



**PREPARED FOR**

Melanie Koslow

Mt Diablo Unified School District

(925) 596-0446

koslowm@mdusd.org

08/10/2023

College Park HS-Softball  
Field-Upgrades

***Project Number*** 1-7-23665

CMAS 4-20-78-0089C

Contact

Scott Day  
1800 E. McFadden Ave.  
Santa Ana, CA  
925-404-9634

Scott.Day@theKYAgroup.com

Pages 6

CA LICENSE #984827 B + C15

DIR #1000003379



Proposal: 1-7-23665  
To: Mt Diablo Unified School District  
1936 Carlotta Drive  
Concord  
California  
94519

Date: August 10, 2023  
Terms: Net 30  
CMAS 4-20-78-0089C

c/o: Mt Diablo Unified School District  
RA: Scott Day  
RA Phone: 925-404-9634  
RA Email: Scott.Day@theKYAgroup.com  
Site: College Park High (Mt. Diablo Unified)  
Address: 201 Viking Dr.,  
94523

Site Qualifications and General Scope of Work

DIR # 1000003379

Scope of work  
Supply and Apply 350 lf of home run fence with windscreen  
Supply 2 foul poles  
Supply and apply chain link fence at dugouts .  
Supply and apply windcreens at dugout with logos  
Supply and apply fence top-rail protection  
  
Priced for all work to be performed Monday-Friday, 6:00am-5:00pm excluding holidays  
Priced per CMAS  
KYA Pays prevailing wages

Notes: Sales tax rate will be based upon the shipping address. Price is good for 30 days from date of quote.

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# SCOPE OF WORK - PRICING

College Park HS-Softball Field-Upgrades	Quantity	U/M	Price	Value
<u>ELE-STC-8FG- FENCE TOP GUARD (7' LENGTH) (SET OF 12)</u>	5.00	EA	\$220.89	\$1,104.45
<u>ELE-CFC-ITOOOL- POLYCAP FENCE TOP PROTECTION INSTALLATION TOOL</u>	4.00	EA	\$103.08	\$412.32
<u>ELE-CFC-TIESBK-POLYCAP FENCE TOP PROTECTION 19" TIE</u>	5.00	EA	\$57.43	\$287.15
<u>ELM01CL001-ELEMENTS GALVANIZED CHAIN LINK FENCING</u>	7.00	EA	\$168.41	\$1,178.87
<u>ELM01CL002- ELEMENTS GALVANIZED METAL TOP RAIL</u>	350.00	EA	\$29.91	\$10,468.50
<u>ELE-1C-2 7/8" O.D. GALV. SCHED 40 CORNER POST</u>	20.00	EA	\$1,133.20	\$22,664.00
<u>ELM01CL004- ELEMENTS GALVANIZED STEEL FENCE LINE POST</u>	60.00	EA	\$34.54	\$2,072.40
<u>ELM01CL005- ELEMENTS GALVANIZED METAL BRACE BAND</u>	500.00	EA	\$2.85	\$1,425.00
<u>ELM01CL006-ELEMENTS GALVANIZED METAL CARRIAGE BOLT/</u>	25.00	EA	\$13.29	\$332.25
<u>ELE-WSCRN-6- WIND SCREEN PREMIUM (14 OZ. VINYL COAT</u>	2,400.00	SF	\$1.11	\$2,664.00
<u>ELE-PCT-100- PLASTIC CABLE TIES WIND SCREEN (BLACK)</u>	200.00	EA	\$16.20	\$3,240.00
<u>ELE-SBFP-40-WT- FOUL POLES 40' SOFTBALL (PROFESSIONAL</u>	1.00	EA	\$11,337.25	\$11,337.25
<u>ELE-FPS-40-GROUND SLEEVES (40' POLE) ? FOUL POLE (P</u>	2.00	EA	\$1,232.55	\$2,465.10
<u>RMIXCON- READY MIX CONCRETE</u>	100.00	CY	\$217.61	\$21,761.00
<u>ELE-4 BOTTON RAIL</u>	350.00	LF	\$29.20	\$10,220.00
<u>Carpenter Journeyman</u>	288.00	HRS	\$128.25	\$36,936.00
<u>Bonding</u>	1.00	EA	\$1,342.77	\$1,342.77
			<b>Total Price</b>	<b>\$129,911.06</b>

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*This is a legal agreement - please read carefully  
Complete and Initial all pages*

**Proposal Number 1-7-23665**



# CONDITIONS AND WARRANTY

1) Proposal:

The above proposal is valid for 30 days from the date first set forth above. After 30 days, we reserve the right to increase prices due to the rise in cost of raw materials, fuel or other cost increases. When applicable, KYA Services LLC reserves the right to implement a surcharge for significant increases in raw materials, including, but not limited to; fuel, and materials. Due to the duration of time between proposals, contracts and final furnishing, KYA Services LLC reserves the right to implement this surcharge when applicable.

Any job that is accepted prior to December 31st of the current year and scheduled to install after December 31st of the current year is subject to price increase

2) Purchase:

By executing this proposal, or submitting a purchase order pursuant to this proposal (which shall incorporate the terms of this agreement specifically by reference) which is accepted by KYA Services LLC. (the "Company"), the purchaser identified above ("you" or the "Purchaser") agrees to purchase the materials and the services to be provided by the "Company", as detailed in the Pricing and "General Scope of Work" sections in this agreement, above.

3) Standard Exclusions:

Unless specifically included, this agreement does not include, and Company will not provide services, labor or materials for any of the following work: (a) removal or disposal of any material containing asbestos or any hazardous materials as defined by the EPA; neither we nor our installers are responsible for the handling, removal or abatement of asbestos contained floor material or adhesive. Further, our policy is to request an Asbestos Hazard Emergency Response Act (AHERA) report prior to proceeding with any floor material or floor adhesive removal. We and our installers consider it the owners responsibility to produce this report prior to executing this contract. (b) moving Owner's property around the installation site. (c) repair or replacement of any Purchaser or Owner- supplied materials. (d) repair of concealed underground utilities not located on prints, supplied to Company by Owner during the bidding process, or physically staked out of by the Owner, and which are damaged during construction; or (e) repair of damage to existing surfaces that could occur when construction equipment and vehicles are being used in the normal course of construction.

4) Insurance Requirements:

Company is not required to provide any insurance coverage in excess of Company's standard insurance. A copy of the Company's standard insurance is available for your review prior to acceptance of the Company's proposal.

5) Payment:

Terms of payment are defined in the "Pricing" details section and are specific to this contract. For purposes of this agreement, "Completion" is defined as being the point at which the materials have been furnished. In any event where Completion cannot be effected due to delays or postponements caused by the Purchaser or Owner, final payment (less 10% retainage) is due within 30 days of the date when the Completion was scheduled, had the delay not occurred. All payments must be made to KYA Services LLC 1800 E McFadden Ave, Santa Ana, CA 92705. If the Purchaser or Owner fails or delays in making any scheduled milestone payments, the Company may suspend the fulfillment of its obligations hereunder until such payments are made, or Company may be relieved of its obligations hereunder if payment is more than 60 days past due. Company may use all remedies available to it under current laws, including but not limited to filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt.

6) Lien Releases:

Upon request by Owner, Company will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner, Company will provide a full release of liens upon receipt of final payment. In accordance with state laws, Company reserves the right to place a lien on the property if final payment has not been received 10 days prior to the filing deadline for liens.

7) Site Plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings and Surveying:

Site plan approval, permits, permit fees, plans, engineering drawings and surveying are specifically excluded from this agreement and the Services unless specified under the "General Scope of Work". The Company does not in any way warrant or represent that a permit or site plan approval for construction will be obtained. Sealed engineered drawings that are required but not included in the "General Scope of Work" will result in additional cost to Purchaser.

8) Manufacturing and Delivery:

Manufacturing lead-time and delivery varies depending on the product purchased.

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*Proposal Number 1-7-23665*



9) Returned Product, Deposits and/ or Cancelled Order:

From date of shipment from our facility, all returned product(s) and cancelled orders are subject to a 50% restocking fee. No returns are available following this date. All deposits are non-refundable.

10) Concealed Conditions:

“Concealed conditions” include, without limitation to, water, gas, sprinkler, electrical and sewage lines, post tension cables, and steel rebar. Observations that were able to be made either by visual inspection or by drawings and/or plans submitted by Owner at the time this agreement was approved. If additional Concealed Conditions are discovered once work has commenced which were not visible at the time this proposal was approved, Company will stop work and indicate these unforeseen Concealed Conditions to Purchaser or Owner so that Purchaser and Company can execute a change order for any additional work. In any event, any damage caused by or to unforeseen Concealed Conditions is the sole responsibility of the Purchaser and Company shall not be held liable for any such damage. Soil conditions are assumed to be soil that does not contain any water, hard rock (such as limestone, caliche, etc.), rocks bigger than 4inches in diameter or any other condition that will require additional labor, equipment and/or materials not specified by the purchaser or Owner in the bidding process.

Any condition requiring additional labor, equipment, and/or materials to complete the drilling or concrete operations will require a change order before Company will complete the process. Any variation will incur additional charges.

11) Changes in the Work:

During the course of this project, Purchaser may order changes in the work (both additions and deletions). The cost of these changes will be determined by the Company, and a change order must be completed and signed by both the Purchaser and the Company, which will detail the “General Scope of the Change Order”. Should any change be essential to the completion of the project, and the Purchaser refuses to authorize such change order, then Company will be deemed to have performed its part of the project, and the project and Services will be terminated. Upon such termination, Company will submit a final billing to Purchaser for payment, less labor allowance for work not performed but including additional charges incurred due to the stoppage. No credit will be allowed for materials sold and supplied, which will remain the property of the Purchaser.

12) Warranty; Limitations of Liability:

Company warrants that all Company-supplied labor and Services will be performed in a good and workmanlike manner. Purchaser shall notify the Company in writing detailing any defects in Service for which a warranty claim is being made.

COMPANY SHALL NOT IN ANY EVENT BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR LIQUIDATED DAMAGES IN ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INTENDED CONDUCT OR OTHERWISE, INCLUDING WITHOUT LIMITATION, DAMAGES RELATING TO LOSS OF PROFITS, INCOME OR GOODWILL, REGARDLESS OF WHETHER COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL COMPANY’S LIABILITY FOR MONETARY DAMAGES UNDER THIS AGREEMENT EXCEED THE FEES PAID OR DUE AND PAYABLE FOR THE SERVICE UNDER THIS AGREEMENT (OR RELEVANT PURCHASE ORDER).

The warranties or the materials are contained in a separate document between Company and the ultimate Owner of the materials, which will be provided to Owner at the time of completion of work.

13) Indemnification:

To the fullest extent permitted by law. Purchaser shall indemnify, defend and hold harmless the Company and its consultants, agents and employees or any of them from and against claims, damages, losses and expenses, including but not limited to attorney’s fees, relating to furnishing of the materials or performance of the Services, provided that such claim, damage, loss or expense is attributable to bodily injury to, sickness, disease or death of a person, or injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Purchaser or its agents, employees, or subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in Section 13.

14) Delegation: Subcontractors:

The Services and furnishing of materials may be performed by subcontractors under appropriate agreements with the Company

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15) Force Majeure: Impracticability:

The Company shall not be charged with any loss or damage for failure or delay in delivering or furnishing of materials when such failure or delay is due to any cause beyond the control of the Company, due to compliance with governmental regulations, or orders, or due to any acts of God, lockouts, slowdowns, wars or shortages in transportation, materials or labor.

16) Dispute Resolution:

Any controversy or claim arising out of or related to this agreement must be settled by binding arbitration administered in Santa Ana, CA by a single arbitrator selected by the parties or by the American Arbitration Association, and conducted in accordance with the construction industry arbitration rules. Judgement upon the award may be entered in any court having jurisdiction thereof.

17) Entire Agreement; No Reliance:

This agreement represents and contains the entire agreement between the parties. Prior discussion or verbal representations by the parties that are not contained in this agreement are not part of this agreement. Purchaser hereby acknowledges that it has not received or relied upon any statements or representations by Company or its agents which are not expressly stipulated herein, including without limitation any statements as to the materials, warranties or services provided hereunder.

18) No Third-Party Beneficiaries:

This agreements creates no third party rights or obligations between Company and any other person, including any Owner who is not also a Purchaser. It is understood and agreed that the parties do not intend that any third party should be a beneficiary of this agreement.

19) Governing Law:

This agreement will be constructed and enforced in accordance with the laws of the State of California.

20) Assignment:

Purchaser may not assign this agreement, by operation of law or otherwise, without the prior written consent of the Company. The agreements shall be binding upon and ensure to the benefit of the Company and the Purchaser, and their successors and permitted assigns.

Executed to be effective as of the date executed by the Company:

KYA Services LLC

Accepted by:

Signature:	Signature:	<i>Scott Day</i>
By: (Print)	By: (Print)	Scott Day
Title:	Title:	Regional Advisor
Date:	Date:	August 10, 2023

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