

SECTION 4 CONTRACT

DRAFT CONTRACT

CITY OF VISALIA

STATE OF CALIFORNIA

This Contract for the construction of the **VALLEY STRONG BALLPARK OUTFIELD FENCE & BATTER'S EYE REPLACEMENT PROJECT**, is made between the City of Visalia, (hereinafter "the City"), and **Forcum/Mackey Construction, Inc.**, (hereinafter referred to as Contractor) both parties having authority to enter into this Contract do agree to the following:

ARTICLE I - For and in consideration of the payments hereinafter mentioned to be made by the City, and under the conditions expressed in this Contract and Contract Documents (as those terms are defined in City of Visalia Standard Specifications), including the bonds submitted with this Contract, Contractor agrees at his own cost and expense, to do all the work and furnish all the materials necessary to construct and complete in a good, workmanlike, and substantial manner the **VALLEY STRONG BALLPARK OUTFIELD FENCE & BATTER'S EYE REPLACEMENT PROJECT**, as a fully operational and functional facility for the intended purpose in accordance with the Contract Documents, and in accordance with the reference documents listed in the Contract Documents, which are also made a part hereof.

Said work to be done is shown upon the following plans:

RFB No.: **24-25-42A**
Project Name: **VALLEY STRONG BALLPARK OUTFIELD FENCE & BATTER'S EYE REPLACEMENT PROJECT**
CIP: **1570-72000/CP0641-999**

which said plans are hereby made a part of this contract.

ARTICLE II - Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work described in this Contract; also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City of Visalia and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the Contract Documents, and requirements of the Engineer under them, to wit:

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CONTRACT WITH FORCUM/MACKEY CONSTRUCTION, INC.

TOTAL BID AMOUNT

| ITEM NO. | DESCRIPTION OF WORK | QUANTITY | UNIT | UNIT PRICE (\$) | TOTAL (\$) |
|----------|---|----------|------|-----------------|--------------|
| 1 | All Work included in RFB 24-25-42, to meet Minor/Major League Baseball (MiLB/MLB) requirements, as per the Contract Documents, Plans and Specifications | 1 | LS | NA | \$915,000.00 |
| | TOTAL BID AMOUNT (\$) = <u>\$915,000.00</u> | | | | |

Schedule of Deductive Alternates

| ITEM NO. | DESCRIPTION OF WORK | QUANTITY | UNIT | UNIT PRICE (\$) | TOTAL (\$) |
|----------|--|--------------|---------------|-----------------|-------------------------|
| 1 | Metal Paneling at Back of Batter's Eye (east side) — DEDUCTIVE <u>NOT AWARDED</u> | 1 | LS | NA | -\$31,500.00 |
| 2 | Metal Paneling at Back of Fencing System (exterior side) — DEDUCTIVE <u>NOT AWARDED</u> | 1 | LS | NA | -\$11,500.00 |
| 3 | Storm Drain System — DEDUCTIVE <u>NOT AWARDED</u> | 1 | LS | NA | -\$14,750.00 |

TOTAL CONTRACT AMOUNT (\$) = \$915,000.00

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ARTICLE III - Contractor hereby agrees to indemnify and hold City and its officers, agents, employees and assigns, harmless from any liability imposed for injury (as defined by Government code 810.8), whether arising before or after completion of work hereunder, or in any manner directly or indirectly caused, occasioned or contributed to, or claimed to be caused, occasioned or contributed to, in whole or in part, by reason of any act or omission, including strict liability or negligence of Contractor, or of anyone acting under Contractor's direction or control or on its behalf, in connection with or incident to or arising out of the performance of this contract.

It is the intent of the parties that Contractor will indemnify, defend, and hold harmless City and its officers, agents, employees, and assigns, from any and all claims, demands, costs, suits or actions as set forth above regardless of the existence of passive concurrent negligence, on the part of the City or anyone acting under its direction or control or on its behalf. It is further the intent of the parties that this indemnification required is not intended to relieve City from liability for the active negligence of City, its officers, agency and employees.

The Contractor shall continuously protect City property, including work under construction, from damage, loss, or liability of any kind to persons or property arising in connection with the contract, direct or indirect, including that arising from rainfall, flood waters, and other action of the elements and all acts of third parties.

This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

In an emergency affecting the safety of life or limb, work site, or any property, the Contractor is hereby permitted and directed to act at their discretion to prevent such threatened loss of injury, and in the event any instructions are given by the City of Visalia in any emergency, the Contractor shall unconditionally comply therewith.

With respect to the performance of work under this agreement, the Contractor shall maintain and shall require all of its subcontractors to maintain insurance as described below.

Worker's Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$1,000,000 per accident.

Commercial General Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include products/completed operations liability, owner's and Contractor's protective, blanket contractual liability, personal injury liability, broad form property damage coverage and explosion, collapse and underground hazard coverage. Such insurance shall (a) name City, its appointed

and elected officials, officers, employees and agents as insureds; and (b) be primary with respect to any insurance or self-insurance programs maintained by the City; and (c) contain Standard cross liability provisions. Such additional insured endorsement maintained by Contractor and its subcontractors shall not be required to provide coverage for City for the active negligence of City.

Commercial Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles and shall be provided by a business automobile policy.

Contractor shall furnish properly executed certificates of insurance to City prior to commencement of work under this agreement, such certificates shall:

- a. Clearly evidence all coverage required above, including specific evidence of a separate endorsement naming the City as an insured;
- b. Indicate whether coverage provided is on a claims made or occurrence basis; and
- c. Provide that such insurance shall not be materially changed, terminated, or allowed to expire except on 30-days prior written notice to City's Purchasing Division, Attention:

Purchasing
707 W. Acequia Avenue
Visalia, CA 93291.

Such insurance shall be maintained from the time work first commences until completion of the work under this Agreement if an occurrence policy form is used. If a claims made policy is used, coverage shall be maintained during the contract term and for a period extending 5 years beyond the contract date. Contractor shall replace such certificates for policies expiring prior to completion of work under this agreement and shall continue to furnish certificates 4 years beyond the contract term, when Contractor has a claims made form(s). If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this agreement and/or obtain damages from the Contractor resulting from said breach. Alternatively, City may purchase such required insurance coverage, and without further notice to Contractor, City may deduct from sums due to Contractor any premium costs advanced by City for such insurance.

This insuring provision, insofar as it may be adjudged to be against public policy or in violation of Insurance Code Section 11580.04, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of the insuring provisions herein may be within public policy and enforceable.

ARTICLE IV - It is further expressly agreed by and between the City and the Contractor that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting with this instrument.

Executive Order N-6-22 – Russia Sanctions On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

Third Party Beneficiaries: CONTRACTOR and OWNER acknowledge that this agreement is part of the Recreation Park Project involving improvements agreed upon between the OWNER and current stadium tenant, First Pitch Entertainment, LLC, (hereinafter referred to as “FPE”). FPE shall be considered to be a third-party beneficiary to this Agreement. Except as stated herein, this Agreement is for the sole benefit of the Parties hereto and is not intended to confer rights upon any other third party.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date opposite their respective signatures.

CITY OF VISALIA

CONTRACTOR

City Manager

Date

By: Authorized Agent

Date

Print Name, Title

APPROVED AS TO FORM:

City Attorney

Date

Risk Manager

Date

Project Manager

Date

SECTION 5 CONTRACT BOND FORMS

DRAFT

5-1 **PAYMENT BOND**

CITY OF VISALIA
PAYMENT BOND
(To Accompany Contract)

Bond No. _____

WHEREAS, the City of Visalia, has awarded to Contractor _____, hereafter designated as the "Principal", a contract for the work described as follows: _____, referred to hereafter as "Contract."

AND WHEREAS, said Principal is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics, materialmen and other persons as provided by law.

NOW, THEREFORE, we the undersigned Principal and _____, referred to as "Surety" are bound unto the City of Visalia in the sum of \$ _____ dollars (\$ _____), for which payment, we bind ourselves, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal or its subcontractors shall fail to pay any of the persons named in Civil Code Section 9100, or amounts due under the California Unemployment Insurance Code with respect to work or labor performed by such claimant, or any amounts required to be deducted, withheld, and paid pursuant to the California Revenue and Taxation Code for the wages of employees of the Principal and his subcontractors, with respect to such work and labor, that the Surety herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the surety will pay a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons, companies, or corporations, named in Civil Code Section 9100 as to give a right of action to such persons, entities, or their assigns in any suit brought upon this bond.

The 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 under the Contract, or the specifications accompanying the Contract shall in any way affect its obligations on this bond, and Surety does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the specified work, or the specifications. Surety hereby waives the provisions of Civil Code Sections 2819 and 2845.

IN WITNESS WHEREOF, We have hereunto executed this instrument on the date indicated below. Persons signing for a corporation or entity hereby represent that they are doing so pursuant to a grant of authority by the governing body.

| | | | |
|----------------------------|---------------|-------------------------|---------------|
| _____ Name of Principal | _____ Date | _____ Name of Surety | _____ Date |
|----------------------------|---------------|-------------------------|---------------|

| | |
|----------------------------------|-------------------------------|
| _____ Signature for Principal | _____ Signature for Surety |
|----------------------------------|-------------------------------|

| | |
|---------------------------------|---------------------------------|
| _____ Printed Name and Title | _____ Printed Name and Title |
|---------------------------------|---------------------------------|

Correspondence or claims relating to this bond should be sent to the surety at the following address:

NOTE: Signatures of those executing for the Surety must be properly acknowledged and Surety's Power of Attorney must be attached.

CERTIFICATE OF 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, accuracy, or validity of that document.

State of California

County of _____ SS

On _____ before me _____,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name 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.

(SEAL)

Notary Public

RFB 24-25-42A

Valley Strong Ballpark Outfield Fence & Batter's Eye Replacement Project
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CERTIFICATE OF 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, accuracy, or validity of that document.

State of California

County of _____ SS

On _____ before me _____,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name 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.

(SEAL)

Notary Public

RFB 24-25-42A

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5-3 **MAINTENANCE BOND**

CITY OF VISALIA
MAINTENANCE BOND
(To Accompany Contract)

Bond No. _____

WHEREAS, The City of Visalia, has awarded to Contractor _____, hereafter designated as the “Principal”, a contract for the work described as follows: _____, referred to hereafter as “Contract.”

AND WHEREAS, said Principal is required to furnish a bond in connection with said contract, guaranteeing the correction of deficiencies during the specified maintenance period of one (1) year from the date the notice of completion for work performed under said contract has been recorded or the date the work was completed if no notice of completion is recorded:

NOW, THEREFORE, we the undersigned Principal and _____, referred to as “Surety” are held firmly bound to the City of Visalia in the sum of \$ _____ dollars (\$ _____), to be paid to City of Visalia or its certain attorney, its successors and assigns: for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, the named Principal has made specific guarantees to the City concerning the work, labor and materials furnished for the construction of said improvements as stated above. If Principal complies with these guarantees for a period of one (1) year from the date of the notice of completion for work performed under said contract has been recorded or the date the work was completed if no notice of completion is recorded, then this obligation shall be null and void. If City notifies Surety that Principal has not met its guarantee, then Surety shall indemnify City for losses incurred up to the amount listed above. The City shall give written notice to the Principal during the one (1) year period specified in this obligation of any defect of the guaranteed work that becomes apparent. This obligation shall remain in full force and effect until any defect identified in said written notice are repaired by the Principal and accepted in writing by the City.

The said Surety, for value received, hereby stipulates and agrees that no change, alteration, or addition to the terms of the Contract or to the work to be performed under the Contract, or the specifications accompanying the Contract shall in any way affect its obligations on this bond, and Surety does hereby waive notice of any such change, alteration, or addition to the terms of the Contract, or to the specified work, or the specifications. Surety hereby waives the provisions of Civil Code Sections 2819 and 2845.

IN WITNESS WHEREOF, We have hereunto executed this instrument on the date indicated below. Persons signing for a corporation or entity hereby represent that they are doing so pursuant to a grant of authority by the governing body.

Name of Principal

Date

Name of Surety

Date

Signature for Principal

Signature for Surety

Printed Name and Title

Printed Name and Title

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Correspondence or claims relating to this bond
should be sent to the surety at the following
address:

NOTE: Signatures of those executing for the Surety must be properly acknowledged and Surety's Power of Attorney must be attached.

DRAFT

CERTIFICATE OF 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, accuracy, or validity of that document.

State of California

County of _____ SS

On _____ before me _____,
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name 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.

(SEAL)

Notary Public

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