

## **AGREEMENT FOR CONSTRUCTION SERVICES (SMALL PROJECTS)**

**THIS CONTRACT** is made and entered into this **18<sup>th</sup> DAY of October 2023**, by and between **MORGAN FENCE CO., INC.** ("Contractor") and **SOLANO COMMUNITY COLLEGE DISTRICT** ("District") ("Contract").

1. The Contractor shall furnish to the District for a total price of **FIFTY-THREE THOUSAND SIX HUNDRED NINETY-FIVE DOLLARS AND 00/100 (\$ 53,695.00)** ("Contract Price"), the following services ("Services" or "Work"):
  - a. See attached 'Exhibit A' for full scope of work.
2. Contractor shall perform the Work at Solano Community College's Vacant Lot in Vacaville CA, 95688 (Property is located adjacent to Nut Tree Airport) ("Site"). The Project is the scope of Work performed at the Site.
3. Work shall be started on **October 18<sup>th</sup>, 2023** and completed by **November 17<sup>th</sup>, 2023** ("Contract Time"). All work shall be coordinated with District Representative, and shall be scheduled to not have a negative impact on class instruction.

It is understood and agreed that the Work shall be performed and completed as required in the Contract Documents (as defined herein) including, without limitation, the Drawings and Specifications and submission of all documents required to secure funding or by the Division of the State Architect ("DSA") for close-out of the Project, under the direction and supervision of, and subject to the approval of, the District or its authorized representative.

4. This Contract incorporates by this reference the Terms and Conditions attached hereto. Contractor, by executing this Contract, agrees to comply with all the Terms and Conditions.

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5. This Contract incorporates by this reference the Contract Documents attached hereto. Contractor, by executing this Contract, agrees to comply with all obligations set forth in the Contract Documents. The Contract Documents include only the following documents, as indicated:

<input type="checkbox"/> Notice to Bidders	<input checked="" type="checkbox"/> Lead-Product(s) Certification
<input type="checkbox"/> Instructions to Bidders	<input type="checkbox"/> Roofing Project Certification
<input type="checkbox"/> Bid Form and Proposal	<input type="checkbox"/> Registered Subcontractor List
<input type="checkbox"/> Bid Bond	<input checked="" type="checkbox"/> Insurance Certificates and Endorsements
<input checked="" type="checkbox"/> Non-collusion Declaration	<input checked="" type="checkbox"/> Performance Bond
<input type="checkbox"/> Iran Contracting Act Certification	<input checked="" type="checkbox"/> Payment Bond
<input type="checkbox"/> Designated Subcontractors List	<input type="checkbox"/> Specifications
<input type="checkbox"/> Notice to Proceed	<input type="checkbox"/> Plans
<input checked="" type="checkbox"/> Prevailing Wage Certification	<input type="checkbox"/> Special Conditions
<input checked="" type="checkbox"/> Workers' Compensation Certification	<input checked="" type="checkbox"/> Exhibit "A" ("Scope of Work")
<input type="checkbox"/> Drug-Free Workplace Certification	<input type="checkbox"/> <u>Federal Debarment Certification</u>
<input type="checkbox"/> Tobacco-Free Environment Certification	<input type="checkbox"/> COVID-19 Vaccination / Testing Certification
<input checked="" type="checkbox"/> Asbestos & Other Hazardous Materials Certification	<input type="checkbox"/> Registered Subcontractor List

6. Contractor shall not commence the Work under this Contract until the Contractor has submitted and the District has approved the performance bond, payment (labor and material) bond, the certificate(s) and the endorsement(s) of insurance required under the Terms and Conditions and the District has issued a Notice to Proceed.
7. Payment for the Work shall be made in accordance with the Terms and Conditions.
8. The Design Professional In General Responsible Charge for the Project is Not Applicable ("Architect"), the construction manager on the Project is Not Applicable ("Construction Manager"), and the project inspector on the Project is Not Applicable ("Project Inspector"). Contractor hereby acknowledges that the Architect, the Construction Manager, the Project Inspector, and the Division of the State Architect have authority to approve and/or suspend Work if the Contractor's Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. No work shall be carried on except with the knowledge and under the inspection of said Project Inspector. Project Inspector shall have free access to any or all parts of work at any time. Contractor shall furnish Project Inspector reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector fully informed respecting progress, manner of work, and character of materials. The Contractor shall be liable for any delay caused by its non-compliant Work or its failure to provide proper notification for inspection.
9. Inspection and acceptance of the Work shall be performed by the District.
10. Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid,

return receipt required, or sent by overnight delivery service, or facsimile or email, addressed as follows:

**District**

Solano Community College District  
ATTN: Noe Ramos - Kitchell  
4000 Suisun Valley Road  
Fairfield CA, 94534  
[Noe.ramos@solano.edu](mailto:Noe.ramos@solano.edu)

**Contractor**

Morgan Fence Co., Inc.  
ATTN: Joel Morgan  
4160 Suisun Valley Rd. Ste E – PMB 554  
Fairfield, CA 94534  
[joel@morganfencecompany.com](mailto:joel@morganfencecompany.com)

Any notice personally given or sent by facsimile or email shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

11. Contractor shall guarantee all labor and material used in the performance of this Contract for a period of one (1) year from the date of the District's written approval of the Work.
12. Each party has the full power and authority to enter into and perform this Contract, and the person signing this Contract on behalf of each party has been properly authority and empowered to enter into this Contract.
13. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct.

ACCEPTED AND AGREED on the date indicated below:

Dated: \_\_\_\_\_, 2023

**Solano Community College District**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Dated: \_\_\_\_\_, 2023

**Morgan Fence Co., Inc.**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

License No.: \_\_\_\_\_

Registration No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

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**Information regarding Contractor:**

Type of Business Entity:

- ☐ Individual  
☐ Sole Proprietorship  
☐ Partnership  
☐ Limited Partnership  
☐ Corporation, State: \_\_\_\_\_  
☐ Limited Liability Company  
☐ Other: \_\_\_\_\_

\_\_\_\_\_  
Employer Identification and/or  
Social Security Number

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.**

## **TERMS AND CONDITIONS TO CONTRACT**

**NOTICE TO PROCEED:** District shall provide a Notice to Proceed to Contractor pursuant to the Contract at which time Contractor shall proceed with the Work.

**STANDARD OF CARE:** Contractor shall perform, diligently prosecute and complete the Work in a good and workmanlike manner within the Contract Time, and in strict conformity with all Contract Documents.

**SITE EXAMINATION:** Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. By submitting its quote, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site.

**PERMITS, LICENSES AND REGISTRATION:** Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses, registration and permits as are required by law, in connection with the furnishing of materials, supplies, or services herein listed.

**PROJECT INSPECTION CARD:** Contractor shall verify that forms DSA 152 Project Inspection Card (or current version) are issued for the Project prior to commencement of construction.

**NOTIFICATION:** Contractor shall notify the Architect and Project Inspector, in writing, of the commencement and completion of construction of each and every aspect of the work at least 48 hours in advance by submitting form DSA 156 (or current version) to the Project Inspector. Forms are available on the DSA's website at: <http://www.dgs.ca.gov/dsa/Forms.aspx>.

**LABOR, MATERIALS AND EQUIPMENT:** Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the Work specifications attached hereto. Unless otherwise specified, all materials shall be new and previously unused, and of the manufacturer's latest model or the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

**SUBSTITUTIONS:** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the District. Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute, as well as any costs that the District incurs for professional services, including DSA fees. District may deduct those costs from any amounts owing to Contractor for the review of the request for substitution, even if the request for substitution is not approved. Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one-hundred percent (100%) of the net difference between the substitute and the originally specified material.

**INDEPENDENT CONTRACTOR STATUS:** While engaged in carrying out the Services of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the District. Contractor shall be solely responsible for its own Workers' Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

**CONTRACTOR SUPERVISION:** Contractor shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

**WORKERS:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the District.

**SUBCONTRACTORS:** Subcontractors, if any, engaged by the Contractor for any Service or Work under this Contract shall be subject to the approval of the District. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's

work, including, without limitation, all registration, indemnification, insurance, bond, and warranty requirements. If Contractor shall subcontract any part of this Contract, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the District.

**SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.

**LEAD-BASED PAINT:** Pursuant to the Lead-Safe Schools Protection Act (Education Code section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Pursuant to the Renovation, Repair and Painting Rule (title 40 of the Code of Federal Regulations part 745 (40 CFR 745)), all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area or greater outdoors must be trained by an EPA-accredited provider and certified by the EPA. Contractor must execute the Lead-Based Paint Certification, if applicable.

**GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES:**

- 15.1 Contractor acknowledges that all California community college districts are obligated to develop and implement the following requirements for the discharge of storm water to surface waters from its construction and land disturbance activities pursuant to the Clean Water Act and Porter Cologne Water Quality Act. District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit. District has filed certain submittals referred to as Permit Registration Documents ("PRDS") with the Regional Water Control Board ("Storm Water Pollution Prevention Plan" or "SWPPP").
- 15.2 Contractor shall comply with any District SWPPP that is approved by the District and applicable to the Project, at no additional cost to the District. Contractor shall pay any fees and any penalties that may imposed by a regulatory agency for its non-compliance with the SWPPP during the course of Work.
- 15.3 Contractor shall provide a Qualified Storm Water Practitioner ("QSP") at no additional cost to the District, who shall be onsite and implement and monitor any and all SWPPP requirements applicable to the Project, including but not limited to:
  - 15.3.1 All required visual observations, sampling, analysis, reporting and record keeping, including any Numeric Action Levels ("NALs"), if applicable;
  - 15.3.2 Rain Event Action Plan ("REAP") at least forty eight (48) hours prior to any forecasted rain event requiring implementation of the REAP, including any erosion and sediment control measures needed to protect all exposed portions of the site, if applicable;
  - 15.3.3 Active Treatment System ("ATS"), if applicable; and
  - 15.3.4 Best management practices ("BMPs").

**CLEAN UP:** Debris shall be removed from the Site. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

**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.

**FORCE MAJEURE:** The Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, products,

plants, or facilities by the government, when satisfactory evidence thereof is presented to the District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Contractor.

**CORRECTION OF ERRORS:** Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions that are caused by the Contractor's failure to comply with the approved plans and specifications and the standard of care required herein. Schedule delays resulting from unauthorized work shall be Contractor's responsibility.

**NO RELIEF FROM OBLIGATIONS BASED ON REVIEW BY OTHER PERSONS:** Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by act or omission of the District, Architect, Construction Manager, Project Inspector, or DSA or other entities having jurisdiction including, but not limited to, administration of the Contract, review of submittals, or by tests, observation, inspection, or permit/interconnection approvals.

**DISTRICT'S RIGHT TO PERFORM WORK:** If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this Contract, the District, after **FORTY-EIGHT (48)** hours' written notice to the Contractor, may make good such deficiencies, without prejudice to any other remedy it may have, including but not limited to the District hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Construction Change Directive, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) otherwise due to Contractor.

**ACCESS TO WORK:** District representatives, Architect, and Project Inspector shall at all times have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

**OCCUPANCY:** District reserves the right to occupy buildings at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall such occupancy extend the date specified for completion of the Work.

**PAYMENT:** On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Contract as of the date of submission ("Application for Payment"). Within thirty (30) days after District's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The District may withhold or deduct from any payment an amount necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop payment notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (11) any other sums which the District is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107, 7200 and 7201.

**CHANGE IN SCOPE OF WORK:** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the District. Contractor

specifically understands, acknowledges, and agrees that the District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide the District with all information requested to substantiate the cost of the change order and to inform the District whether the Work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

#### **INDEMNIFICATION:**

- 26.1 To the furthest extent permitted by California law, Contractor shall indemnify and hold harmless the District, its agents, representatives, officers, consultants, employees, and volunteers (the "Indemnified Parties") from any and all demands, damages, injuries, losses, expenses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising from, arising out of, connected with, or resulting from, in whole or in part, the performance of this Contract unless the claims are caused wholly by the sole or active negligence or willful misconduct of the Indemnified Parties and/or defects in design furnished by the Architect, as found by a court or arbitrator of competent jurisdiction, in which case the Contractor's indemnification and hold harmless obligation shall be reduced by the proportion of the Indemnitees' and/or Architect's liability.
- 26.2 Contractor shall also, to the furthest extent permitted by California law, defend the Indemnified Parties at Contractor's own expense, including attorneys' fees and costs, from any and all claims directly or indirectly arising from, arising out of, connected with, or resulting from the performance of this Contract unless the claims are caused wholly by the sole or active negligence or willful misconduct of the Indemnified Parties and/or defects in design furnished by the Architect, as found by a court or arbitrator of competent jurisdiction, in which case, without impacting Contractor's obligation to provide an immediate and ongoing defense of the Indemnified Parties, the Contractor's defense obligation shall be retroactively reduced by the proportion of the Indemnitees' and/or Architect's liability. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the District.
- 26.3 Pursuant to Public Contract Code section 9201, the District shall provide timely notification to Contractor of the receipt of any third-party claim relating to this Contract. The District shall be entitled to recover its reasonable costs incurred in providing said notification.
- 26.4 If the Indemnitees provide their own defense due to failure to timely respond to tender of defense, rejection of tender of defense, or conflict of interest of proposed counsel, Contractor shall reimburse Indemnitees for any expenditures, including reasonable attorney's fees and costs.
- 26.5 The District may retain so much of the moneys due the Contractor as shall be considered necessary, until disposition of any such suit, claims or actions for damages or until the District has received written agreement from the Contractor that it will unconditionally defend the Indemnified Parties, and pay any damages due by reason of settlement or judgment.
- 26.6 The Contractor's defense and indemnification obligations hereunder shall survive the completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

**PAYMENT BOND AND PERFORMANCE BOND:** Contractor shall not commence the Work until it has provided to the District, in a form acceptable to the District, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the District.

## CONTRACTOR'S INSURANCE:

- 28.1 The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits not less than the amount indicated below. If Contractor normally carries insurance in an amount greater than the minimum amounts required by District, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Contractor hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.

Type of Coverage	Minimum Requirement
<b>Commercial General Liability Insurance</b> , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Automobile Liability Insurance - Any Auto</b> Each Occurrence General Aggregate	 \$ 1,000,000 \$ 2,000,000
<b>Workers' Compensation</b>	Statutory Limits
<b>Employer's Liability</b>	\$ 1,000,000

- 28.1.1 **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

- 28.1.2 **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Contract are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

- 28.2 **Proof of Insurance.** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

- 28.2.1 A clause stating: "This policy shall not be canceled until notice has been mailed to the District, stating date of cancellation. Date of cancellation shall not be less than thirty (30) days after date of mailing notice."

- 28.2.2 Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation notice will be sent, and length of notice period.

- 28.2.3 An endorsement stating that the District and its Governing Board, agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, and Employers' Liability Insurance.

28.2.4 All policies except the Workers' Compensation Insurance, and Employers' Liability Insurance Policies shall be written on an occurrence form.

28.2.5 An endorsement stating that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

28.2.6 An endorsement stating that there shall be a waiver of any subrogation.

28.2.7 Contractor's insurance limit shall apply separately to each insured against whom a claim is made or suit is brought.

28.3 **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

**WARRANTY/QUALITY:** Unless a longer warranty is called for elsewhere in the Contract Documents, the Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from filing the Notice of Completion with the county in which the Site is located. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

**CONFIDENTIALITY:** The Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Contractor's Work to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

**LIMITATION OF DISTRICT LIABILITY:** District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, or lost bonding capacity, arising out of or in connection with this Contract for the services performed in connection with this Contract.

**COMPLIANCE WITH LAWS:** Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising therefrom.

**COVID-19 SAFETY REQUIREMENTS:** Contractor shall, at its cost, timely comply with all applicable federal, State, and local requirements relating to COVID-19 or other public health emergency/epidemic/pandemic. Further, except to the extent the Order provides otherwise, Contractor and Contractor's personnel, subcontractors and suppliers shall continue to comply with all applicable terms in the California Department of Public Health's State Public Health Officer Orders.

**LABOR CODE REQUIREMENTS:** Contractor represents that Contractor and all Subcontractors shall not be presently debarred, suspended, proposed for disbarment, declared ineligible or excluded pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7. The Contractor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the District or available online at <http://www.dir.ca.gov/>. In addition, the Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful

failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

- 34.1 **Registration:** Contractor and its subcontractor(s) shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 and in accordance with Labor Code section 1771.1.
- 34.2 **Registered Subcontractor List:** Within 30 days of the award of contract or prior to commencing the Work under this Contract, whichever occurs first, Contractor shall provide District all information required by Labor Code section 1773.3, as amended by Stats. 2017, Ch. 28, Sec. 21, for Company and all tiers of Subcontractors to enable District to provide notice to the Department of Industrial Relations (DIR) of the Contract (PWC-100 form). Contractor shall submit and maintain an updated Registered Subcontractor List including all Subcontractors of any tier furnishing labor, material, or equipment to the Project.
- 34.3 **Certified Payroll Records:** Contractor and its subcontractor(s) shall upload certified payroll records ("CPR") electronically using California Department of Industrial Relations' (DIR) eCPR System by uploading the CPRs by electronic XML file or entering each record manually using the DIR's iform (or current form) online directly to the DIR on no less than every 30 days while Work is being performed and within 30 days after the final day of Work performed on the Project, and within ten (10) days of any request by the District or Labor Commissioner at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html> or current application and URL, 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 the Contractor and/or each subcontractor in connection with the Work.
- 34.4 **Labor Compliance:** Contractor shall perform the Work of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.

**ANTI-DISCRIMINATION:** Contractor herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Contractor and all of its subcontractors. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

**ANTI-TRUST CLAIM:** Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

**CONTRACTOR CLAIMS:** In the event of any demand by Contractor for (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the District under the Contract, (B) payment by the District of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Contractor is not otherwise entitled to, or (C) an amount of payment disputed by the District, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part, 3, Division 2, of the Public Contract Code, if applicable, the provisions of which are each attached hereto and incorporated herein by this reference. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, the Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor's right to

bring a civil action against the District. For purposes of those provisions, the running of the time within which a claim must be presented to the District shall be tolled from the time the Contractor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Contractor and its subcontractors shall continue to perform the Work under the Contract, including the disputed work, and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of the District.

**ATTORNEY FEES/COSTS:** Should litigation be necessary to enforce any terms or provisions of this Contract, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

**TERMINATION:** If Contractor fails to perform the Services and Contractor's duties to the satisfaction of the District, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates any of the terms or provisions of this Contract, District shall have the right to terminate this Contract and/or Contractor's right to perform the Work of the Contract for cause effective immediately upon the District giving written notice thereof to the Contractor. The Contractor and its performance bond surety, if any, shall be liable for all damages caused to the District by reason of the Contractor's failure to perform and complete the Contract. District shall also have the right in its sole discretion to terminate the Contract and/or Contractor's right to perform the Work of the Contract for its own convenience upon District giving three (3) days' written notice thereof to the Contractor. In case of a termination for convenience, Contractor shall be paid for the actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise. 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. In the event termination for cause is determined to have not been for cause, the termination shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

**ASSIGNMENT OF CONTRACT:** Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District.

**TIME IS OF THE ESSENCE:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

**CALCULATION OF TIME:** For the purposes of this Contract, "days" refers to calendar days unless otherwise specified.

**GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which the District administration office is located.

**BINDING CONTRACT:** This Contract shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

**DISTRICT WAIVER:** District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

**CAPTIONS AND INTERPRETATIONS:** Paragraph headings in this Contract are used solely for convenience, and shall be wholly disregarded in the construction of this Contract. No provision of this Contract shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Contract shall be construed as if jointly prepared by the parties.

**INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

**PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

**ENTIRE CONTRACT:** This Contract sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements, understandings, written or oral, between the parties hereto pertaining to the subject matter thereof.

**NO ORAL MODIFICATIONS:** No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract.

### **Public Contract Code section 9204**

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date.

## **Public Contract Code sections 20104 – 20104.6**

### **§ 20104.**

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

### **§ 20104.2.**

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

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

**§ 20104.4.**

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

**§ 20104.6.**

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

## **EXHIBIT "A"**

### **SCOPE OF WORK**

Consultant's entire Proposal is **not** made part of this Agreement.

Scope of work includes, but is not limited to the following;

- Installation of 205 lineal feet of 6 foot tall 11-gauge Galvanized Chain-Link Fence.
- Installation of a 22 foot wide by 6 foot tall double swing gate.
- Posts will be spaced every 10 feet or less, in concrete.
- Includes a tension wire at top and bottom of fence.
- Spoils from excavation will be spread out on site next to post holes.
- Includes Prevailing Wage
- Includes Payment and Performance Bonds.

Fence Installation Location:





**NONCOLLUSION DECLARATION**  
**Public Contract Code Section 7106**

TO BE EXECUTED BY CONTRACTOR AND SUBMITTED WITH CONTRACT

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_,  
(Title) (Bidder Name)  
the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bid or any other bid, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bid. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_.

(City, State)

Proper Name of Bidder: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PREVAILING WAGE CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project, including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

### **WORKERS' COMPENSATION CERTIFICATION**

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 by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his 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 the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: \_\_\_\_\_

Proper Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

(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.)

### **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 Hazardous Material"), 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. Contractor certifies that it is knowledgeable of, and shall comply with, all laws applicable to the Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work.

Date: \_\_\_\_\_

Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **LEAD-PRODUCT(S) CERTIFICATION**

California Occupational Safety and Health Administration (CalOSHA), Environmental Protection Agency (EPA), California Department of Health Services (DHS), California Community Colleges Chancellor's Office (CCCCO), and the Consumer Product Safety Commission (CPSC) regulate lead-containing paint and lead products.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **CONTRACTOR IS HEREBY NOTIFIED** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

Community college districts must utilize DHS lead-certified personnel when a lead-based hazard is identified. Examples of lead-certified personnel include: project designers, inspectors, and abatement workers. Furthermore, since it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials **(Including Title 8, California Code of Regulations, Section 1532.1)**. Any and all Work which may result in the disturbance of lead-containing building materials must be coordinated through the District.

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or in the modernization or renovation of any existing school facility. The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor.

All contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area or greater outdoors shall comply with the Renovation, Repair and Painting Rule, shall receive training from a U.S. EPA-accredited training provider, and shall be certified by the U.S. EPA. Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

If failure to comply with these laws, rules, and regulations results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom. If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

THE UNDERSIGNED HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT HE OR SHE HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY, AS WELL AS THE EXISTENCE OF APPLICABLE LAWS, RULES AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL OF, SUCH MATERIALS WITH WHICH IT MUST COMPLY. THE UNDERSIGNED ALSO WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE CONTRACTOR.

Date: \_\_\_\_\_

Name of Contractor: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**PERFORMANCE BOND**  
**(100% of Contract Price)**

**(Note: Contractor must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **Solano Community College District** ("District") and **Morgan Fence Co., Inc.** ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project: **Vacaville Property Fence Project** ("Project" or "Contract") which Contract dated **October 18<sup>th</sup>, 2023**, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

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

NOW, THEREFORE, the Principal and \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ("Surety")  
are held and firmly bound unto the Board of the District in the penal sum of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_  
\_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Promptly perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

Or, at the District's sole discretion and election, the Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Contract Price," and to pay and perform all obligations of Principals under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the District under the Contract and any modifications thereto, less the amount previously paid by the District to the Principal, less any withholdings by the District allowed under the Contract. District shall not be required or obligated to accept a tender of a completion contractor from the Surety for any or no reason.

The condition of the obligation is such that, if the above bound Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

Surety expressly agrees that the District may reject any contractor or subcontractor proposed by Surety to fulfill its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Work nor shall Surety accept a Bid from Principal for completion of the Work if the District declares the Principal to be in default and notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

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 thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond. The Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond by any overpayment or underpayment by the District that is based upon estimates approved by the Architect. The Surety does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal	Surety
By	By
	Name of California Agent of Surety
	Address of California Agent of Surety
	Telephone No. of California Agent of Surety

**Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT

**PAYMENT BOND**  
**Contractor's Labor & Material Bond**  
**(100% Of Contract Price)**

**(Note: Contractor must use this form, NOT a surety company form.)**

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **Solano Community College District**, ("District") and **Morgan Fence Co., Inc.**, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

**Vacaville Property Fence Project** ("Project" or "Contract") which Contract dated August 22<sup>nd</sup>, 2023, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and \_\_\_\_\_ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of its subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or any of its subcontractors of any tier under Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal	Surety
By	By
	Name of California Agent of Surety
	Address of California Agent of Surety
	Telephone No. of California Agent of Surety

**Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

END OF DOCUMENT