

ITEM 4.4

CITY MANAGER'S REPORT SEPTEMBER 13, 2021 CITY COUNCIL REGULAR MEETING

- ITEM:** **AWARD CONSTRUCTION CONTRACT TO BENTON FENCE & DRILLING, INC. FOR THE GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13**
- RECOMMENDATION:** **Adopt Resolution Awarding a Construction Contract to Benton Fence & Drilling, Inc. for the Generations Center Skate Park Fence, CIP PK 22-13 and Approve Related Budget Amendment**
-

SUMMARY:

The Generations Center Skate Park Fence, CIP PK 22-13 (Project) was created to provide a perimeter fence to secure the skate park. The plans and specifications for the construction of the Project were advertised on August 5, 2021 via California Uniform Public Construction Cost Accounting Act informal bid solicitation procedures, in accordance with California Public Contract Code (PCC) and Lathrop Municipal Code (LMC).

A total of two (2) bids were received and opened by Public Works on August 19, 2021. Based on review and evaluation of the bids, the lowest responsive and responsible bidder was determined to be Benton Fence & Drilling, Inc. (Benton), with a bid of \$110,280.

Staff requests City Council award a construction contract to Benton for construction of the Project in the amount of \$110,280 plus a 10% construction contingency in the amount of \$11,028 for a total cost not to exceed \$121,308.

On June 3, 2021, the City Council approved the Biennial Budget for Fiscal Years 21/22 and 22/23. The budget included funding from Measure C for project PK22-13 in the amount of \$105,000. On June 22, 2021, the Measure C Committee found the FY 21/22 expenses in conformance with the intent of the Measure. Therefore, Staff requests City Council approve a budget amendment transferring an additional \$17,000 from the Measure C Fund (1060) to the CIP Project Fund (3010).

BACKGROUND:

On June 2, 2021, City Council approved the creation of the Generations Center Skate Park Fence, CIP PK 22-13. This project will provide a fence around the Generations Center Skate Park, allowing staff to secure the facility from use at night and during other hours of closure. The fencing consists of welded panels of galvanized and powdercoated steel, providing a strong and rust-resistant fence. The proposed fence is similar to that installed around City Hall, with a flat top rail and square-section posts, rails and pickets.

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FOR THE GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13

The fence will have one gate at each of the 3 concrete walkways entering the skate park: a sliding main gate 10’ long under the shade sails to allow for service vehicles to enter, and 2 swing gates, all lockable in both closed and open positions. To simplify landscape maintenance and protect the fence from undermining, a City-standard concrete mow strip will be constructed under all portions of the fence not over hardscape.

This project will provide a method by which the City can secure the skate park from use at times scheduled for closure and in response to situations such as inclement weather and the presence of standing water from rain.

The plans and specifications for the construction of this project were completed by Public Works staff and advertised via informal bid solicitation on August 5, 2021, in accordance with PCC 220034 and LMC Chapter 3.30. A total of two (2) bids were received, both determined to be responsive and responsible. The bid results are summarized in Table 1 below:

Table 1: Summary of Bid Results

Contractor	Bid
Benton Fence & Drilling, Inc.	\$110,280
All Steel Fence, Inc.	\$156,433

Staff reviewed and evaluated the bids, and determined that the lowest responsive and responsible bidder is Benton. Staff requests City Council adopt a resolution awarding a construction contract to Benton for the amount of \$110,280. Staff also requests City Council authorize a 10% construction contingency of \$11,028, and authorize staff to spend the contingency as necessary to achieve the goals of the project for a total cost not to exceed \$121,308.

REASON FOR RECOMMENDATION:

The skate park at the Generations Center needs to be secured outside of hours of operation and on occasions when weather and other safety considerations dictate. This project will provide a durable, weather-resistant and attractive fence to secure the Generations Skate Park.

FISCAL IMPACT:

The proposed construction contract with Benton is for \$110,280. A 10% construction contingency is requested in the amount of \$11,028 for a total cost not to exceed \$121,308.

Funding for this project was included in the FY 21/22 budget; however, sufficient funds were not allocated. Therefore, staff requests City Council approve a budget amendment transferring \$17,000 from the Measure C Fund (1060) to the CIP Project Fund (3010) as follows:

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<u>Increase Transfer Out</u>		
1060-9900-990-9010		\$17,000
<u>Increase Transfer In</u>		
3010-9900-393-0000	PK 22-13	\$17,000
<u>Increase Appropriation</u>		
3010-8000-420-1200	PK 22-13	\$17,000

ATTACHMENTS:

- A. Resolution Awarding a Construction Contract to Benton Fence & Drilling, Inc. for the Generations Center Skate Park Fence, CIP PK 22-13 and Approve Related Budget Amendment

- B. Construction Contract with Benton Fence & Drilling, Inc. for the Generations Center Skate Park Fence, CIP PK 22-13

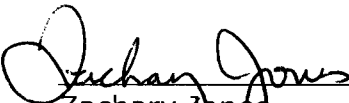
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APPROVALS:



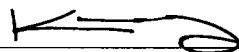
Ken Reed
Senior Construction Manager

9-1-2021
Date



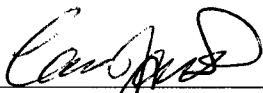
Zachary Jones
Parks, Recreation and Maintenance
Services Director

9.1.2021
Date




Michael King
Public Works Director

9.1.2021
Date



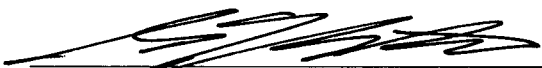
Cari James
Finance & Administrative
Services Director

9/7/2021
Date



Salvador Navarrete
City Attorney

9.2.2021
Date



Stephen J. Salvatore
City Manager

9.7.21
Date

RESOLUTION NO. 21-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP AWARDING A CONSTRUCTION CONTRACT TO BENTON FENCE & DRILLING, INC. FOR THE GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13 AND APPROVE RELATED BUDGET AMENDMENT

WHEREAS, the Generations Center Skate Park Fence Capital Improvement Project (CIP) PK 22-13 was created to provide a fence around the Generations Skate Park to secure the park from use during hours of closure or inclement weather; and

WHEREAS, the plans and specifications for this project were completed by Public Works staff and advertised for bid on August 5, 2021 in accordance with Public Contract Code Section 220034, and with Lathrop Municipal Code (LMC) Chapter 3.30; and

WHEREAS, a total of two (2) bids were received and opened by Public Works on August 19, 2021; and

WHEREAS, upon review and evaluation of the bids, the lowest responsive and responsible bidder for the project was determined to be Benton Fence & Drilling, Inc. with a bid of \$110,280; and

WHEREAS, staff requests the City Council award a construction contract to Benton Fence & Drilling, Inc. in the amount of \$110,280; and

WHEREAS, staff also requests Council authorize a 10% construction contingency in the amount of \$11,028 and authorize staff to spend the contingency as necessary to achieve the goals of the project for a total cost not to exceed \$121,308; and

WHEREAS, on June 3, 2021 the City Council approved the Biennial Budget for Fiscal Years 21/22 and 22/23. The budget included funding from Measure C for project PK 22-13 in the amount of \$105,000; and

WHEREAS, on June 22, 2021, the Measure C Committee found the FY 21/22 expenses in conformance with the intent of the Measure; and

WHEREAS, sufficient funds were not allocated in the adopted FY 21/22 Budget; therefore, staff requests City Council approve a budget amendment transferring \$17,000 from the Measure C Fund (1060) to the Project CIP Fund (3010) as follows:

<u>Increase Transfer Out</u> 1060-9900-990-9010		\$17,000
<u>Increase Transfer In</u> 3010-9900-393-0000	PK 22-13	\$17,000
<u>Increase Appropriation</u> 3010-8000-420-1200	PK 22-13	\$17,000

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lathrop hereby awards a construction contract to Benton Fence & Drilling, Inc. for Generations Center Skate Park Fence, CIP PK 22-13 for a cost of \$110,280; and

BE IT FURTHER RESOLVED, that the City Council of the City of Lathrop does hereby approve a 10% construction contingency in the amount of \$11,028 for a total cost not to exceed \$121,308 for the construction and authorizes staff to spend up to this amount as necessary to accomplish the goals of the project; and

BE IT FURTHER RESOLVED, that the City Council of the City of Lathrop also approves a budget amendment transferring \$17,000 from the Measure C Fund (1060) to the Project CIP Fund (3010) as detailed above in order to have the necessary funds to pay for the project.

The foregoing resolution was passed and adopted this 13th day of September 2021, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSTAIN:

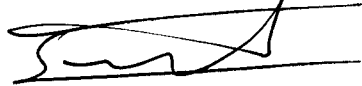
ABSENT:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

CONSTRUCTION CONTRACT

This Contract, dated **September 13, 2021**, is entered into by and between the **City of Lathrop**, a municipal corporation of the State of California (City), and **Benton Fence & Drilling, Inc.** (Contractor), whose Taxpayer Identification Number is_____.

For and in consideration of the following covenants, terms and conditions, City and Contractor (the parties) agree:

1. Term. This Contract shall commence on, and be binding on the parties on, the date of execution of this Contract, and shall expire on the date of recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder, subject to the earlier termination of this Contract.
2. General Scope of Project and Work. Construction Documents for the, **CIP PK 22-13, Generations Center Skate Park Fence** (Project). Contractor shall furnish labor, services, materials and equipment in connection with the construction of the Project and complete the Work in accordance with the covenants, terms and conditions of this Contract to the satisfaction of City. The Project and Work is generally described as follows:

The work to be performed under this contract includes all work contained in the Construction Documents, as detailed in Paragraph 3 below, including but not limited to demolition, hauling and disposing of two (2) existing wooden shade shelters, associated concrete slabs and outdoor furnishings, and construction of two (2) concrete slabs and metal shade shelters and provision and installation of new exterior furnishings.

The work shall be **completed within 40 working days** following issuance of Notice to Proceed.

The Work shall be complete, and all appurtenant work, materials, and services not expressly shown or called for in the Construction Documents which may be necessary for the complete and proper construction of the Work in good faith shall be performed, furnished, and installed by the Contractor as though originally specified or shown. The Contractor will be compensated for actual work performed in accordance with the unit prices and provisions contained in these Construction Documents.

Bid Total: \$ 110,280 (One Hundred Ten Thousand, Two Hundred Eighty Dollars)

3. Construction Documents. This Contract shall include the Construction Documents, which are hereby incorporated by reference (i.e. Project Specifications, Project Plans, addenda, performance bond, labor and materials bond, certification of insurance, workers compensation certification, and guaranty) and the Bid Documents submitted by **Benton Fence & Drilling, Inc.** on August 19, 2021. For the purposes of construing, interpreting and resolving inconsistencies between the provisions of this Contract, these documents and the provisions thereof are set forth in the order of precedence described in Article 3 of the General Conditions.

4. Compensation. In consideration of Contractor's performance of its obligations hereunder, City shall pay to Contractor the amount set forth in Contractor's Bid in accordance with the provisions of this Contract and upon the receipt of written invoices and all necessary supporting documentation within the time set forth in the Construction Documents. Contractor hereby shall not be permitted to invoice the City nor accept compensation for work not yet complete. In no event, shall the Contractor be entitled to payment for work not included in the approved scope of work, a written task order, or change order signed by the City's Public Works Director prior to commencement of any work.
5. Insurance. On or before the Date of Execution, Contractor shall obtain and maintain the policies of insurance coverage described in Section 5.2 of the General Conditions on terms and conditions and in amounts as may be required by the City. City shall not be obligated to take out insurance on Contractor's personal property or the personal property of any person performing labor or services or supplying materials or equipment under the Project. Contractor shall furnish City with the certificates of insurance and with original endorsements affecting coverage required under this Contract on or before the Date of Execution. The certificates and endorsements for each insurance policy shall be signed by a person who is authorized by that insurer to bind coverage in its behalf. Proof of insurance shall be mailed to the Project Manager to the address set forth in Section 15 of this Contract.
6. Indemnification. Contractor agrees to protect, defend, indemnify and hold City, its City Council members, officers, employees, engineer, and construction manager harmless from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments, arising in whole or in part, directly or indirectly, at any time from any injury to or death of persons or damage to property as a result of the willful or negligent act or omission of Contractor, or which results from Contractor's noncompliance with any Law respecting the condition, use, occupation or safety of the Project site, or any part thereof, or which arises from Contractor's failure to do anything required under this Contract or for doing anything which Contractor is required not to do under this Contract, or which arises from conduct for which any Law imposes strict liability on Contractor in the performance of or failure to perform the terms and conditions of this Contract, except as may arise from the sole willful or negligent act or omission of City or any of its City Council members, officers, employees. This indemnification shall extend to any and all claims, demands, or liens made or filed by reason of any construction, renovation, or remodeling work performed by Contractor under this Contract at any time during the term of this Contract, or arising thereafter.
7. Assumption of Risk. Contractor agrees to voluntarily assume any and all risk of loss, damage, or injury to the property of Contractor which may occur in, on, or about the Project site at any time and in any manner, excepting such loss, injury, or damage as may be caused by the sole willful or negligent act or omission of City or any of its City Council members, officers, or employees.
8. Waiver. The acceptance of any payment or performance, or any part thereof, shall not operate as a waiver by City of its rights under this Contract. A waiver by City of any breach of any part or provision of this Contract by Contractor shall not operate as a waiver or

continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any part or provision of this Contract be construed to waive or to lessen the right of City to insist upon the performance of Contractor in strict compliance with the covenants, terms and conditions of this Contract.

9. Compliance with Laws. Contractor shall comply with all Laws now in force or which may hereafter be in force pertaining to the Project and Work and this Contract, with the requirement of any bond or fire underwriters or other similar body now or hereafter constituted, with any discretionary license or permit issued pursuant to any Law of any public agency or official as well as with any provision of all recorded documents affecting the Project site, insofar as any are required by reason of the use or occupancy of the Project site, and with all Laws pertaining to nondiscrimination and affirmative action in employment and hazardous materials.

DEPARTMENT OF INDUSTRIAL RELATIONS- COMPLIANCE MONITORING UNIT

DIR Registration.

- a) **Contractor and Subcontractor Compliance.** Strict compliance with DIR registration requirements pursuant to Labor Code Section 1725.5 is a material obligation of the Contractor under the Contract Documents. The foregoing includes without limitation, compliance with DIR Registration requirements at all times during performance of the Work by the Contractor and all Subcontractors of any tier. The failure of the Contractor and all Subcontractors of every tier to be DIR registered at all times during the performance of the Work is the Contractor's default of a material obligation of the Contractor under the Contract Documents.
- b) **No Subcontractor Performance of Work Without DIR Registration.** No portion of the Work is permitted to be performed by a Subcontractor of any tier unless the Subcontractor is a DIR Registered contractor.
- c) **Contractor Obligation to Verify Subcontractor DIR Registration Status.** An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors, of all tiers, are at all times during performance of Work in full and strict compliance with DIR Registration requirements. The Contractor shall not permit or allow any Subcontractor of any tier to perform any Work without the Contractor's verification that all such Subcontractors are in full and strict compliance with DIR Registration requirements.
- d) **Contractor Obligation to Request Substitution of Non-DIR Registered Subcontractor.** If any Subcontractor identified in the Contractor's Subcontractor List submitted with the Contractor's proposal for the Work is not DIR Registered at the time of opening of proposals for the Work or if a Subcontractor's DIR registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the CITY's consent to

substitute the non-DIR registered Subcontractor pursuant to Labor Code Section 1771.1(c)(3) and/ or Labor Code Section 1771.1(d).

Certified Payroll Records

- a) Compliance with Labor Code Section 1771.4 and 1776. A material obligation of the Contractor under the Contract Documents is: (i) the Contractor's strict compliance with the requirements pursuant to Labor Code Section 1771.4 and 1776 for preparation and submittal of Certified Payroll Records ("CPR"); and (ii) the Contractor's enforcement of CPR preparation and submittal for all Subcontractors of every tier.
- b) Express Condition Precedent to Payment of Contract Price. Strict compliance with CPR requirements established pursuant to Labor Code Section 1776 is an express condition precedent to the CITY's obligation to: (i) process any request for payment of any portion of the Contract Price; or (ii) to disburse any portion of the Contract Price to the Contractor. The Contractor shall demonstrate strict compliance with CPR preparation and submittal requirements by delivery to the CITY of electronic files or hard copies of all CPR's submitted by the Contractor and/ or Subcontractors for Work pursuant to Labor Code Section 1771.4 and 1776 concurrently with the submittal thereof to the Labor Commissioner. The CITY: (i) shall not be obligated to process or disburse any portion of the Contract Price; or (ii) shall not be deemed in default of the CITY's obligations under the Contract Documents unless the Contractor's demonstrates strict compliance with CPR preparation and submittal requirements.
- c) PWR Monitoring and Enforcement. During the Work pursuant to Labor Code Section 1771.4(a)(4), the Department of Industrial Relations shall monitor and enforce the obligation of the Construction and Subcontractors of every tier to pay the laborers performing any portion of the work the PWR established for the classification of work/ labor performed.

RECORD OF WAGES PAID: INSPECTION

Pursuant to Labor Code section 1776, Contractor stipulates to the following:

- a) Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work under the Facilities lease and Construction Provisions. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. The payroll records may consist of payroll data that are maintained as computer records, if printouts contain the same information as the forms provided by the division and the printouts are verified as specified in subdivision (a) of Labor Code section 1776.

- b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:
- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employees or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the CITY, the Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or copies thereof. However, a request by the public shall be made through either the CITY, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Contractor.
- c) Contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of the written request.
- d) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, by the CITY, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of contractor awarded the contract or performing the contract shall not be marked or obliterated.
- e) Contractor shall inform the CITY of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within (5) working days, provide a notice of a change of location and address.
- f) In the event of noncompliance with the requirements of this Article, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, Contractor shall pay a penalty of One- Hundred Dollars (\$100.00) to the CITY for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the progress payment then due.

The responsibility for compliance with this Article shall rest upon Contractor.

10. Bonds. As a condition precedent to City's obligation to pay compensation to Contractor, and on or before the date of Execution, Contractor shall furnish to the Project Manager the Bonds as required under the Notice to Contractors.
11. Representations and Warranties. In the supply of any materials and equipment and the rendering of labor and services during the course and scope of the Project and Work, Contractor represents and warrants:
 - (1) Any materials and equipment which shall be used during the course and scope of the Project and Work shall be vested in Contractor;
 - (2) Any materials and equipment which shall be used during the course and scope of the Project and Work shall be merchantable and fit to be used for the particular purpose for which the materials are required;
 - (3) Any labor and services rendered and materials and equipment used or employed during the course and scope of the Project and Work shall be free of defects in workmanship for a period of one (1) year after the recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder;
 - (4) Any manufacturer's warranty obtained by Contractor shall be obtained or shall be deemed obtained by Contractor for and on behalf of City.
 - (5) Any information submitted by Contractor prior to the award of Contract, or thereafter, upon request, whether or not submitted under a continuing obligation by the terms of the Contract to do so, is true and correct at the time such information is submitted or made available to the City;
 - (6) Contractor has not colluded, conspired, or agreed, directly or indirectly, with any person in regard to the terms and conditions of Contractor's Bid, except as may be permitted by the Notice to Contractors;
 - (7) Contractor has the power and the authority to enter into this Contract with City, that the individual executing this Contract is duly authorized to do so by appropriate resolution, and that this Contract shall be executed, delivered and performed pursuant to the power and authority conferred upon the person or persons authorized to bind Contractor;
 - (8) Contractor has not made an attempt to exert undue influence with the Project Manager or any other person who has directly contributed to City's decision to award the Contract to Contractor;
 - (9) There are no unresolved claims or disputes between Contractor and City which would materially affect Contractor's ability to perform under the Contract;

- (10) Contractor has furnished and will furnish true and accurate statements, records, reports, resolutions, certifications, and other written information as may be requested of Contractor by City from time to time during the term of this Contract;
 - (11) Contractor and any person performing labor and services under this Project is duly licensed as a contractor with the State of California as required by California Business & Professional Code Section 7028, as amended; and
 - (12) Contractor has fully examined and inspected the Project site and has full knowledge of the physical conditions of the Project site.
12. Assignment. This Contract and the performance required hereunder is personal to Contractor, and it shall not be assigned by Contractor. Any attempted assignment shall be null and void.
13. Claims of Contractor. All claims pertaining to extra work, additional charges, or delays within the Contract Time or other disputes arising out of the Contract shall be submitted by Contractor in accordance with the General Conditions.
14. Audits by City. During the term of this Contract and for a period of not less than three (3) years after the expiration or earlier termination of this Contract, City shall have the right to audit Contractor's Project-related and Work-related writings and business records, as such terms are defined in California Evidence Code Sections 250 and 1271, as amended, during the regular business hours of Contractor, or, if Contractor has no such hours, during the regular business hours of City.
15. Notices. All contracts, agreements, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed with two (2) days by delivery of a hard copy of the material sent by facsimile transmission, in accordance with (1), (2) or (3) above. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

To City: City of Lathrop
 City Clerk
 390 Towne Centre Drive
 Lathrop, CA 95330

To City: City of Lathrop
Department of Public Works
390 Towne Centre Drive
Lathrop, CA 95330
PHONE: (209) 941-7430
FAX: (209) 941-7449
ATTN: Senior Construction Manager

To Contractor: Benton Fence & Drilling, Inc.
Mailing Address: P.O. Box 190 Acampo, CA 95220
Phone: (209) 339.2303
Email: _____
ATTN: _____

Miscellaneous

- (1) Bailee Disclaimer. The parties understand and agree that City does not purport to be Contractor's bailee, and City is, therefore, not responsible for any damage to the personal property of Contractor.
- (2) Consent. Whenever in this Contract the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
- (3) Controlling Law. The parties agree that this Contract shall be governed and construed by and in accordance with the Laws of the State of California.
- (4) Definitions. The definitions and terms are as defined in these specifications.
- (5) Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Contract, which directly results from an Act of God or an act of a superior governmental authority.
- (6) Headings. The paragraph headings are not a part of this Contract and shall have no effect upon the construction or interpretation of any part of this Contract.
- (7) Incorporation of Documents. All documents constituting the Construction Documents described in Section 3 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in this Contract and shall be deemed to be part of this Contract.
- (8) Integration. This Contract and any amendments hereto between the parties constitute the entire contract between the parties concerning the Project and Work, and there are no other prior oral or written contracts between the parties that are not incorporated in this Contract.

- (9) **Modification of Contract.** This Contract shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- (10) **Provision.** Any contract, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Contract shall define or otherwise control, establish, or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- (11) **Resolution.** Contractor shall submit with its Bid a copy of any corporate or partnership resolution or other writing, which authorizes any director, officer or other employee or partner to act for or on behalf of Contractor or which authorizes Contractor to enter into this Contract.
- (12) **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Contract is void or unenforceable, the provisions of this Contract not so affected shall remain in full force and effect.
- (13) **Status of Contractor.** In the exercise of rights and obligations under this Contract, Contractor acts as an independent contractor and not as an agent or employee of City. Contractor shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of City, and Contractor expressly waives any and all claims to such rights and benefits.
- (14) **Successors and Assigns.** The provisions of this Contract shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.
- (15) **Time of the Essence.** Time is of the essence of this Contract and each of its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as a legal holiday by City, the time for performance shall be extended to the following Business Day.
- (16) **Venue.** In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Eastern District of California.
- (17) **Recovery of costs.** The prevailing party in any action brought to enforce the terms of this Contract or arising out of this Contract, including the enforcement of the indemnity provision(s), may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

- (18) Contractor and subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency Regulations at 40 CFR Part 15.
- (19) Contractors and subcontractors must comply with mandatory standards and policies relating to the energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation ACT (Public Law 94-163, 89 stat 871).
- (20) The Contractor shall provide access to the site for the Environmental Protection Agency and its duly authorized representatives, and the City.
- (21) If during the course of construction evidence of deposit of historical or archaeological interest is found, the Contractor shall cease operation affecting the find and shall notify the City, who shall notify the EPA and the State Historic Preservation Officer. No further disturbance of the deposits shall ensue until the Contractor has been notified by the City that construction may proceed. The City will issue a notice to proceed only after the state official has surveyed the find and made a determination to the EPA and the City. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the Construction Documents.
- (22) Notice to Proceed. Prior to commencing work under this Contract, CONTRACTOR shall receive a written "Notice to Proceed" from CITY. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay CONTRACTOR for any services prior to issuance of the Notice to proceed.
- (23) Signatures. The individuals executing this Contract represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Contract on behalf of the respective legal entities of the CONTRACTOR and the CITY. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- (24) This project is a public works project: Contractor shall comply with requirements of California Labor Code § 1700 and following, and prevailing wages shall be paid for work performed on this project.
- (25) The statutory provisions for penalties for failing to comply with the State of California wage and labor laws be enforced, as well as that for failing to pay prevailing wages.

EXHIBITS:

EXHIBIT A: Contractor's Submitted Bid Packet

Certification of insurance, performance and payment bonds, and worker's compensation certification shall be furnished to the City by the Contractor after City Council's approval with resolution.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above stated in Lathrop, California.

CONTRACTOR:

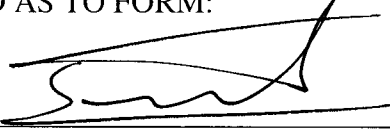
By: _____

Name: _____

Title: _____

CITY OF LATHROP

APPROVED AS TO FORM:

By:  _____

Salvador Navarrete, City Attorney

RECOMMENDED FOR APPROVAL:

By: _____

Michael King, Director of Public Works

APPROVED:

By: _____

Stephen J. Salvatore, City Manager

(END OF SECTION)

GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13
CUPCCAA INFORMAL BID SOLICITATION

BID PROPOSAL FORMS

BID PROPOSAL FORMS

TO: City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

ATTENTION: Public Works Department

FOR: **GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13**

THE UNDERSIGNED, AS BIDDER, HEREBY AGREES AND DECLARES THAT:

LEGAL COMPLIANCE

The only persons or parties interested in this Bid as Principals are those named herein; that this Bid is made without collusion with any other person, firm, partnership, corporation, or association; that he has carefully examined the location of the proposed work and the Construction Documents; and he proposes and agrees that if this Bid is accepted he will contract with the City of Lathrop, in the form of the Contract as set forth in the Construction Documents for said project, to provide all the necessary labor, services, materials, and equipment, and to do all the work and furnish all the materials; and that he will accept in full payment therefore the price as proposed in the following Bid Schedule.

SCHEDULE OF PRICES

All applicable permit fees, licensing costs, sales taxes, State, and/or Federal, and any other taxes, patent rights, or royalties are included in the prices quoted in the Bid. All blank spaces must be filled in.

BASIS OF AWARD

The basis for award of the contract will be the total price of the bid. The City of Lathrop reserves the right to award the work contemplated by the bid or none of the work.

SECTION 00300

GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13
CUPCAA INFORMAL BID SOLICITATION

BID PROPOSAL FORMS

GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13

BID SCHEDULE

BID ITEM	DESCRIPTION	QUANTITY	UNITS	UNIT PRICE	EXTENDED TOTAL
1	Construct Complete Fence with 3 Gates, per Plans and Specifications	680	LF	115.00	78,200.00
2	Construct PCC Mow Strip	610	LF	50.00	30,500.00
3	Spare Panel	4	EA	395.00	1580.00

TOTAL BID: \$ 110,280.00

TOTAL BID IN WORDS: one hundred ten thousand two hundred eighty.

SECTION 00300

GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13
CUPCAA INFORMAL BID SOLICITATION

BID PROPOSAL FORMS

INFORMATION REQUIRED OF BIDDER

The Bidder (Contractor) shall furnish the following information. This information is considered essential in enabling the Project Manager to determine if the Bidder is experienced in similar types of work and if the Bid is based on a careful study of methods applicable to the work and full realization of the various factors which may affect the progress of the work. Failure to comply with this requirement may render the Bid non-responsive and may cause its rejection. Additional sheets shall be attached as required.

BIDDER'S INFORMATION

- (1) Bidder's name and address:

Benton Fence and Drilling, Inc.
P.O. Box 190 Acampo, CA 95220

- (2) Bidder's telephone number: (209) 339-2303

- (3) Bidder's fax number: (209) 339-0213

- (4) Bidder's Contractor's License (Class): C-13

License No.: 273445

Expires: 7/31/2023

- (5) Person who inspected site of proposed work for Contractor's firm:

Name: Jayson Walsh Date of Inspection: 8/18/21

SECTION 00300

GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13
 CUPCCAA INFORMAL BID SOLICITATION

BID PROPOSAL FORMS

List of Subcontractors:

The Bidder shall list below the name and business address of each subcontractor who will perform work under this Bid in excess of one-half of one percent of the Contractor's Total Bid Price, and shall also list the portion of the WORK which will be done by such subcontractor, in accordance with Section 4107 of the Public Contract Code. After the opening of bids, no changes or substitutions will be allowed except as otherwise provided by law. The listing of more than one subcontractor for each item of work to be performed with the words "and/or" will not be permitted. Failure to comply with this requirement may render the Bid non-responsive and may cause its rejection. Should the Contractor provide a bid that does not require a subcontractor, the Contractor shall note that on this page by writing "Not Applicable" in the list below.

<u>Work to be Performed</u>	<u>Subcontractor License Number</u>	<u>Percent of Total Contract</u>	<u>Subcontractor's Name & Address</u>
1. <u>RCC mow strip</u>	<u>776221</u>	<u>28%</u>	<u>Gates Concrete Construction</u> <u>4520 E Harvest Rd.</u> <u>Acampo, CA 95820</u>
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Note: Attach additional sheets if required.

SECTION 00300

GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13
CUPCCAA INFORMAL BID SOLICITATION

BID PROPOSAL FORMS

ADDENDA

Bidder acknowledges receipt of the following addendum (addenda):

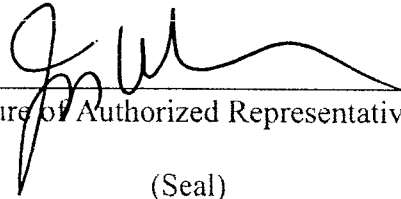
1

Respectfully submitted,

8/18/21

Dated

Benton Fence and Drilling, Inc.
Legal Name of Firm


Signature of Authorized Representative
(Seal)

(If Bidder is a corporation, show State in which incorporated.)

The full names and post office addresses of all persons and parties interested in the foregoing Bid as principals are as follows:

(NOTICE): Give first and last names in full; in case of corporation, give names of President, Secretary, Treasurer, and Manager, and in case of partnerships and joint ventures, give names and Post Office addresses of all the individual members.

Jayson Walsh, President 598 Bernier Cir., Galt, CA 95632

Richard Benton, V.P. P.O. Box 693, Acampo, CA 95220

SECTION 00300

GENERATIONS CENTER SKATE PARK FENCE, CIP PK 22-13
CUPCCAA INFORMAL BID SOLICITATION

BID PROPOSAL FORMS

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the Bidder, any officer of the Bidder, or any employee of the Bidder, who has a proprietary interest in the Bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes _____ No

If the answer is yes, explain the circumstances in the following space.

PUBLIC CONTRACT SECTION 10232 STATEMENT

In accordance with Public Contract Code Section 10232, the Contractor hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

NOTE: The above Statement and Questionnaire are part of the Proposal. Signing this proposal on the signature portion thereof shall also constitute signature of this Statement and Questionnaire.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

(END OF SECTION)