December 12, 2018

TO: Bailey Fence
3205 Baumberg Avenue
Hayward, CA 94545

CONSTRUCTION MANAGERS

CONTRACTORS

BUILDERS

Subject: **San Leandro Unified School District - Washington ES – Fence Replacement**
Washington Elementary School
250 Dutton Avenue San Leandro, CA 94577

Enclosed please find one copy of the subject PO/Contract. Please follow the instructions in this letter as carefully and completely as possible.

The PO/Contracts, Insurance Certificates and W-9's shall be returned to:

Bond Office
C/O San Leandro Unified School District
1145 Aladdin Ave., San Leandro, CA 94577
Attention: Renee Robles OR Email @ Rrobles@slusd.us

Not later than Wednesday December 19, 2018

I. PO/CONTRACT

A. CONTRACT AMOUNT:

1. Your contract amount is based on the following bid award:

Base Bid $11,831.00

B. IF YOU ARE A CORPORATION:

1. Have the Agreement signed by two officers, one from each of the two following groups:

a. The Chairman of the Board, the President, or any Vice President.

b. The Secretary, the Assistant Secretary, the Chief Financial Officer, or an Assistant Treasurer.

2. Have the "Acknowledgement" on each copy completed by a Notary Public.

3. Affix the corporate seal.

4. Return copy to the address given on Page One (1) of this letter. You will receive a fully executed copy for your files, together with the Notice to Proceed.

RGM and ASSOCIATES
3230 Monument Way
Concord, CA 94518

Phone: 925-671-7717
Fax: 925-671-7788

C. IF YOU ARE <u>NOT</u> A CORPORATION:

1. All copies must be signed by:

a. Owner of the Business, if a sole proprietorship;

b. Or if a partnership, all partners must sign under the partnership name.

2. Have the "Acknowledgement" on each copy completed by a Notary Public.

3. Return to the address given on Page One (1) of this letter. You will receive a fully executed copy for your file, together with the Notice to Proceed.

II. INSURANCE

A. Please see Exhibit "A".

III. INVOICE

A. Direct all invoices to:

Bond Office
C/O San Leandro Unified School District
13701 Bancroft Ave San Leandro, CA 94578
Attention: Renee Robles OR Email @ Rrobles@slusd.us

Please return the contracts together with the required insurance certificates no later than**, Wednesday December 19, 2018**.

We appreciate your careful and complete compliance with our instructions.

Sincerely,

Ridge Greene
RGM and Associates

Enclosures: Instruction Letter and PO/Contract
Exhibit A – "Terms and Conditions"
Exhibit B – "Certificate Regarding Workers' Compensation"
Exhibit C – "Notice to Contractors Regarding Criminal Record Checks"
Exhibit D – "Asbestos and Other Hazardous Materials Certification"
Exhibit E – "Scope of Work"

Exhibit "A"

This attachment amends the District's Purchase Order Terms and Conditions for small contract purposes and/or for services, e.g., installation, incidental to a purchase. The Additional Terms and Conditions are as follows:

1. **Time for Completion.** Seller/Contractor shall complete the work described in the District's Purchase Order, to the District's satisfaction and for the price stated therein, by _____.

2. **Seller's/Contractor's Invoices.** Invoices shall be prepared and submitted in duplicate unless otherwise specified. Invoices shall contain: purchase order number and date, descriptions of items, sizes, quantities, unit prices, extended total, place and date of delivery. Invoices or vouchers not on printed bill heads shall be signed by the vendor or person furnishing the supplies or services. Every invoice shall be properly itemized.

3. **Changes.** No change or modification in terms, quantities, or specification may be made without express authorization from the Purchasing Office. This will be followed by a written change order. No other department/schools, officer, or employee may authorize changes.

4. **Rules and Regulations.** All work and materials shall be in full accordance with the latest rules and regulations of the Safety Orders of the Division of Industrial Safety, current OSHA requirements, the National Electric Code, the Uniform Plumbing Code published by the Western Plumbing Officials Association, and all other applicable State laws or regulations. The Seller/Contractor and Subcontractors shall comply with Sections 6360 et seq. of Labor Code, together with Title 22 with regard to hazardous substances in the workplace. The Seller/Contractor and each Subcontractor shall supply to their employees and, where site is occupied, to District, copies of Material Safety Data Sheets (MSDS) for hazardous substances that may be used in the course of the Work, together with notice of actual hazardous substances to which employees may be exposed while performing work and appropriate protective measures.

5. **Safety / Inspection:** The Contractor shall at all times maintain proper facilities and provide safe access for inspection by the District to all part of the work, and to the shops wherein the work is in preparation. Where the specifications require work to be specially tested or approved, it shall not be tested or covered up without timely notice to the Superintendent, or his representative, of its readiness for inspection, and without the approval thereof, or consent thereto by the latter. Should any such work be covered up without such notice, approval or consent, it must, if required by the Superintendent, or his representative, be uncovered for examination at the Contractor's expense.

6. **Protection of Work and Property:** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at his discretion to prevent such threatened loss or injury.

7. **Agreement Authority.** It is understood that the aforementioned terms and conditions are the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof.

8. **Prevailing Wages.** For all public works contracts in excess of $1,000.00 contractor shall pay prevailing wages in accordance with Labor Code Sections 1770 to 1777 inclusive.

9. **Hold Harmless.** Seller/Contractor shall indemnify, defend with counsel acceptable to District, and hold harmless to the full extent permitted by law, District and its Board of Trustees, officers, agents, employees and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Seller's/Contractor's performance of the project or its failure to comply with any of its obligations contained in these contract documents, except such Liability caused by the active negligence, sole negligence or willful misconduct of the District. Such indemnification shall extend to all claims, demands, or liabilities occurring after completion of the project as well as during the progress of the work. Pursuant to Public Contract Code Section 9201, if applicable, District shall timely notify Seller/Contractor of receipt of any third-party claim relating to this Agreement.

10. **Insurance.** Without limiting Contractor's indemnification duties, it is agreed that Contractor shall maintain in force at all time during the performance of the contract the policies of insurance hereinafter described:

    a. Seller/Contractor shall obtain public liability and workers compensation insurance in an amount acceptable to District with company or companies licensed to do business in the State of California and acceptable to District.

    b. Neither Contractor/Subcontractor shall commence work under Contract until all insurance requirements have been provided and approved by the District. Evidence of insurance in the form of a Certificate of Insurances naming the District, Consultants and their officers and their employees, as additional insured, shall be provided prior to commencement of work.

    c. Written notification by the carrier to the District at least thirty (30) days prior to reduction, cancellation, failure to renew, or other termination, is required. Insurance afforded under the Contractor's policy shall be primary and any insurance maintained by the District shall apply, if required by law, in excess of, and not contributory with, insurance required under the terms of this Agreement. All insurance shall be carried with financially responsible insurance companies, licensed in the State of California and approved by the District, and shall be kept in force until the Contractor's work is accepted by the District.

    d. Contractor will, at its own expense, maintain coverage's in conformance with these requirements. Certificates of insurance evidence the existence of coverage shall be filed with the District prior to commencement of work and no later than ten (10) calendar days after the notice of award date.

    e. Contractors shall be responsible for the project from the date that work commences until final acceptance of the Project by the District. Therefore, Contractor, not the District, shall assume all risks for death, personal injury, or property damage from all causes, including but not limited to, vandalism or other "Acts of God." Contractor shall not, however, be responsible for any death, injury or property damage caused solely by the District. Contractor may purchase, at Contractor's sole expense, any insurance policies desired to cover this risk.

f. Worker's Compensation

i. State: Statutory Amount (minimum)	$1,000,000.00
ii. Employer's Liability: Statutory Amount (minimum)	$1,000,000.00

g. General Liability

iii. Bodily Injury (each occurrence)	$1,000,000.00
iv. Property Damages (each occurrence)	$1,000,000.00
v. Product and Completed Insurance (aggregate)	$2,000,000.00

h. Contractual Liability

vi. Bodily Injury (each occurrence)	$1,000,000.00
vii. Property Damages (each occurrence)	$1,000,000.00
viii. Product and Completed Insurance (aggregate)	$1,000,000.00

i. If the General Liability policy includes a General Aggregate, such General Aggregate shall be no less than $2,000,000.00

j. Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Either option shall be implemented at the Contractor's expense.

11. **Licenses and Permits.** The Contractor shall, at his own expense, obtain all necessary permits and licenses, easements, etc., for the construction of the project, give all necessary notices, pay all fees required by law, and comply with all laws, ordinances, rules and regulations relating to the work and the preservation of the public health and safety. The Contractor shall pay for all taxes on materials and equipment's. The District is exempt from Federal Excise Tax and Contractor shall not pay such tax on any item under this Contract.

12. **Termination.** District shall have the right in its sole discretion to terminate the Contract for its own convenience. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.

13. **No Discrimination.** It is the policy of the District that in connection with all work performed under contracts, there will be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, as or marital status. The Seller/Contractor agrees to comply with applicable Federal and California laws, including but not limited to, the California Fair Employment Practice Act, beginning with Government Code Section 12900 and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5. In addition, the Contractor agrees to require like compliance by any subcontractors employed on the work.

14. **Contractor's License.** Contractors are required by law to be licensed and regulated by the Contractors State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.

15. **Miscellaneous Provisions.**

a. Every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted, and this Contract shall be read and enforced as though it were included, and if through mistake or otherwise any other provision is not inserted or is not correctly inserted, upon application of either party the contract shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments on the subject which are in effect as of the date of this Contract, and any later changes which do not materially and substantially alter the positions of the parties.

b. This Contract shall be construed, and its performance enforced under California law. Venue shall be in the Superior Court of the State of California in the county in which District is located.

c. The District's failure to enforce any provisions of this Contract or the waiver of any provisions in a particular instance shall not be construed as a general waiver of any part of such provision.

d. The parties do not intend, by any provision of this Contract, to create in any third part any benefit or right owed by one party to the other party.

e. If any term or portion of this Contract is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Contract shall continue in full force and effect.

f. The headings of the sections and any exhibits to this agreement are inserted for convenience only, and do not constitute a part of this agreement, and are not to be used in its construction.

IN WITNESS WHEROF, this agreement is hereby executed by the parties or their duly authorized representatives and effective on April 11, 2018.

SELLER/CONTRACTOR	DISTRICT
Bailey Fence Company	**San Leandro Unified School District**
By: _____	By: _____
[Name/Title]	[Name/Title]

_____
Contractor's License #

Exhibit "B"

CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code Section 3700 in relevant part provides:

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

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

_____
Contractor

By: _____

(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.)

Exhibit "C"

NOTICE TO CONTRACTORS REGARDING CRIMINAL RECORD CHECKS
(EDUCATION CODE SECTION 45125.1)

Education Code section 45125.1 provides that if the employees of any entity that has a contract with a school district may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the Department for its costs incurred in processing the application.

The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the Department When the Department of Justice ascertains that an individual whose fingerprints were submitted to it has a pending criminal proceeding for a violent felony listed in Penal Code section 667.5(c), or a serious felony listed in Penal Code section 1192.7(c), or been convicted of such a felony, the Department shall notify the employer designated by the individual of the criminal information pertaining to the individual. The notification shall be delivered by telephone and shall be confirmed in writing and delivered to the employer by first-class mail.

The contractor shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a violent or serious felony. The contractor shall certify in writing to the governing board of the school district that none of its employees who may come in contact with pupils have been convicted of a violent or serious felony. The contractor shall provide a list of the names of its employees who may come in contact with pupils to the governing board of the **School District.**

Penal Code section 667.5(c) lists the following "violent" felonies: murder; voluntary manslaughter; mayhem; rape; sodomy by force; oral copulation by force; lewd acts on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant inflicts great bodily injury on another, any robbery perpetrated in an inhabited dwelling; arson; penetration of a person's genital or anal openings by foreign or unknown objects against the victim's will; attempted murder, explosion or attempt to explode or ignite a destructive device or explosive with the intent to commit murder; continuous sexual abuse of a child; and carjacking.

Penal Code section 1192.7 lists the following "serious" felonies: murder, voluntary manslaughter, mayhem; rape; sodomy by force; oral copulation by force; a lewd or lascivious act on a child under the age of 14 years; any felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally inflicts great bodily injury on another, or in which the defendant personally uses a firearm; attempted murder; assault with intent to commit rape or robbery; assault with a deadly weapon on a peace officer, assault by a life prisoner on a non inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive device with intent to murder, or explosion causing great bodily injury or mayhem; burglary of an inhabited dwelling; robbery or bank robbery; kidnapping; holding of a hostage by a person confined in a state prison; attempt to commit a felony punishable by death or imprisonment in the state prison for life; any felony in which the defendant personally uses a dangerous or deadly weapon; selling or furnishing specified controlled substances to a minor, penetration of genital or anal openings by foreign objects against the victim's will; grand theft involving a firearm; carjacking; and a conspiracy to commit specified controlled substances offenses.

FINGERPRINTING AND EMPLOYEE BACKGROUND CHECK REQUIREMENTS

Education Code Section 45125.1 provides in relevant part:

A. If the employees of an entity which has a contract with a school district may have any contact with students, those employees must have their fingerprints submitted to the Department of Justice;

B. The Department of Justice shall determine whether the individuals have been arrested or convicted of a crime and notify the employer of the criminal history.

C. An entity with a school district contract shall not permit an employee to come into contact with pupils until the Department of Justice ascertains that the employee has not been convicted of a felony as defined in education Code Section 45122.1;

D. The entity must certify that none of its employees who may come into contact with pupils have been convicted of a felony as defined in Education Code Section 45122.1.

E. The entity must provide lists of the names of the employees who may come into contact with pupils.

I am aware of the provisions of the Education Code section 45125.1 which require fingerprinting and background checks of school district contractor's and subcontractor's employees, certification that employees with pupil contact have not committed a felony as defined in the Education Code section 45122.1 and provision of lists of those employees to the school district. I will comply with such provisions before commencing the performance of the work of this contract. I will provide a new certification and an updated list in the event that during the course of the contract, new and different employees may come into contact with pupils

_____

PROPER NAME OF BIDDER / CONTRACTOR

_____

SIGNATURE OF BIDDER / CONTRACTOR

_____

DATE

The above certificate must be signed and filed with the awarding body prior to performing any work under this contract.

(SUBMIT WITH BID / CONTRACT)

CERTIFICATE OF COMPLIANCE
WITH EDUCATION CODE SECTION 45125.1

TO: THE GOVERNING BOARD OF SAN LEANDRO UNIFIED SCHOOL DISTRICT

I CERTIFY THAT:

1. Each employee who may have contact with pupils has been fingerprinted;

2. The Department of Justice has provided a report on the criminal background of each employee;

3. No employee who may come into contact with pupils has been convicted of a crime as defined in education Code section 45122.2; and

4. Attached is a list of the names of each employee who may come into contact with pupils.

_____
CONTRACTOR

_____
PROJECT

_____
PRINT NAME

_____
SIGNATURE

_____
DATE

(SUBMIT WITH AWARD OF CONTRACT)

"Exhibit D"

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations "New Material Hazardous", shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.

Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work, or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

Contractor has read and understood the document Hazardous Materials Procedures & Requirements and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

“Exhibit E”

SCOPE OF WORK

- Please see attached proposal

BAILEY FENCE COMPANY, INC.
3205 BAUMBERG AVE. HAYWARD, CA 94545
(510) 783-2980 . FAX (510) 783-2989
CA LIC # 498661

PROPOSAL

JOB NO._____

DATE 10-5-18

PROPOSAL TO San Leandro Unified School District PHONE # 507-0926

ADDRESS 1145 Aladdin St. San Leandro, Ca. 94577 JOB PHONE#_____

JOB ADDRESS Washington School 250 Dutton Ave. San Leandro

TOTAL HEIGHT 10 BARBED WIRE ☐ NO BARBED WIRE ☒ TYPE NO. 420 HEIGHT OF FABRIC 10

STYLE FABRIC b&k GAUGE 9 MESH 2 GALV. AFTER WEAVING X TOP RAIL ~~TOP TENSION WIRE~~ 1 5/8 od

LINE POSTS 2 3/8 od SPACE 10' ~~FLANGED DRIVEN~~ CONCRETE END POSTS 2 7/8 od CORNER POSTS 2 7/8 od

WALK GATE POSTS _____ DRIVE GATE POSTS _____ GATES _____

ERECTED IN PLACE X MATERIAL ONLY _____ SIZE FRAMES _____

QUANTITY	DESCRIPTION		
65'	Remove & dispose of existing ten foot high fencing		
65'	Complete installed fencing		
	Total Material,labor & taxes	$11,831.00	

TOTAL PRICE (INCLUDING LABOR, MATERIAL AND TAXES)

AS PER DIAGRAM ON BACK

TERMS: NET CASH ON COMPLETION 1 ½% per month interest on accounts over 15 days. In the event legal action is instituted by either party hereto, the prevailing party shall be entitled to reasonable attorney's fees and costs.

CONDITIONS: All property line and grade stakes are to be established by purchaser. Fence is to follow ground line unless otherwise provided for in this contract. Obstructions of every nature which in any manner interfere with the erection of the fence shall be removed by purchaser prior to commencing erection work. **We assume no responsibility for unmarked underground water, electrical, telephone, gas or sewer lines.**

NOTICE TO OWNER:
Under to California Mechanics Lien Law any contractor, subcontractor, laborer, supplier or other person who helps to improve your property, but it not paid for his/her work or supplies, has a right to enforce a claim against your property. This means that after a court hearing, your property could be sold by a court officer and the proceeds of the sale used to satisfy the indebtedness. This can happen even if you paid your contractor in full, if the subcontractor, laborers or suppliers remain unpaid. To preserve their right to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are required to provide you with a document entitled "Preliminary Notice". Original (or prime) contractors and laborers for wages do not have to provide this notice. A Preliminary Notice is not a lien against your property. It's purpose is to notify you of persons who may have a right to file a lien against your property if they are not paid. (Generally, the maximum time allowed for filing a claim or lien against your property is ninety (90) days after completion of your project.)
Under the law, you may protect yourself against such claims by filing, before commencing such work of improvement, an original contract for the work of improvement, or a modification thereof, in the office of the county recorder of the county where the property is situated and requiring that a contractor's payment and performance bond be recorded in such office. Said bond shall be in an amount not less than fifty percent (50%) of the contract price and shall, in addition to any conditions for the performance of the Contract, be conditioned for the payment in full of the claims of all persons furnishing labor, services, equipment or materials for the work described in said contract.

I understand my rights as described in the above paragraph_____

OWNER HAS THE RIGHT TO REQUIRE, IN WRITING, A PERFORMANCE AND PAYMENT BOND AT HIS COST.

STIPULATIONS: Now, therefore, the Owner hereby accepts the above proposal, and the Contractor agrees to perform the work comprehended there under, and by and between them as part and parcel of this Agreement the terms and conditions set forth in original writing on the reverse side hereof are understood and agreed upon.

BAILEY FENCE COMPANY, INC.

DATE 10-5-18 ACCEPTED _____ DATE_____

NOTICE OF CANCELLATION: You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

I herby cancel this transaction _____
Date Buyer

TERMS AND CONDITIONS

GUARANTEE: **Bailey Fence Company, Inc.** certifies that all equipment and materials furnished shall carry a one (1) year warranty on parts, material and labor Damage to equipment or materials caused by negligence, misuse, vandalism or acts of God is not covered by this guarantee statement.

Bailey Fence Company, Inc. does not warrant and hereby expressly disclaims any warranty on components purchased or existing from another manufacturer, and **Bailey Fence Company, Inc.** shall be under NO obligation to provide either maintenance, service, or support for any such system or equipment that may cause damage to materials supplied or installed by **Bailey Fence Company, Inc.**

INSURANCE: **Bailey Fence Company, Inc.** shall carry Workmen's Compensation Insurance on all employees and Public Liability and Property Damage Insurance.

LICENSING: Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the Registrar of The Board whose address is: **Contractors' State License Board; P.O. Box 26000, Sacramento, CA 95826.**

ENFORCEABILITY AGAINST TRANSFEREES AND SUCESSORS: This Agreement and all its terms shall be binding upon and enforceable against the parties hereto and also against heirs, estates, successors in interest, assigns and personal representatives of the parties hereto. It is further expressly agreed that this Agreement and all terms hereof shall also be binding upon and may be enforced against any person, firm, association, or entity to whom Owner transfer any part of his right, title, or interest in or to the premises upon which this Contract is to be performed.

ARBITRATION: Subject to the exception hereinafter contained, if, at any time, any controversy shall arise between **Bailey Fence Co. Inc.** and the Owner with respect to any matters or questions arising out of, or relating to, this Agreement or the breach thereof, which the parties do not promptly adjust and determine, said controversy shall be decided by arbitration administered by and in accordance with the Construction Industry Arbitration rules of the American Arbitration Association then obtaining unless the parties agree otherwise. This Agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in any Court having Jurisdiction thereof. This Agreement to arbitrate, however, shall not apply to any controversy, suit, or claim asserted by **Bailey Fence Company, Inc.** by which **Bailey Fence Company, Inc.** seeks to enforce only collection of the contract price referred to on the face of the Agreement and as to which Owner raises no affirmative defense (or counter-claims) based upon alleged acts or omissions of **Bailey Fence Company, Inc.**

