

CONTRACT (Attachment D)

I. This Contract (“Contract”) is made on [REDACTED], 2023 (“Effective Date”) between Wayland Union School District, Wayland, Michigan, a Michigan public school district (the “School District”), whose administrative offices are located at 850 E. Superior Street, Wayland, Michigan, 49348, and [REDACTED] (“Contractor”), whose address is [REDACTED]. The School District and Contractor may each be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

A. The School District issued a Request for Proposal (RFP) #WUS 2023-04 for the purpose of obtaining proposals from qualified contractors for Softball and Baseball Fencing, as amended by [None] (collectively the “RFP”), identified in the RFP in accordance with the terms and conditions contained in the RFP and the Specifications attached thereto (the “Work”).

B. In response to the RFP, the Contractor submitted to the School District a Proposal dated June 6, 2023, to perform the Work contemplated by the RFP.

C. The Parties have, in accordance with the provisions of the RFP, conducted negotiations concerning the Contractor’s Proposal to the RFP. The Contractor’s Proposal together with written clarifications of the Parties, if any, are attached hereto, incorporated by reference and marked as Attachment A (collectively referred to as the “Proposal”).

D. Pursuant to the terms of the RFP, the Contractor is required to enter into a written contract in accordance with the School District’s written acceptance of its Proposal

E. The Parties agree that certain terms, conditions, and provisions of the RFP and the Proposal must be further clarified and that certain additional terms and conditions need to be expressly set forth by way of this Contract.

Now therefore, in consideration of the foregoing and the mutual covenants set forth herein, the Parties agree as follows:

1. RESTATEMENT CONSTITUTES THE CONTRACT

- (a) Incorporation by Reference. The object of this Contract is to formalize in one document the complete agreement between the Parties, and to do so by specifically incorporating by

reference into this Contract the RFP, the Proposal and other related documents, and by including certain additional necessary or appropriate Contract terms, particularly where the Contract terms agreed to by the Parties during the RFP negotiation process do not correspond with the RFP and/or Proposal.

- (b) Order of Precedence. The Contract Documents, which are all incorporated herein by reference, include the following:

This Contract, including all Attachments hereto;  
The RFP, including the Specifications attached thereto; and  
Contractor's Proposal.

To the extent that the terms and conditions of the Contract documents are in conflict, the term and conditions shall be interpreted in the above-referenced order from 1 to 3. However, the Parties also agree that where there is not a conflict between any of the terms and conditions contained in the above-referenced Contract Documents, all of the Contract Documents shall be binding upon both Parties, except to the extent the exceptions contained in the Contractor's Proposal are not expressly accepted by the School District in writing and incorporated into this Contract.

## 2. TERM AND TERMINATION

- (a) This Agreement shall commence as the Effective Date **April 1, 2023** and all Work hereunder shall be completed per the RFP and shall be in compliance with all federal, state, and local laws.
- (b) Each Party shall have, in addition to all other remedies available to it, the right to terminate this Contract upon written notice to the other Party that the other Party has committed a material breach of any of its obligations herein and such material breach shall not have been cured or corrected within then (10) days following written notice of the same. Furthermore, in addition to the rights of the School District under this Paragraph if the School District must regularly request that the Contractor to cure breaches of this Contract, such circumstances shall be grounds for termination of this Contract for cause, even if each breach on its own would not be material. Upon termination of this Contract by the School District for breach or default of the Contractor pursuant to this Paragraph, the School District shall be entitled to exercise any other right, remedy, or privilege which may be available to it under applicable law or proceed by appropriate court action to enforce the terms of the Contract or to recover damages for the breach of this Contract. If this Contract is terminated in accordance with any of the provisions contained herein, all rights of the Contractor under this Contract shall cease. Regardless of the basis for termination, the School District shall neither be liable to, nor obligated to pay, the

Contractor for any incidental or consequential damages or lost profits, or costs incurred for Work not actually performed.

- (c) Notwithstanding anything contained herein to the contrary, the School District may amend this contract at any time as determined by building/facility use. Please note pickups will be reduced during shutdowns, school breaks, and any other reason that is not of the school district's control and all invoices will reflect pickups as those actually completed not as previously scheduled.
- (d) Notwithstanding anything contained herein to the contrary, the School District may terminate this Contract at any time and for any reason or no reason at all upon written notice to the Contractor.

### 3. WARRANTY

The Contractor warrants and represents that its Work, will be in accordance with all applicable federal, state, and local laws and regulations as is required for a landscape company providing fencing on public property.

### 4. INSURANCE

The Contractor shall maintain, at its expense, during the term of this Contract the following insurance:

- (a) Worker's Compensation Insurance with statutory limits and Employer's Liability Insurance with a minimum limit of \$1,000,000 each occurrence.
- (b) Comprehensive General Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, in the same amount made for bodily injury and property damage. The policy is to include products and completed operations, cross liability, broad form property damage, independent bidders, and contractual liability coverage. The policy shall be endorsed to provide thirty (30) days written notice to the School District of any material change of coverage, cancellation, or non-renewal of coverage.
- (c) If Subcontractors are likely to be used, the Comprehensive General Liability policy shall include coverage for independent contractors.
- (d) Automobile Liability insurance covering all owned, hired, and non-owned vehicles with personal protection insurance and property insurance to comply with the provisions of the Michigan no-fault Insurance Law, including residual liability insurance with a minimum

combine single limit of \$1,000,000 each occurrence of bodily injury and property damage.

- (e) All insurance policies shall be issued by companies licensed to do business in the State of Michigan. The companies issuing the policies must be domestic (on-shore) companies and have an A-rating by AM Best.
- (f) The Contractor shall be responsible for payment of all deductibles contained in any insurance policy required in this Contract.
- (g) Other requirements: Evidence of your insurance coverage, required herein, is to be provided to the School District and must indicate:
  - 1. A Best's rating for each of your insurance carrier at A-VII or better.
  - 2. Wayland Union Schools is endorsed as an additional insured on the General Liability policies.
  - 3. Provided annually to the School District for the life of the Contract.

## 5. CONTRACTOR'S COMPENSATION

Based upon the School District's RFP and the Contractor's Proposal, the School District shall pay the Contractor for its Work as follows:

- 1. A Performance and Payment Bond is not required.
- 2. The Contractor shall send invoices to the District for materials on-site, and then invoiced monthly for work-to-date, until complete for the total of the RFP as bid: \$?????.
- 3. Prices quoted are to be F.O.B. to the School District. All purchases shall be net; including transportation, insurance, and delivery charges fully prepaid by the successful Contractor to destinations indicated in the Proposal.

## 6. MISCELLANEOUS

- (a) Notices. All notices hereunder shall be in writing and shall be effective when sent by facsimile or electronic mail (provided, however, that any notice which could materially affect the rights of either Party shall also be sent by courier as provided herein) or a nationally known courier service such as DHL, Federal Express, United Parcel Service, or by the United States Postal Service with pre-paid special handing postage, addressed to the addresses written below, or to such other address as either Party may have last designated in writing in the manner herein provided. Such notice shall be deemed given when received, but in any event no later than four (4) days after sent by the internationally known courier. All notices shall be sent to the following address:

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the School District: Wayland Union Schools  
Attention: Assistant Superintendent of Finance and  
Operations  
850 E. Superior Street  
Wayland, MI 49348

- (b) Assignment. This Contract and any other interest herein may not be assigned or transferred, in whole or in part, by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withhold, and any assignment of transfer without such consent shall be null and void. This Contract shall be binding upon the successors, and subject to the above, assigns of either Party.
- (c) Severability. If any provision of this Contract is held invalid or unenforceable, the remainder of this Contract shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- (d) Independent Contractor; No Joint Venture. It is expressly agreed that Contractor is acting hereunder as an independent contractor and under no circumstances shall any of the employees of either Party be deemed the employees of the other for any purpose. This Contract shall not be construed as authority for either Party to act for the other Party in any agency or other capacity or to make commitments of any kind for the account of, or on behalf of, the other Party, except to the extent, and for the purposes, expressly provided for and set forth herein, and no partnership or join venture is created hereby.
- (e) Modification. No provision of this Contract or any Exhibit hereto may be modified without the prior written consent of both Parties.
- (f) Captions. The captions used in this Contract are for convenience only and shall not affect in any way the meaning or interpretation of the provision of this Contract.

- (g) Governing Law. This Contract shall be construed in accordance with, and its performance governed by, the laws of the State of Michigan. The Parties hereby agree to the exclusive jurisdiction and venue of courts sitting in Allegan County, Michigan.
- (h) Taxes. Contractor is responsible for sales taxes and any other applicable taxes related to the Work provided under this Contract.
- (i) Entire Agreement. This Contract and all Exhibits and documents incorporated herein by reference constitute the entire agreement between the Parties, and supersedes all previous agreements, whether written or oral.

IN WITNESS WHEREOF. The undersigned have caused this Contract to be duly executed on the dates indicated below.

SCHOOL DISTRICT:

CONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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