addition to CONTRACTOR'S percentage. Only the net change will be calculated in proposals covering both increases and decreases in the contract amount. Overhead and profit will be added to the direct cost decrease for proposals that decrease the Contract amount.
 - c. Overhead and profit will each be limited to ten percent (10%) of the total sum of proposed changes for work performed by CONTRACTOR and its Subcontractors.
 - d. Any request for a time extension will be included with CONTRACTOR's proposal.
 - e. CITY shall consider CONTRACTOR's proposal in detail, utilizing unit prices where specified or agreed upon for calculating CONTRACTOR's estimates, to determine equitable compensation.
 - f. After receiving CONTRACTOR's detailed proposal, the PROJECT COORDINATOR shall promptly review and take action on it. When the immediate need to proceed with a change, as indicated through written communication by CONTRACTOR to CITY or reasonably apparent to CITY, allows insufficient time to review a proposal, or should the parties fail to reach an agreement regarding a proposal, CITY may direct CONTRACTOR in writing to proceed on the basis of a price determined at the earliest practicable date but not more than the increase or less than the decrease proposed by CONTRACTOR.
 - g. Any claim for compensation due to Differing Site Conditions, as defined by the Green Book, is subject to and shall be in accordance with the requirements and limitations set forth in

subparagraphs (a) through (g) of this Paragraph 11. All other claims for compensation submitted by CONTRACTOR under this Contract shall be subject to the requirements and limitations of subparagraphs (a) through (c) of this Paragraph 11.

- h. Upon written request by the PROJECT COORDINATOR, CONTRACTOR shall submit a proposal, in accordance with the requirements and limitations set out in subparagraphs (a) through (g) of this Paragraph 11, for work involving contemplated changes covered by request, within the time limit indicated in the request or any extension of such time limit that may be subsequently granted. If, within a reasonable time after receiving CONTRACTOR's proposal, the PROJECT COORDINATOR directs CONTRACTOR to proceed with performing the proposed work, the proposal shall constitute CONTRACTOR's claim for compensation.
- i. With the exception of emergencies, which may be approved by the City Manager, CONTRACTOR understands that project changes in excess of \$5,000 must be approved by CITY's City Council. Such approval may occur only during regularly scheduled City Council meetings that occur twice a month.

- 12. **DELAY DAMAGES.** Should CITY delay CONTRACTOR through the willful or negligent failure to perform duties assigned to it by this Contract or law, and such delay is unreasonable under the circumstances and not contemplated by the CITY and CONTRACTOR, CONTRACTOR may be entitled to time extensions, compensation, or both. Should such delay occur CONTRACTOR shall inform CITY, pursuant to the procedure in Paragraph 7, regarding how CITY caused, and why it is responsible for, such delay. CITY will follow the procedure in Paragraph 7 for granting a time extension. Any damages resulting from such delay will be calculated by CITY's PROJECT COORDINATOR by dividing the contract amount by the contract time (including time extensions, if any) and multiplying that sum by fifteen percent (15%). This sum shall be the daily delay damages to which CONTRACTOR may be entitled. Office overhead and profit shall be included in this calculation. No other formula, e.g., the Eichleay or other method, shall be used to calculate daily damages for office overhead, profit, or other purported loss. Under no circumstances will CITY pay CONTRACTOR compensation for any alleged delay that does not extend beyond the contract completion date determined in Paragraph 6(a)(ii).
- 13. **OWNERSHIP OF DOCUMENTS.** All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONTRACTOR under this Contract shall be considered CITY's property. CONTRACTOR may retain copies of said documents and materials as desired, but shall deliver all original materials to CITY upon CITY's written notice.
- 14. **PUBLICATION OF DOCUMENTS.** Except as necessary for performance of service under this Contract, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Contract shall be released by CONTRACTOR to any other person or agency without CITY's prior written approval. All press releases, including graphic display information to be published in newspapers or magazines, shall be approved and distributed solely by CITY, unless otherwise provided by written contract between the parties. After project completion, CONTRACTOR may list the project and the general details in its promotional materials.
- 15. **STORM WATER MANAGEMENT.** If CONTRACTOR, its subcontractors, agents or employees are accused of having violated Chapter 8.30 of the Imperial Beach Municipal Code, regarding discharges into CITY's storm water system, CITY will notify CONTRACTOR in writing. Within ten (10) days of receiving notice, CONTRACTOR may submit to the Project Coordinator a written request for a hearing. A hearing before the city manager or the city manager's designee will, if feasible, be held within ten (10) days after the Project Coordinator receives a request from CONTRACTOR. The hearing shall be informal and shall not conform to the strict rules of evidence. The city manager or the city manager's designee must determine whether CONTRACTOR, its subcontractors, agents or employees were in violation of Chapter 8.30 of the Imperial Beach Municipal Code. Within ten (10) days of the hearing, the city manager or the city manager's designee shall deposit in the mail, certified with return receipt requested, the written determination whether CONTRACTOR, its subcontractors, agents or employees were in violation of Chapter 8.30 of the Imperial Beach Municipal Code.

If CONTRACTOR does not timely request a hearing, or if it is determined after a hearing that CONTRACTOR, its Subcontractors, agents or employees committed a violation, the monetary consideration in paragraph 1 of this Contract will be offset by one thousand dollars (\$1,000). Subsequent violations, or CONTRACTOR's failure to timely request subsequent hearings, will offset the monetary consideration for this Contract by two thousand five hundred dollars (\$2,500) each.

16. **STANDARD PROVISIONS.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin, nor shall CONTRACTOR discriminate against any qualified individual with a disability. CONTRACTOR will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by CITY setting forth the provisions of this non-discrimination clause.

17. **PAYROLL RECORDS; CALIFORNIA LABOR CODE.**

- a. CONTRACTOR will comply with California Labor Code § 1776, and related provisions, relating to the maintenance, certification, inspection, and timely submission to the California Labor Commissioner of accurate payroll records for all persons CONTRACTOR, or its subcontractors, employs for the work in this Contract. CONTRACTOR shall be responsible for ensuring that CONTRACTOR and its subcontractors furnish to the California Labor Commissioner the certified payroll records specified in Labor Code § 1776 at least once per month.
- b. CONTRACTOR shall ensure that it, and its subcontractors, are properly registered with the California Department of Industrial relation pursuant to Labor Code §§ 1725.5 and 1771.1 throughout the duration of this Contract. Contractors and subcontractors that are not lawfully and currently registered with the DIR are unqualified and may not perform work under this Contract. A list of all currently registered contractors can be found online at the DIR's Public Works Contractor Registration database at <https://efiling.dir.ca.gov/PWCR/Search>.
- c. CONTRACTOR shall post notices on the Project's job site notifying its subcontractors of their continuing obligations to both maintain their current registration with California Department of Industrial Relations pursuant to §§ 1725.5 and 1771.1, and to submit to the California Labor Commissioner the certified payroll records specified in Labor Code § 1776 at least once per month.
- d. CONTRACTOR shall strictly adhere to the Labor Code provisions regarding minimum wage (CITY has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work and are on file at the office of the CITY Public Works Department), the eight (8) hour day and forty (40) hour week, overtime, weekend and holiday work, the provisions of Labor Code §1777.5 relating to apprentices, and all other applicable Labor Code provisions. Penalties for failure to comply with the Labor Code provisions regarding prevailing wages, and wage and hour laws shall be enforced. CONTRACTOR is required to secure the payment of employee compensation in accordance with Labor Code § 3700. CONTRACTOR shall post or cause to be posted at the job site a copy of the determination of the Director of the Department of Industrial Relations of the prevailing rate of per diem wages.
- e. In accordance with the provisions of the California Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for

performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the Project shall be returned to the CITY. CONTRACTOR shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

- f. CONTRACTOR shall forfeit to CITY the penalties prescribed in Labor Code §§ 1775, 1776, 1777.7, 1813, and related sections, for any violations.

18. **SOLICITATION.** CONTRACTOR maintains and warrants that it has not employed nor retained any company or person, other than CONTRACTOR's bonafide employee, to solicit or secure this Contract. Further, CONTRACTOR warrants that it has not paid nor has it agreed to pay any company or person, other than CONTRACTOR's bonafide employee, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract. Should CONTRACTOR breach or violate this warranty, CITY may rescind this Contract without liability.

19. **HOLD HARMLESS.**

- a. The CONTRACTOR shall indemnify, defend (with counsel satisfactory to CITY) and hold harmless the City and its officers, agents and employees from and against any and all claims, demands, costs, liability, loss, injury or damage including attorney costs and fees arising out of, in any way connected with, relating to, or resulting from the following caused in whole or in part by any act or omission of the CONTRACTOR or any agent, subcontractor or employee of CONTRACTOR (the "Indemnity Obligations"), excepting only loss, injury or damage arising from the sole negligence, active negligence or willful misconduct of the CITY:

- i. Any work performed by CONTRACTOR and/or its agents, employees and subcontractors pursuant to this Contract;
- ii. Any materials furnished at the instance or request of CONTRACTOR or any agent, subcontractor or employee of CONTRACTOR;
- iii. Default under this Contract by CONTRACTOR, or by any agent, subcontractor or employee of CONTRACTOR, or failure by CONTRACTOR or any agent, subcontractor or employee of CONTRACTOR to comply with any requirement of Law.

Notwithstanding the foregoing, CONTRACTOR shall undertake the Indemnity Obligations involving the active negligence of the CITY for contract types set forth in Civil Code sections 2782.1, 2782.2 and 2782.5.

- b. Upon written notice from CITY, CONTRACTOR agrees to assume the defense of any lawsuit, administrative action, or other proceeding brought against CITY by any public body, individual, partnership, corporation, or other legal entity relating to any matter covered by this Contract for which CONTRACTOR has an obligation to assume liability for and/or to indemnify and hold harmless CITY. CONTRACTOR shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. CITY agrees to timely notify CONTRACTOR of the receipt of any third party claim related to this Contract.
- c. It is expressly understood and agreed that the foregoing provisions shall survive the termination of this Contract.
- d. The requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR as required by Paragraph 23 below, and any approval of said insurance by CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Contract, including but not limited to the provisions concerning indemnification.

20. **ASSIGNABILITY.** This Contract shall not be assigned by either party without the prior written approval of the other.

21. **INDEPENDENT CONTRACTOR.** CONTRACTOR, its employees, subcontractors and agents, shall be independent contractors and not CITY's agents.
22. **AUDIT OF RECORDS.** At any time during normal business hours and as often as may be deemed necessary CONTRACTOR shall make available to a representative of CITY for examination all of its records with respect to all matters covered by this contract and will permit CITY to audit, examine and/or reproduce such records. CONTRACTOR will retain such financial and program service records for at least four (4) years after termination or final payment under this Contract.
23. **INSURANCE/WORKER'S COMPENSATION.** CONTRACTOR shall provide proof of liability coverage which meets CITY's insurance requirements as set forth in the Instructions to Bidders and Proposal Requirements, and designates CITY as additional insured. Such policy shall insure against all liability of CONTRACTOR and its authorized representatives arising out of and in connection with CONTRACTOR's work under this Contract.
24. **MEDIATION.** Except as otherwise required by this Contract, the parties may agree that any dispute arising out of or relating to this Contract, or its breach, that cannot be settled by negotiation may be first submitted to mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to litigation or other action.
25. **NOTICES.** All communications to either party by the other party shall be deemed made when received by such party at its respective name and address, as follows:

CITY

CONTRACTOR

City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach CA 91932

Any such written communications by mail shall be conclusively deemed to have been received by the addressee five days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

26. **INTERPRETATION.** This Contract and its performance shall be governed, interpreted, construed and regulated by the laws of the State of California.
27. **ENTIRE CONTRACT.**
- a. This Contract, its Attachments, and the Documents set forth in subparagraph (b) sets forth the entire understanding of the parties. There are no other understandings, terms or other contracts expressed or implied, oral or written.
- b. The following documents are incorporated within this Contract as if fully set forth:
- i. Notice Advertising for Bids;
 - ii. Instructions to Bidders and Proposal Requirements;
 - iii. Bidder's Proposal and Bidder's Bond;
 - iv. Bid Acceptance;
 - v. Performance Bond;
 - vi. Labor and Material Bond;
 - vii. Policy of Insurance;
 - viii. Special Provisions;
 - ix. Special Requirements;
 - x. The edition of the Standard Specifications for Public Works Construction (the "Green Book") as set forth in the Special Provisions;

- xi. The Standard Special Provisions for use in connection with the Standard Specifications;
- xii. The General Prevailing Wage Rate of per diem wages as determined by the Director of Industrial Relations;
- xiii. California Public Contract Code § 20104.50;
- xiv. All addenda setting forth any modifications or interpretations of these documents.

28. **SEVERABILITY.** If any portion of this Contract is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Contract shall continue in full force and effect.

29. **TIME IS OF ESSENCE.** Time is of the essence for each and every provision of this Contract.

30. **STATEMENT OF EXPERIENCE.** By executing this Contract, CONTRACTOR represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Contract in a manner satisfactory to CITY. CONTRACTOR represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private owners, and experience in dealing with public agencies all suggest that CONTRACTOR is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

31. **RISK.** By executing this Contract, CONTRACTOR acknowledges and understands that all work performed pursuant to this Contract involves inherent business risks. Such risks may occur before acceptance or during the progress of work performed for this Contract and may involve damage or losses resulting from, without limitation:

- a. Inclement weather;
- b. Unforeseen conditions arising during work performance;
- c. Suspension or discontinuance of work due to labor disputes, or other reasons;
- d. Earthquakes and/or floods;
- e. Changes in law;
- f. Actions by third-parties, including Utility Companies; and
- g. Other Federal, State, or Local Government actions.

CONTRACTOR is solely responsible for such risk and loss except where this Contract or State law specifies that CITY bears such responsibility. As permitted under Public Contracts Code § 7105, CONTRACTOR shall be solely responsible for repairing or restoring damages caused by an act of God up to and including five percent (5%) of the total Contract amount. The City shall have the right, but not the obligation, to immediately terminate this Contract in the event of such damages.

32. **RETENTION.**

Unless findings are made by the City Council or designee pursuant to Public Contracts Code section 7201(b)(3)-(4) allowing for a retention greater than five percent (5%), the CITY shall retain five percent (5%) of the total project costs for thirty-five (35) days following final inspection and acceptance by the CITY of the Project. However, in the event of a dispute between the CITY and the Contractor, the CITY may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

Pursuant to California Public Contracts Code, Section 22300, the CONTRACTOR has the option, at its expense, to substitute for any money withheld by the CITY, securities equivalent to the amount being withheld. Securities eligible for such substitution are those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the CONTRACTOR and the CITY. As to any such security or securities so substituted for monies withheld, the CITY shall be the beneficial owner of same and shall receive any interest thereon.

Such security shall, at the request and expense of the CONTRACTOR, be deposited with the CITY or with a State or Federally Chartered bank in this state as the escrow agent who shall pay such monies to the CONTRACTOR upon notification by the CITY that payment can be made. Such notification will be given at the expiration of 35 days from the date of acceptance of the work, or as prescribed by law, provide however, that there will be a continued retention of the necessary securities to cover such amounts as are required by law to be withheld by properly executed and filed notices to stop payment, or as may be authorized by the contract to be further retained.

Alternatively, the CONTRACTOR may request and the owner shall make payment of retentions earned directly to the escrow agent at the expense of the CONTRACTOR. At the expense of the CONTRACTOR, the CONTRACTOR may direct the investment of the payments into securities and the CONTRACTOR shall receive the interest earned on the investments upon the same terms provided for in Public Contracts Code 22300 for securities deposited by the CONTRACTOR. Upon satisfactory completion of the contract, the CONTRACTOR shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the owner, pursuant to the terms of Public Contracts Code 22300. The Escrow Agreement for Security Deposits in Lieu of Retention shall be substantially similar to the form contained in Public Contracts Code 22300, and security deposits will be administered as specified therein.

33. **UNFAIR BUSINESS PRACTICE CLAIMS.** In entering into this Contract or a subcontract to supply goods, services, or materials pursuant to this Contract, the CONTRACTOR or subcontractor offers and agrees to assign to the CITY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the CITY tenders final payment to the CONTRACTOR, without further acknowledgment by the Parties.

[ONLY IF TRENCHING OF MORE THAN 4 FEET IS REQUIRED, INCLUDE THE FOLLOWING SECTION 34.]

34. **TRENCHING.** In the digging of trenches or other excavations that extend deeper than four feet below the surface, the CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the CITY, in writing, of any:
- (a) Material that the CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - (b) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; or
 - (c) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

The CITY shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in this Contract.

In the event that a dispute arises between the CITY and the CONTRACTOR whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the CONTRACTOR's cost of, or time required for, performance of any part of the work, the CONTRACTOR shall not be excused from any scheduled completion date provided for by this Contract, but shall proceed with all work to be performed under this Contract. The CONTRACTOR shall retain any and all rights provided by this Contract regarding resolution of disputes and protests between the Parties.

In trenching contracts exceeding twenty-five thousand dollars (\$25,000), CONTRACTOR shall provide detailed plans for trenches or excavations of five feet or more in depth.

35. **UTILITY RELOCATION.** The CITY shall comply with Government Code § 4215 in the event that utilities not identified in the plans, specifications and other bid documents require relocation.
36. **SUBCONTRACTOR PAYMENTS.** In accordance with Public Contracts Code §7108.5, the CONTRACTOR and any subcontractor shall comply with the following:
- (a) The CONTRACTOR or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the CONTRACTOR on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the CONTRACTOR or subcontractor to a subcontractor, the CONTRACTOR or subcontractor may withhold no more than 150 percent of the disputed amount.
 - (b) Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.
 - (c) In any action for the collection of funds wrongfully withheld pursuant to this section, the prevailing party shall be entitled to his or her attorney's fees and costs.
 - (d) The sanctions authorized under this section shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal.
 - (e) This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

Pursuant to Civil Code §9358, the City shall have the right to perform the following:

On receipt of a stop payment notice, withhold from the CONTRACTOR sufficient funds due or to become due to the CONTRACTOR to pay the claim stated in the stop payment notice and to provide for the City's reasonable cost of any litigation pursuant to the stop payment notice.

Further, the City reserves the right to demand from the CONTRACTOR proof of any and all payments made by CONTRACTOR or subcontractors to any subcontractors, and investigate complaints of non-payment to subcontractors.

37. **RELEASE OF CLAIMS.** Pursuant to Civil Code § 3262, the CITY reserves the right to require CONTRACTOR to execute a release(s) of claims for any undisputed payments.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF IMPERIAL BEACH,
a municipal corporation.

CONTRACTOR

City Manager

City of Imperial Beach
Business License No.

City Clerk

APPROVED AS TO CONTENT:

Director of Public Works

APPROVED AS TO FORM:

City Attorney

Council Date: _____

Item #: _____

Resolution No. _____

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

CORPORATE CERTIFICATE

I, _____ certify that I am the Secretary of the Corporation named as Contractor in the foregoing Contract; that _____ who signed said Contract on behalf of the Contractor, was then _____ of said Corporation; that said Contract was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

_____ Corporate Seal

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

PARTNERSHIP CERTIFICATE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness.

STATE OF _____)
COUNTY OF _____) ss

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said County and State, personally appeared:

_____ (Notarial Seal)

known to me to be _____ of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

Signature _____

Name (Type or Print) _____
(Notary Public in and for said County and State)

My Commission expires: _____

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Section 3700 of the Labor Code provides in part as follows:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure ..., which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees. ..."

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

(In accordance with Article 5, commencing at Section 1860, Chapter 1, Part 7, Division 2, of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Contract.)

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the City Council of the City of Imperial Beach, by resolution, passed _____, 20____ as awarded to hereinafter designated as the "Principal."

**CITY OF IMPERIAL BEACH
Veterans Park Soccer Field Netting Project (P16-301)**

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract.

NOW, THEREFORE, we, the Principal and _____

as surety, are held and firmly bound unto the City Council of the City of Imperial Beach, hereinafter called the "Council", in the penal sum of _____ Dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrator's and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the above bounden Principal; his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract any alteration thereof made as therein provides, on his or their part, to be kept and performed at the time and in the amount therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Council, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or additions to the terms of the Contract or to the work or to the specifications.

In the event suit is brought upon this bond by the Council and judgment is recovered, the surety shall pay all costs incurred by the Council in such suit, including a reasonable attorney's fee to be fixed by the Court.

IN WITNESS WHEREOF _____ identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____

_____(SEAL)_____(SEAL)

_____(SEAL)_____(SEAL)

_____(SEAL)_____(SEAL)
Surety Principal

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness.

STATE OF _____)
)ss
COUNTY OF _____)

On _____ before me, _____
personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

BOND FOR MATERIALS AND LABOR

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the City of Imperial Beach City Council, hereinafter designated as "Public Entity", by resolution passed _____, 20____, has awarded_____.

hereinafter designated as the "Principal", a Contract for the work described as follows:

**CITY OF IMPERIAL BEACH
Veterans Park Soccer Field Netting Project (P16-301)**

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said Contract;

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the Public Entity in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America for the payment of which sum will and truly be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by their presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Contractor and his subcontractors pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor the Surety will pay for the same in an amount not exceeding the sum hereinafter specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the Court.

This Bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil

Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any Contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefor, not by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the Contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such Contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant

seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of Contract between the owner of Public Entity and original Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____.

NOTE: Signature of those executing for Surety must be properly acknowledged.

(SEAL)
Principal

NOTE: The Attorney-in-fact must attach a certified copy of the Power of Attorney.

By _____ (SEAL)

(SEAL)
Surety

(SEAL)
Attorney-In-Fact

SECTION IV

SPECIAL PROVISIONS

General Requirements

Resolution of Claims

Unfair Business Practice Claims

Construction Survey Staking

Traffic Control

Scope of Work

**CITY OF IMPERIAL BEACH
STATE OF CALIFORNIA
Veterans Park Soccer Field Netting Project (P16-301)**

SPECIAL PROVISIONS

1. GENERAL REQUIREMENTS

1.1 Specifications

All work and materials will conform to the special provisions, plans or specifications in the priority sequence so indicated:

- A. Special Provisions
- B. Plans
- C. Standard Specifications
 - a. The Standard Specifications for Public Works Construction (Green Book) 2012 Edition

1.2 Description of Work

The furnishing of all labor, materials, tools and equipment to: construct approximately 280 linear feet of 25 foot high soccer netting including netting, posts, post foundations and hardware; provide traffic control, public safety and construction staging; provide water pollution control; provide utility protection/relocations and access during construction.

1.3 Records

Each Contractor and subcontractor is required to comply with Section 1776 of the Labor Code of the State of California, which includes, but is not limited to, the following obligations: to keep 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 or worker employed by him in connection with this project; the Contractor's and subcontractor's certified copies of payroll records shall be available for inspection at all reasonable hours, and a copy shall be made available to the employee or his authorized representative, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards.

1.4 Time for Completion

The Contractor shall diligently prosecute to completion before the expiration of 30 calendar days from the date of the Notice to Proceed.

1.5 Progress Schedule

- A. The Contractor, shall, prior to starting work, submit a schedule of his proposed operations to the Public Works Director for approval. The schedule shall outline start and completion dates of work, including procurement of materials and equipment. Upon approval of this schedule by the Public Works Director, the Contractor may begin work.
- B. If any changes in the progress schedule is to be made or becomes necessary due to unforeseen circumstances, the Contractor shall so notify the Public Works Director in writing

no less than forty-eight (48) hours in advance, and may, upon approval by the Public Works Director, change his Order of Work or schedule of operations.

1.6 Partial Payments

- A. Partial payments will be made to the Contractor in accordance with Section 9-3.2 of the Standard Specifications.
- B. The City shall retain five percent 5% of the total project costs for thirty-five (35) days following final inspection, acceptance and recording of Notice of Completion by the City.

1.7 Permits and Inspections

The Contractor will be responsible for obtaining any necessary work and building permits and issuing calls for inspection in an orderly sequence as the work progresses.

1.8 Contractor's Responsibility for Work

Until the formal acceptance of the work by the City Council, the Contractor shall have the charge and care by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof.

1.9 Inspection

The Public Works Department will be responsible for all inspections.

1.10 Finance Administration

- A. A City business license must be obtained by the contractor and all subcontractors (if applicable) within 15 days of award of contract by the City. The lead contractor shall be responsible for ensuring that its subcontractors obtain a subcontractor's business license.
- B. An IRS W-9 form (Request for Tax I.D.) must be completed and submitted to the City to establish the contractor as a new vendor in the City's Accounts Payable system.
- C. All invoices submitted for payment to the City must contain the six-digit project number and six-digit purchase order number on the face of the invoice to expedite processing.
- D. All progress payments must be accompanied by a "Conditional Waiver & Release" form (for the dollar value of the progress payment) from the contractor and a separate form for each subcontractor (if applicable).
- E. Invoices submitted for progress payments shall include all documentation required by the City of the Contractor along with the progress invoice. The City will make progress payments within 30 days after receipt of an undisputed and properly submitted payment request, and in accordance with Public Contract Code section 20104.50.

1.11 Construction Best Management Practices (BMPs)

Water resulting from construction activities including wash water and groundwater, shall be prevented from entering the storm drain conveyance system. Water from construction activities shall be managed and disposed as necessary to prevent urban runoff or groundwater contamination. Additionally, BMPs need to be implemented to prevent debris, liquids, or other wastes from entering the storm drain conveyance system. All spills or discharges into the storm

drain conveyance system will be contained and recovered to prevent entry into the receiving waters adjacent to the City. Disposal of such materials shall be in accordance with current disposal standards and the responsibility of the contractor.

1. The Contractor shall prepare a Storm Water Management Plan for approval by the City. The Plan shall contain at a minimum:
 - a. Site map(s) which shows the construction site perimeter, existing and proposed buildings, lots, roadways, storm water collection and discharge points, general topography both before and after construction, drainage patterns across the project, and BMP locations.
 - b. List of BMPs the discharger will use to protect storm water runoff and the placement of those BMPs.
 - c. Incorporate the use of Best Available Technology for BMPs to prevent and/or control storm water and non-storm water runoff.
2. The contractor shall implement the Storm Water Management Plan and maintain the Plan and documentation records on-site in accordance to the City's Urban Runoff Management and Discharge Control Ordinance IBMC 8.30. The contractor shall:
 - a. Implement erosion and sediment control BMPs that effectively protect the site from wind and storm water runoff.
 - b. Control site perimeter with BMPs to provide storm water run-on and runoff protections.
 - c. Minimize disturbed areas and preserve existing vegetation.
 - d. Stabilize all disturbed soil.
 - e. Provide stockpile protection.
 - f. Implement good housekeeping BMPs that prevent potential discharges related to material storage, cleaning, and disposal.
 - g. Prevent the tracking of sediment from vehicles and equipment offsite.
 - h. Maintain streets around construction area free of silt, sediment, and other construction materials.
 - i. Provide and maintain storm drain inlet protection. Inlet filter fabric covers shall be temporarily removed prior to forecast rain events to prevent flooding.
 - j. Provide and maintain any additional BMPs that may be necessary to prevent non-storm water from entering the storm drain system or from damaging adjacent properties.
 - k. Provide storm water BMP training to all job site employees including subcontractor employees before each employee begins work on the job site.
 - l. Verify proper implementation and maintenance of installed BMPs daily.
 - m. Inspect entire project site prior to forecast rain events.

Development and implementation of the Storm Water Management Plan is the Contractors responsibility. No separate payment will be made.

The Contractor shall obtain and monitor all storm water permitting requirements within the proposal. No separate payment will be made.

1.12 Water for Construction

The Contractor shall obtain a construction meter for water utilized during the construction under this contract, if needed. The Contractor shall contact the appropriate water agency for requirements for a water meter. Contractor shall include cost of water and meter rental within appropriate items of proposal. No separate payment will be made.

1.13 Construction and Demolition Debris Recycling

City of Imperial Beach Municipal Code, Chapter 8.38 promotes the recycling or reuse of construction and demolition debris in order to protect public health, safety, and welfare and to meet the City's obligation under AB 939 and its Alternative Diversion Debris Requirement approved by the California Integrated Waste Management Board.

All construction, demolition and renovation projects sponsored by the City or Redevelopment Agency are included in Chapter 8.38 of the City of Imperial Beach Municipal Code. As such, the successful bidder of this project must complete and submit a Waste Management Plan form (WMP), approved by the City for this purpose. The WMP is to be submitted to the WMP Compliance Official for review and approval. A Notice to Proceed will not be issued until the WMP has been approved. A minimum of 50% diversion or reuse of construction and demolition-generated waste from this project is required.

1.14 As-Built Drawings

The Contractor shall prepare final As-Built drawings and submit them for approval by the City Engineer and delivered to the City prior to payment of the retained amounts.

1.15 Contract Price

The contract price for the items in Section 1.1 through 1.14 above shall be considered as included in the contract lump sum price paid for Mobilization, and no additional compensation will be made therefor.

2. MOBILIZATION

Mobilization shall conform to Section 9-3.4, "Mobilization," of the Standard Specifications.

Mobilization will be paid based on the percent of mobilization completed as of the date of the invoice. Mobilization shall include demobilization, final project clean-up and restoration of any laydown or staging sites to their original condition.

The contract lump sum price for Mobilization shall be considered the full compensation for furnishing all labor, materials, tools, and equipment, and for all work involved in mobilization and no additional compensation will be made therefore. Half of the price for this bid item shall be paid for with the first invoice and the other half shall be paid for with the last invoice.

3. TRAFFIC CONTROL AND CONSTRUCTION STAGING

Traffic control shall conform to Section 7-10, "Public Convenience and Safety," of the Standard Specifications, the Traffic Control Manual and the following Special Provisions:

Public Streets and Parks:

The Contractor shall maintain public streets, sidewalks and parking areas open to traffic smooth and usable during construction and avoid excessive dust, mud or unnecessary inconvenience to the public.

Work in public streets and parks shall be performed between the hours of 7:00 a.m. and 5:00 p.m. during which time one twelve foot (12') traffic lane shall be kept open for each direction of traffic. The total traveled way shall remain open to traffic at all other times. The Contractor shall be responsible for the maintenance of necessary barricades, signs, etc., at all times, including Saturdays, Sundays, and other normal nonworking hours. Workers shall wear warning jackets or vests. The Public Works Director shall approve the traffic lane or lanes to be closed as part of the traffic control plans for the project.

Traffic Control and Construction Staging Plan:

A traffic control and construction staging plan shall be submitted to the Public Works Director a minimum of 10 working days before the start of public street and park work. The Contractor must obtain The Director of Public Works' approval of the traffic control and construction staging plan prior to the start of street and alley work. The traffic control and construction staging plan shall also include the schedule and method of advance notification of affected residents and businesses, any parking or access restrictions during the construction period and other public outreach measures proposed during construction. Affected residents and businesses shall be provided with two weeks advance notice via door hangers or similar approved methods of street, sidewalk and parking closures and the contractor shall keep written records of when notices are provided to each party or address. The traffic control and construction staging plans shall include parking restrictions and other traffic control measures for construction staging/storage areas in public streets or parks, if employed for these purposes by the contractor.

Full compensation for Traffic Control and Construction Staging shall be considered as included in the contract lump sum price paid for Mobilization, and no additional compensation shall be allowed therefor.

4. UTILITY COORDINATION

This item of work includes coordination by the contractor of utility relocation work with the City and utility companies, scheduling and phasing construction work to facilitate access and work by City forces and utility companies to avoid delays, damage and rework to other improvements, additional move-ons in areas of utility work and contractor's coordination of utility relocations and temporary outages with all affected parties on the jobsite, all in accordance with Section 5 of the SSPWC. Utilities under this section shall include park electrical, irrigation, sewer, water, communications and drainage systems within the limits of work.

Full compensation for Utility Coordination shall be considered as included in the contract lump sum price paid for Mobilization, and no additional compensation shall be allowed therefor.

5. CONSTRUCTION SURVEY STAKING

Attention is directed to Section 2-9, of the Standard Specifications. The contractor is responsible for providing project construction staking or station control. The contractor shall notify the inspector five (5) days in advance of conducting the construction staking or station control.

Construction Survey Staking shall include locating, referencing, preserving, replacing and filing a corner record (if required) for any existing survey monumentation destroyed by construction activities, whether such monumentation is shown on the plans or not.

Full compensation for Construction Survey Staking shall be considered as included in the contract lump sum price paid for Mobilization, and no additional compensation shall be allowed therefor.

6. CLEARING AND GRUBBING

Clearing and grubbing shall include, but shall not be limited to: saw cutting and removal of asphalt and concrete paving and driveways, removal of curb, gutter and sidewalk as indicated, the removal of trees and vegetation, removal of surface or subsurface structures (including vault, manhole, and accessories) indicated for removal or abandonment, removal of sewer mains and manholes, removal and replacement of signs, poles, bollards, fences, and other existing improvements and materials that may be in conflict with the new improvements and that are not specified under any other bid item. All removed materials not indicated for salvage shall become the property of the contractor and shall be disposed of offsite at a legal site or recycled.

Clearing and grubbing shall conform to Section 300-1 of the Standard Specifications.

Materials that can be re-used or re-cycled, such as concrete and asphalt concrete, shall not be disposed in the landfill system but shall be processed for such re-use or re-cycling. All such materials to be recycled will be weighed before disposal at recycling facilities.

Full compensation for Clearing and Grubbing shall be considered as included in the contract lump sum price paid for Mobilization, and no additional compensation shall be allowed therefor.

7. SOCCER FIELD NETTING

The soccer field netting system shall consist of the following components:

- a. Netting-Netting shall consist of black knotted or knotless HTTP netting, four inch square maximum stretched opening, 25 feet high, 360 lb. tensile strength with a 1/4" rope border and ultraviolet protection. The netting shall be attached at the top and bottom with 1/4 inch vinyl coated, galvanized steel cable secured by turnbuckles and cable clamps. Individual net sections should not exceed 60 feet long to allow for replacement. The net shall be capable of being raised or lowered from ground level by a pulley system attached to the top of the posts. The pulley system shall use heavy duty braided nylon rope or vinyl coated steel cable, and shall be capable of being secured against tampering by means of a padlock and chain accessible from ground level at each post. The netting shall have sliding intermediate restraints to keep it in alignment with the intermediate and end posts while allowing it to be raised and lowered.
- b. Posts-Vertical posts shall be fabricated from 6061 mill finish aluminum, approximately six inches inside diameter with a minimum wall thickness of 0.188 inches. Posts shall be installed at 20 feet on center maximum. Permanent caps or plugs shall be installed on each post.
- c. Post Foundations-Post foundations shall be constructed of 3,250 psi reinforced concrete complying with the SSPWC, a minimum of 30 inches in diameter and 60 inches deep, and designed in conformance with the current edition of the California Building Code (CBC). Sleeves for the posts may be used provided the completed system complies with the requirements of the CBC.
- d. Hardware-All post collars, hog rings, clamps, pulleys, cleats, clips, cables, turnbuckles, fasteners and other hardware shall be aluminum, brass, stainless steel or galvanized steel and designed to resist corrosion in a marine environment. Fasteners shall be grade 5 minimum.

Installation of poles supporting the netting will require constructing new penetrations of the existing artificial turf for the soccer field. Cutting, removing and replacing the turf shall be performed in accordance with the manufacturer's recommendations as follows:

Removal, replacement and/or repair of the synthetic turf shall be performed by the City's installer at the City's expense. The contractor shall be responsible for marking the pole locations and turf area to be cut and removed to allow for the installation of the pole foundations. **The contractor will also be responsible for coordinating the turf removal and replacement and providing the turf installer with one week advance notice to remove or pull back the turf, and week notice to replace it.**

The contract unit price for Soccer Field Netting shall be considered the full compensation for furnishing all labor, materials, tools, and equipment, and for all work required in constructing soccer field netting and no additional compensation will be made therefore.