

**SUBSTITUTION REQUEST FORM**

To: **TOWN OF MORAGA, Owner**  
 [Enter Phone Number (\_\_\_\_) \_\_\_\_-\_\_\_\_]

<b>PROJECT: <u>MORAGA WAY AND CANYON/CAMINO PABLO IMPROVEMENTS PROJECT</u></b>  <b>TOWN CIP NO. 18-101</b> <b>FEDERAL PROJECT NO. CMSTPL – 5415 (014)</b>	<b>Contractor:</b>
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Substitution Request By:	Firm:
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Transmittal Record	Attn:	Firm:	Date Sent:	Date Rec'd:	Date Due:
Contractor to Owner					
Contractor to Architect					
Owner / Architect to Consultant					
Architect to Owner Representative					
Owner Representative to Contractor					

We hereby submit for your consideration the following product instead of the specified item for the Project:

Section / Drawing	Article	Specified Item
<b>Proposed Substitution:</b>		

We have (a) attached manufacturer's literature, including complete technical data and laboratory test results, if applicable, (b) attached an explanation of why proposed substitution is a true equivalent to specified item, (c) included complete information on changes to Contract Documents

that the proposed substitution will require for its proper installation, and (d) filled in the blanks below:

**Contractor to complete the questions that follow and certify to the accuracy of all answers:**

<p>A. Does the substitution affect dimensions shown on Drawings? Yes ___ / No ___. If No, please explain proposed mitigation and why substitution is equivalent to originally specified item:</p>
<p>B. Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution? Yes ___ / No ___. If No, please state reasons explain why substitution is equivalent to originally specified item:</p>
<p>C. What effect does the substitution have on other trades? No effect: ___ / Some effect ___. If substitution will affect other trades, please explain the effect and why substitution is equivalent to originally specified item:</p>
<p>D. Will substitution cause change to Project Schedule, or to critical delivery dates? Add? Shorten? If the substitution will add to schedule dates or affect critical activities, please explain why substitution is equivalent to originally specified item:</p>
<p>E. Please describe differences between proposed substitution and specified item? Please explain and identify any and all differences, and please explain why substitution is equivalent to originally specified item:</p>
<p>F. What is the Cost Differential to Contractor in original specified item and proposed substitution including all mark-ups? [If substitution requested during bid period, skip this question.]</p>

<p>G. Are Manufacturer's guarantees for the proposed item the same as for item specified? Yes ___; No ____. If No, please explain why substitution is equivalent to originally specified item:</p> 
<p>H. Contractor accepts full responsibility for delays caused by redesign of other items of the Work necessitated by substitution? Yes ___ / No ____. If No, please state reasons and explain why substitution is equivalent to originally specified item:</p> 
<p>I. Contractor states that the function, appearance and quality are equivalent or superior to the specified item? Yes ___ / No ____. If No, please explain why substitution is equivalent to originally specified item:</p> 

We certify that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item, except as we may specifically state otherwise in this request.

Submitted by: \_\_\_\_\_ Signature: \_\_\_\_\_

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

Address: \_\_\_\_\_ Phone/ Fax: \_\_\_\_\_

Remarks: \_\_\_\_\_

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<p><b>Consultant Response:</b>  <input type="radio"/> Accepted  <input type="radio"/> Not Accepted  <input type="radio"/> Accepted As Noted  <input type="radio"/> Received Too Late</p>
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<p><b>Owner Representative Response:</b>  <input type="radio"/> Accepted  <input type="radio"/> Not Accepted  <input type="radio"/> Accepted As Noted  <input type="radio"/> Received Too Late</p>
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Remarks: \_\_\_\_\_

Remarks: \_\_\_\_\_

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

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

**AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS  
[Public Contract Code Section 7100]**

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (**Agreement and Release**), made and entered into this [ date ] day of [ Month ], [20   ], by and between **TOWN OF MORAGA (Owner)**, and [ Enter Name of Contractor ] (**Contractor**), whose place of business is at [ Enter Address of Contractor ].

**RECITALS**

- A. Owner and Contractor entered into Contract (the "Contract") for construction of Owner's **MORAGA WAY AND CANYON/CAMINO PABLO IMPROVEMENTS PROJECT, TOWN CIP NO. 18-101, FEDERAL PROJECT NO. CMSTPL – 5415 (014)**
- B. The Work under the Contract has been completed.

**AGREEMENT**

NOW THEREFORE, it is mutually agreed between Owner and Contractor as follows:

- 1. Contractor will not be assessed liquidated damages except as detailed below:  

Original Contract Sum                \$ \_\_\_\_\_

Modified Contract Sum               \$ \_\_\_\_\_

Payment to Date                        \$ \_\_\_\_\_

Liquidated Damages                  \$ \_\_\_\_\_

Payment Due Contractor              \$ \_\_\_\_\_
- 2. Subject to the provisions of this Agreement and Release, Owner will forthwith pay to Contractor \_\_\_\_\_ the \_\_\_\_\_ sum \_\_\_\_\_ of \_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$ \_\_\_\_\_) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with Owner as of the date of such payment.
- 3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against Owner arising from the Contract, except for the claims described in Paragraph 4 of this Document 00 6530. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against Owner, and all if its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530. Nothing in this Agreement and Release shall limit or modify Contractor’s continuing obligations described in Paragraph 6 of this Document 00 6530.
- 4. The following claims submitted under Document 00 7200 (General Conditions), Article 12, are disputed (**Disputed Claims**) and are specifically excluded from the operation of this Agreement and Release.

**[Insert information in Chart below, affix attachment if necessary]**

CLAIM NO.	DATE SUBMITTED	DESCRIPTION OF CLAIM	AMOUNT OF CLAIM

5. Consistent with California Public Contract Code Section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2 of this Document 00 6530, Contractor hereby releases and forever discharges Owner, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
7. Contractor shall immediately defend, indemnify and hold harmless Owner, any of the Owner's Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530.
8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provide as follows:
 

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**
9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.

11. All rights of Owner shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

**\*\*\* CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING \*\*\***

**OWNER: TOWN OF MORAGA**

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

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

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

**[CONTRACTOR]**

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

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

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

**[CONTRACTOR]**

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

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

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

REVIEWED AS TO FORM:

Dated: \_\_\_\_\_, [20\_\_]

By: \_\_\_\_\_  
Counsel for Owner

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

**GUARANTY**

TO: The **TOWN OF MORAGA (Owner)**, for construction of the **MORAGA WAY AND CANYON/CAMINO PABLO IMPROVEMENTS PROJECT, TOWN CIP NO. 18-101, FEDERAL PROJECT NO. CMSTPL – 5415 (014)**.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

1. Contractor hereby grants to Owner for a period of one year following the date of Final Acceptance of the Work completed, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.
2. Neither final payment nor use nor occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.
3. If within one year after the date of Final Acceptance, or such other period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents or any extended warranty or guaranty, any Work is found to be Defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to comply promptly with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
4. Observation and inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.
5. This Guaranty is in addition to any other Contractor warranties contained in the Contract Documents, and not in lieu of, any and all other Contractor liability imposed under the Contract Documents or at law. In the event of any conflict or inconsistency between the terms of this Guaranty and any Contractor warranty or obligation Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the greater protection to Owner.

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Contractor's name

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip code