

ATTACHMENT A

ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT WITH QUALITY FENCE CO., INC. FOR FENCING SERVICES

THIS ON-CALL MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 24th day of March, 2020 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and QUALITY FENCE CO., INC., a California corporation ("Contractor"), whose address is 14929 Garfield Avenue, Paramount, CA 90723, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Contractor to perform on-call maintenance and/or repair services for City ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on March 23, 2022, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

2.1 Contractor shall provide all tangible items and perform the on-call services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it will perform all Services or Work in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used under reasonably competent practitioners of the same discipline under similar circumstances and that all materials will be of good quality. Contractor shall perform everything required to be performed, and shall furnish all the labor, materials,

necessary tools, expendable equipment and all utility and transportation services necessary for the Project. In consideration of the payment of the purchase price and subject to the terms and conditions hereof, Contractor shall install fences (hereinafter referred to as "Products") as listed and set forth in Exhibit A. Upon written request from the Project Administrator as defined herein, Contractor shall provide a letter proposal for Services requested by the City (hereinafter referred to as the "Letter Proposal"). The Letter Proposal shall include the following:

2.1.1 A detailed description of the Services or Products to be provided;

2.1.2 The position of each person to be assigned to perform the Services, and the name of the individuals to be assigned, if available;

2.1.3 The estimated number of hours and cost to complete the Services;
and

2.1.4 The time needed to finish the specific project.

2.2 No Services shall be provided until the Project Administrator has provided written acceptance of the Letter Proposal. Once authorized to proceed, Contractor shall diligently perform the duties in the approved Letter Proposal.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A and the Letter Proposal. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A and the Letter Proposal, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

3.4 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Letter Proposal and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **One Hundred Ten Thousand Dollars and 00/100 (\$110,000.00)**, without prior written amendment to the Agreement.

4.2 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit B to this Agreement and the Letter Proposal, or specifically approved in writing in advance by City.

4.4 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B and the Letter Proposal.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated William Cavanaugh to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Public Works Department. City's Public Works Director or designee shall be the Project Administrator and shall have the

authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

8.1 Contractor shall use only the standard materials described in Exhibit A in performing Services or when installing Products under this Agreement. Any deviation from the materials described in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 City and all officers, employees and representatives thereof shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

9.2 Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects,

obstructions or from any cause arising from Contractor's Work on the Project, or the Work of any subcontractor or supplier selected by Contractor.

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

9.4 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

9.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

9.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Agreement as shall be considered necessary by City may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

9.7 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of

Contractor's employees or agents, to be the agents or employees of City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with Contractor on the Project.

12. CITY POLICY

Contractor shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Contractor is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. BONDING

15.1 For any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement: (1) a Labor and Materials Payment Bond in the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), and in the form attached hereto as Exhibit D which is incorporated herein by this reference; and (2) a Faithful Performance Bond in the amount of one hundred percent (100%) of the total amount to be paid Contractor as set forth in any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), and in the form attached hereto as Exhibit E which is incorporated herein by this reference.

15.2 The Labor and Materials Payment Bond and Faithful Performance Bond shall be issued by an insurance organization or surety (1) currently authorized by the

Insurance Commissioner to transact business of insurance in the State of California, (2) listed as an acceptable surety in the latest revision of the Federal Register Circular 570, and (3) assigned a Policyholders' Rating A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide: Property-Casualty.

15.3 Contractor shall deliver, concurrently with City's approval of any Letter Proposal over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), the Labor and Materials Payment Bond and Faithful Performance Bond, a certified copy of the "Certificate of Authority" of the Insurer or Surety issued by the Insurance Commissioner, which authorizes the Insurer or Surety to transact surety insurance in the State of California.

16. PREVAILING WAGES

16.1 Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement by the Contractor and any subcontractor. In accordance with the California Labor Code (Sections 1770 et seq.), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. The Contractor is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Contractor or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

16.2 Unless otherwise exempt by law, Contractor warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Contractor further warrants that it is currently registered and qualified to perform "public work" pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

17. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of

Contractor. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

18. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A and the Letter Proposal. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

19. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

20. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

21. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

22. WITHHOLDINGS

City may withhold payment to Contractor of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to

constitute a failure to pay according to the terms of this Agreement. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

23. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other contractors in connection with the Project.

24. CONFLICTS OF INTEREST

24.1 Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Contractor shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

25. NOTICES

25.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

25.2 All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Public Works Director
Public Works Department
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

25.3 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: William Cavanaugh
Quality Fence Co., Inc.
14929 Garfield Avenue

26. CLAIMS

26.1 Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. Contractor and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Contractor shall be required to file any claim Contractor may have against City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

26.2 To the extent that Contractor's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Contractor/Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Contractor shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. LABOR

28.1 Contractor shall conform with all applicable provisions of state and federal law including, but not limited to, applicable provisions of the federal Fair Labor Standards Act ("FLSA") (29 USCA § 201, *et seq.*).

28.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately give written notice to City, and provide all relevant information.

28.3 Contractor represents that all persons working under this Agreement are verified to be U.S. citizens or persons legally authorized to work in the United States.

28.4 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees from loss or damage, including but not limited to attorneys' fees, and other costs of defense by reason of actual or alleged violations of any applicable federal, state and local labor laws or law, rules, and/or regulations. This obligation shall survive the expiration and/or termination of the Agreement.

29. STANDARD PROVISIONS

29.1 Recitals. City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference.

29.2 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Contractor shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

29.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

29.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

29.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

29.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or

against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

29.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

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

29.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

29.10 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

29.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

29.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 3/12/2020

By: *Aaron C. Harp*

FOR: Aaron C. Harp
City Attorney

03/12/20
CHM

ATTEST:

Date: _____

By: _____

Leilani I. Brown
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____

Will O'Neill
Mayor

**CONTRACTOR: QUALITY FENCE CO.,
INC.,** a California corporation

Date: _____

By: _____

William Cavanaugh
Chief Executive Officer

Date: _____

By: _____

Frank Tobias
Secretary/Treasurer

[END OF SIGNATURES]

Attachments:

- Exhibit A – Scope of Services
- Exhibit B – Schedule of Billing Rates
- Exhibit C – Insurance Requirements
- Exhibit D – Labor and Materials Payment Bond
- Exhibit E – Faithful Performance Bond

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A
SCOPE OF SERVICES
ON-CALL FENCING MAINTENANCE/REPAIR SERVICES

General Requirements – On-Call Fencing Maintenance and Repair Services

- a. Contractor shall provide and furnish labor, materials, special equipment, and permits for the installation and repairs of wrought iron gates and fence, the installation and repairs of chain link gates and fence, privacy mesh fencing, Vinyl covered chain link fencing, wood panel fencing, horse trail fencing and tension cables, and other fencing types, on city owned facilities within the City limits of Newport Beach, California.
- b. Contractor shall have the ability to modify or curtail certain tasks and operations in a Letter Proposal accepted by City at the written request of the City's Project Administrator.
- c. Contractor shall maintain work areas with a well-manicured, clean appearance, and all work shall be performed in a professional, workmanlike manner using quality equipment.
- d. Contractor shall be responsible for the demolition, removal, haul away, and disposal of construction related debris and materials related to the requested fence repair/installation work.
- e. Contractor shall recognize that during the course of this Agreement, the City may have other contractors conducting other activities and/or operations in the immediate vicinity of requested work. Contractor shall make every effort to coordinate activities with existing operations. Other activities may include, but are not limited to, the following:
 - i. Landscape refurbishment;
 - ii. Modification or repair of existing facilities;
 - iii. Construction; and
 - iv. Storm related operations

Contractor Requirements:

- f. Contractor shall meet all specifications and requirements contained in the Agreement. No substitutions will be accepted without prior City written approval.
- g. The Contractor shall possess an active C-13 - Fencing Contractor License issued by the State of California Contractors State License Board.

Alternatively, Contractor may possess an "A" or "B" License in lieu of a "C-13" License.

- h. Consistent with a Letter Proposal accepted by City, Contractor shall have the ability to respond and be on-site within twenty-four (24) hours of notification by a representative of the City.**
- i. All tools and materials shall remain in Contractor's possession at all times.**
- j. All Contractor vehicles parked on site shall be secure at all times.**
- k. Contractor shall ensure all precautions for safety are taken.**
- l. Contractor shall obtain any required City Building Permits. Permits shall be at no cost to the Contractor.**
- m. Contractor shall possess a City Business License.**
- n. Contractor shall provide traffic control per the latest edition of the MUTCD "Watch Manual" as required.**

EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT B **SCHEDULE OF BILLING RATES**

Section 1			
Demolition of Existing Fence-Including Haul away & Disposal up 10' high			
Item #	Description	Price	Unit
1	Removal of Chain link & Gates-Flush cut post	8.00	Lin Ft
2	Removal of Chain link & Gates-Footing	15.00	Lin Ft
3	Removal of Iron Fence & Gates - cut to flush	12.00	Lin Ft
4	Removal of Iron Fence & Gates - with footing	15.00	Lin Ft
5	Removal of concrete mow strip up to 24" wide	8.00	Lin Ft
6	Removal of Wood Fence & Gate & Footing	15.00	Lin Ft
Section 2			
Chain link Fencing Fence & Gates -4' high			
Item #	Description	Price	Unit
1	4' high 11 gauge up to 100' - 1 1/2" posts	20.00	Lin Ft
2	4' high 11 gauge up to 101' to 500' - 1 1/2" posts	18.00	Lin Ft
3	4' high 11 gauge up to 501' & over - 1 1/2" posts	18.00	Lin Ft
4	4' high 9 gauge up to 100' - 2 1/2" posts	26.00	Lin Ft
5	4' high 9 gauge up to 101' to 500' - 2 1/2" posts	24.00	Lin Ft
6	4' high 9 gauge up to 501' & over - 2 1/2" posts	22.00	Lin Ft
7	Terminal Posts for 4' fence 2 1/2"	90.00	Each
8	Terminal Posts for 4' fence 2 1/2"	160.00	Each
9	Gate Posts for 4' fence 2 1/2"	110.00	Each
10	Gate Posts for 4' fence 4" post	175.00	Each
11	4' x 4' walk gate 11 or 9 gauge 1 1/2" frame	600.00	Each
12	4' x 10' single swing gate 11 or 9 gauge 1 1/2" frame	900.00	Each
13	4' x 20' double drive gate 11 or 9 gauge 1 1/2" frame	1,400.00	Each
14	4' Slide gate per lineal foot 11 of 9 gauge	125.00	Lin FT
Chain link Fencing Fence & Gates -6' high			
Item #	Description	Price	Unit
15	6' high 11 gauge up to 100' - 1 1/2" posts	26.00	Lin Ft
16	6' high 11 gauge up to 101' to 500' - 1 1/2" posts	24.00	Lin Ft
17	6' high 11 gauge up to 501' & over - 1 1/2" posts	23.00	Lin Ft
18	6' high 9 gauge up to 100' - 2 1/2" posts	36.00	Lin Ft
19	6' high 9 gauge up to 101' to 500' - 2 1/2" posts	34.00	Lin Ft
20	6' high 9 gauge up to 501' & over - 2 1/2" posts	32.00	Lin Ft
21	Terminal Posts for 6' fence 2 1/2"	175.00	Each
22	Terminal Posts for 6' fence 2 1/2"	225.00	Each
23	Gate Posts for 6' fence 2 1/2"	225.00	Each
24	Gate Posts for 6' fence 4" post	275.00	Each
25	Gate Posts for 6' fence 6 1/2" post	550.00	Each
26	6' x 4' walk gate 11 or 9 gauge 1 1/2" frame	750.00	Each
27	6' x 10' single swing gate 11 or 9 gauge 1 1/2" frame	1,000.00	Each
28	6' x 20' double drive gate 11 or 9 gauge 1 1/2" frame	1,200.00	Each
29	6' Slide gate per lineal foot 11 of 9 gauge	160.00	Lin Ft
Chain link Fencing Fence & Gates -8' high			
Item #	Description	Price	Unit
30	8' high 11 gauge up to 100' - 2 1/2" posts	32.00	Lin Ft
31	8' high 11 gauge up to 101' to 500' - 2 1/2" posts	30.00	Lin Ft
32	8' high 11 gauge up to 501' & over - 2 1/2" posts	29.00	Lin Ft
33	8' high 9 gauge up to 100' - 2 1/2" posts	42.00	Lin Ft
34	8' high 9 gauge up to 101' to 500' - 2 1/2" posts	40.00	Lin Ft
35	8' high 9 gauge up to 501' & over - 2 1/2" posts	38.00	Lin Ft
36	Terminal Posts for 8' fence 2 1/2"	295.00	Each
37	Terminal Posts for 8' fence 2 1/2"	325.00	Each
38	Gate Posts for 8' fence 2 1/2"	325.00	Each
39	Gate Posts for 8' fence 4" post	350.00	Each
40	Gate Posts for 8' fence 6 1/2" post	750.00	Each
41	8' x 4' walk gate 11 or 9 gauge 1 1/2" frame	800.00	Each
42	8' x 10' single swing gate 11 or 9 gauge 1 1/2" frame	1,100.00	Each
43	8' x 20' double drive gate 11 or 9 gauge 1 1/2" frame	1,700.00	Each
44	8' Slide gate per lineal foot 11 of 9 gauge	190.00	Lin Ft
Chain link Fencing Fence & Gates -10' high			
Item #	Description	Price	Unit
45	10' high 9 gauge up to 100' - 2 1/2" posts	58.00	Lin Ft
46	10' high 9 gauge up to 101' to 500' - 2 1/2" posts	56.00	Lin Ft
47	10' high 9 gauge up to 501' & over - 2 1/2" posts	52.00	Lin Ft
48	Terminal Posts for 10' fence 3 1/2"	325.00	Each
49	Terminal Posts for 10' fence 4"	375.00	Each
50	Gate Posts for 10' fence 6 1/2" post	825.00	Each
51	10' x 4' walk gate 11 or 9 gauge 1 1/2" frame	850.00	Each
52	10' x 10' single swing gate 11 or 9 gauge 1 1/2" frame	1,200.00	Each
53	10' x 20' double drive gate 11 or 9 gauge 1 1/2" frame	1,850.00	Each
54	10' Slide gate per lineal foot 11 of 9 gauge	210.00	Lin Ft

"Price Includes Labor and Materials"

Chain link Fencing Fence & Gates -12' high			
Item #	Description	Price	Unit
55	12' high 9 gauge up to 100' - 2 1/2" posts	68.00	Lin Ft
56	12' high 9 gauge up to 101' to 500' - 2 1/2" posts	66.00	Lin Ft
57	12' high 9 gauge up to 501' & over - 2 1/2" posts	62.00	Lin Ft
58	12' high 1 1/2" Tennis Court Chain link - 2 1/2" posts	75.00	Lin Ft
59	Terminal Posts for 12' fence - 4"	400.00	Each
60	Gate Posts for 12' fence 6 1/2" post	950.00	Each
61	12' x 4' walk gate 11 or 9 gauge 1 1/2" frame	875.00	Each
62	12' x 10' single swing gate 11 or 9 gauge 1 1/2" frame	1,250.00	Each
63	12' x 20' double drive gate 11 or 9 gauge 1 1/2" frame	1,950.00	Each
64	12' Slide gate per lineal foot 11 of 9 gauge	235.00	Lin Ft
Vinyl Coated Chain Link & Gate 9-gauge core 8-gauge Finish			
Item #	Description	Price	Unit
65	4' high - Add Vinyl to Galvanized Price Additional Cost	2.00	Sq Ft
66	6' high - Add Vinyl to Galvanized Price Additional Cost	2.50	Sq Ft
67	8' high - Add Vinyl to Galvanized Price Additional Cost	2.50	Sq Ft
68	10' high - Add Vinyl to Galvanized Price Additional Cost	2.50	Sq Ft
69	12' high - Add Vinyl to Galvanized Price Additional Cost	2.50	Sq Ft
70	12' high tennis cover mesh	4.00	Sq Ft
Chain Link 9-gauge 1" Mesh Additional Cost to 9-Gauge Price			
Item #	Description	Price	Unit
71	4' high - Additional Cost Per Square Foot	3.00	Sq Ft
72	6' high - Additional Cost Per Square Foot	3.00	Sq Ft
73	8' high - Additional Cost Per Square Foot	3.00	Sq Ft
74	10' high - Additional Cost Per Square Foot	3.00	Sq Ft
75	12' high - Additional Cost Per Square Foot	3.00	Sq Ft
Misc. Fence Items			
Item #	Description	Price	Unit
76	3 strands of barb wire added to fence 6' and Higher	10.00	Lin Ft
77	6 strands of barb wire added to fences 6' and Higher	20.00	Lin Ft
78	1 1/2" Middle to Bottom Rail Added to any Height	9.00	Lin Ft
79	18" Razor Ribbon added to fence 7' or higher	18.00	Lin Ft
Slats, Screen, Barrier Netting			
Item #	Description	Price	Unit
80	Barrier Netting Installed, Includes cable fittings outside rope (excludes posts)	4.00	Sq Ft
81	4' high PVC slats 1"	8.00	Lin Ft
82	6' high PVC slats 1"	12.00	Lin Ft
83	8' high PVC slats 1"	14.00	Lin Ft
84	100% Coverage Windscreen	2.75	Sq Ft
85	80% Coverage Windscreen	2.00	Sq Ft
86	Galvanized Perforated Metal	4.00	Sq Ft
87	Corrugated Metal Screening up to 12' high	5.00	Sq Ft
88	6' high Privacy Link Fabric with wings 100% Coverage 2 1/4" slat	2.00	Add Per Sq Ft to 9-gauge Prices
89	8' high Privacy Link Fabric with wings 100% Coverage 2 1/4" slat	2.25	Add Per Sq Ft to 9-gauge Prices
90	10' high Privacy Link Fabric with wings 100% Coverage 2 1/4" slat	2.60	Add Per Sq Ft to 9-gauge Prices
Section 3			
6' High Temporary Fence Installation Removal 6 Months Rental			
Item #	Description	Price	Unit/6 Months
91	6' high temp fence pounded posts	6.88	Lin Ft
92	6' high temp fence free standing panels	5.88	Lin Ft
93	6' high temp fence walk gate	200.00	Each
94	6' high temp fence double drive gate	500.00	Lin Ft
95	Add barb wire to temp fence	4.00	Lin Ft
96	Add windscreen to temp fence (green, black or tan)	3.00	Lin Ft
	*Bill out at 15% Monthly After 6 Months		

"Price Includes Labor and Materials"

Section 4			
Misc. Fencing			
Item #	Description	Price	Unit
97	Wood Fencing up to 8' high 1"x6" cedar or red wood	60.00	Lin Ft
98	2 rail posts and rail fence 4' high	24.00	Lin Ft
99	Barb wire fence on T-posts up to 5 strands	19.00	Lin Ft
100	Paint fences white up to 8' high	8.00	Lin Ft
101	Post and 5/8 chain 3" posts 8' on center	30.00	Lin Ft
102	Bumper posts concrete filler (bollards) 2 7/8" Galv or Yellow	175.00	Each
103	Bumper posts concrete filler (bollards) 4" Galv or Yellow	275.00	Each
104	Bumper posts concrete filler (bollards) 6 5/8" Galv or Yellow	400.00	Each
105	Bumper posts concrete filler (bollards) 8" Galv or Yellow	650.00	Each
106	Add Panic Hardware, VonDuprin Including Kick Plate, screen mounting plate	2,800.00	Each
107	Handrail ADA Compliant 1 5/8" single rail	98.00	Lin Ft
108	Handrail ADA Compliant 1 5/8" double rail	120.00	Lin Ft
109	#719 Cable Rail Fence per Caltrans spec 2 3/8" drilled post and 3 strands	80.00	Lin Ft
110	#719 Cable Rail Fence per Caltrans spec 2 3/8" drilled post and 5 strands	110.00	Lin Ft
111	Replace chain link fabric only on 4' chain link fence	16.00	Lin Ft
112	Replace chain link fabric only on 6' chain link fence	20.00	Lin Ft
113	Replace chain link fabric only on 8' chain link fence	25.00	Lin Ft
114	Replace chain link fabric only on 10' chain link fence	29.00	Lin Ft
115	Replace chain link fabric only on 12' chain link fence	35.00	Lin Ft
116	Paint post after chain link removal prior to new chain link install	N/A	Time & Material
Section 5			
Pipe Gates (Use appropriate rail, posts & hardware)			
Item #	Description	Price	Unit
117	8' wide single gate (heavy duty commercial)	2,000.00	Each
118	10' wide single gate (heavy duty commercial)	2,200.00	Each
119	12' wide single gate (heavy duty commercial)	2,400.00	Each
120	14' wide single gate (heavy duty commercial)	2,600.00	Each
121	16' wide single gate (heavy duty commercial)	2,800.00	Each
122	20' wide single gate (heavy duty commercial)	3,600.00	Each
123	24' wide single gate (heavy duty commercial)	4,000.00	Each
Section 6			
Ornamental Iron Fence (Primer and Black Powder Coated) Including Posts			
Item #	Description	Price	Unit
124	6' high ornamental tubular fence Regal Style	98.00	Lin Ft
125	8' high ornamental tubular fence Regal Style	140.00	Lin Ft
126	10' high ornamental tubular fence Regal Style	175.00	Lin Ft
127	6'x 4' walk gate	1,180.00	Each
128	8'x 4' walk gate	1,380.00	Each
129	10'x 4' walk gate	1,680.00	Each
130	6' high speared top	110.00	Lin Ft
131	8' high curved and speared top	165.00	Lin Ft
132	10' high curved and speared top	195.00	Lin Ft
133	6'x 4' speared top gate	1,250.00	Each
134	8'x 4' speared curved top gate	1,450.00	Each
135	10'x 4' speared top gate	1,680.00	Each
136	Safety posts for any iron gate	275.00	Each
137	6' swing or double gate Regal or Speared	300.00	Lin Ft
138	8' swing or double gate Regal or Speared	320.00	Lin Ft
139	10' swing or double gate Regal or Speared	340.00	Lin Ft
140	6' slide gate Regal or Speared	325.00	Lin Ft
141	8' slide gate Regal or Speared	345.00	Lin Ft
142	10' slide gate Regal or Speared	355.00	Lin Ft
143	Add perforated metal or expanded metal to gate	4.00	Sq Ft
Section 7			
Ameristar Ornamental Fence and Gates			
Item #	Description	Price	Unit
144	Montage 11 - Genesis 6' High	138.00	Lin Ft
145	Montage 11 - Genesis 8' High	160.00	Lin Ft
146	Montage 11 - 4' Gate 6' High	1,200.00	Each
147	Montage 11 - 4' Gate 8' High	1,500.00	Each
148	Montage 11 - Single Gate 6'	275.00	Lin Ft
149	Montage 11 - Single Gate 8'	320.00	Lin Ft
150	Montage 11 - Slide Gate 6' High	325.00	Lin Ft
151	Montage 11 - Slide Gate 8' High	345.00	Lin Ft

"Price Includes Labor and Materials"

Section 8			
Concrete			
Item #	Description	Price	Unit
152	12"x 12" with imbedded v-groove track	60.00	Lin Ft
153	1" angle iron v-groove track bolted to floor	30.00	Lin Ft
154	1" angle iron cored and set 3" on center	40.00	Lin Ft
155	Core drill holes up to 4"	75.00	Each
156	3'x 3' concrete motor pad	300.00	Each
157	4" thick concrete walkways and slats	20.00	Lin Ft
158	metal Guardrail with wood posts and block	125.00	Lin Ft
Section 9			
Wire Mesh Double -Defense Homeless Security Fencing			
Item #	Description	Price	Unit
159	6' security wire mesh fence and posts welded in place, black	80.00	Lin Ft
160	6' security wire mesh panels no posts welded in place, black	65.00	Lin Ft
161	8' high security 4D fence with post welded in place, black	130.00	Lin Ft
162	8' high security 4D fence no posts welded in place, black	90.00	Lin Ft
163*	6' high 4D fence gates	150.00	Lin Ft
164*	8' high 4D fence gates	200.00	Lin Ft
*As seen at Orange County Flood Control Wash Entrles and at Angel Stadium and along channel in the County, Sample on Request			
Section 10			
Hourly and On-Call Services			
Item #	Description	Price	Unit
165	Traffic Control/Flag Man	145.00	Hourly
166	On call emergency mobilization (Per trip)	750.00	Lump Sum
167	Welding Services	120.00	Hourly
168	Crew Rental Regular Time 2-men & Truck	250.00	Hourly
169	Crew Rental Overtime 2-men & Truck on Saturday	300.00	Hourly
170	Crew Rental Nights and Sundays 2-men truck (Holiday & Double Time)	400.00	Hourly
171	Min Call Out (If applicable)	750.00	Lump Sum
Section 11			
Material Sales Mark-Up			
Item #	Description	Price	
172	Chain Link posts fittings	BFC Catalog	Plus 15%
173	Iron fence	Fortress Fence Catalog	Plus 15%
174	Ameristar fence	Ameristar Catalog	Plus 15%
175	Mis. Mark-up, materials, equipment rentals	Per Invoice	Plus 15%
Section 12			
Electric Gates, Keys Pads, Entry Systems			
Item #	Description	Price	
176	Elite 3000 Slide gate or swing gate operators	Price on Requested Proposal	
177	Key Pad entry systems/Prox readers	Price on Requested Proposal	
178	Photo Safety Cell	Price on Requested Proposal	
179	Free exit and Safety Loop	Price on Requested Proposal	
180	Hydraulic closers, Magnetic locks, goose necks	Price on Requested Proposal	
181	Power Runs, Saw Cutting, Low Voltage	Price on Requested Proposal	

"Price Includes Labor and Materials"

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance and, if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented

vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors.
- B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess liability, pollution liability, and automobile liability, if required, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days notice of cancellation (except for nonpayment for which ten (10) calendar days notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of

insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Contractor sixty (60) calendar days advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.
- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

- G. City Remedies for Non-Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Contractor's Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

EXHIBIT D

**CITY OF NEWPORT BEACH
BOND NO. _____
LABOR AND MATERIALS PAYMENT BOND**

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for maintenance and/or repair services, in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Agreement and the terms thereof require the furnishing of a bond, providing that if Principal or any of Principal's subcontractors, shall fail to pay for any materials, provisions, or other supplies used in, upon, for, or about the performance of the Work agreed to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same to the extent hereinafter set forth.

NOW, THEREFORE, We the undersigned Principal, and, _____ duly authorized to transact business under the laws of the State of California, as Surety, (referred to herein as "Surety") are held and firmly bound unto the City of Newport Beach, in the sum of _____ Dollars (_____), lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), payable by the City of Newport Beach under the terms of the Agreement; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal or the Principal's subcontractors, fail to pay for any materials, provisions, or other supplies, implements or machinery used in, upon, for, or about the performance of the Work contracted to be done, or for any other work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the Surety will pay for the same, in an amount not exceeding the sum specified in this Bond, and also, in case suit is brought to enforce the obligations of this Bond, a reasonable attorneys' fee, to be fixed by the Court as required by the provisions of Section 9554 of the Civil Code of the State of California.

The Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Section 9100 of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this Bond, as

required by and in accordance with the provisions of Sections 9500 *et seq.* of the Civil Code of the State of California.

And Surety, for value received, hereby stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Agreement or to the Work to be performed thereunder shall in any wise affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alterations or additions to the terms of the Agreement or to the Work or to the specifications.

In the event that any principal above named executed this Bond as an individual, it is agreed that the death of any such principal shall not exonerate the Surety from its obligations under this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named Principal and Surety, on the _____ day of _____, 20____.

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: _____

By: _____
Aaron C. Harp
City Attorney

**NOTARY ACKNOWLEDGMENTS OF CONTRACTOR AND SURETY MUST BE
ATTACHED**

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

EXHIBIT E

**CITY OF NEWPORT BEACH
BOND NO. _____
FAITHFUL PERFORMANCE BOND**

The premium charges on this Bond is \$ _____, being at the rate of \$ _____ thousand of the Agreement price.

WHEREAS, the City of Newport Beach, State of California, has awarded to _____ hereinafter designated as the "Principal," an agreement for maintenance and/or repair services in the City of Newport Beach, in strict conformity with the Agreement on file with the office of the City Clerk of the City of Newport Beach, which is incorporated herein by this reference.

WHEREAS, Principal has executed or is about to execute the Agreement and the terms thereof require the furnishing of a Bond for the faithful performance of the Agreement.

NOW, THEREFORE, we, the Principal, and _____, duly authorized to transact business under the laws of the State of California as Surety (hereinafter "Surety"), are held and firmly bound unto the City of Newport Beach, in the sum of _____ (_____) lawful money of the United States of America, said sum being equal to 100% of the amount of any Letter Proposal accepted by City of over Twenty Five Thousand Dollars and 00/100 (\$25,000.00), to be paid to the City of Newport Beach, its successors, and assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors, or assigns, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, or the Principal's heirs, executors, administrators, successors, or assigns, fail to abide by, and well and truly keep and perform any or all the Work, covenants, conditions, and agreements in the Agreement and any alteration thereof made as therein provided on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to its true intent and meaning, or fails to indemnify, defend, and save harmless the City of Newport Beach, its officers, employees and agents, as therein stipulated, then, Surety will faithfully perform the same, in an amount not exceeding the sum specified in this Bond; otherwise this obligation shall become null and void.

As a part of the obligation secured hereby, and in addition to the face amount specified in this Performance Bond, there shall be included costs and reasonable expenses and fees, including reasonable attorneys fees, incurred by City, only in the event City is required to bring an action in law or equity against Surety to enforce the obligations of this Bond.

Surety, for value received, stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Agreement or to the Work to be performed thereunder shall in any way affect its obligations on this Bond, and it does hereby waive

notice of any such change, extension of time, alterations or additions of the Agreement or to the Work or to the specifications.

This Faithful Performance Bond shall be extended and maintained by the Principal in full force and effect for one (1) year following the date of formal acceptance of the Project by City.

In the event that the Principal executed this bond as an individual, it is agreed that the death of any such Principal shall not exonerate the Surety from its obligations under this Bond.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the ____ day of _____, 20__.

Name of Contractor (Principal)

Authorized Signature/Title

Name of Surety

Authorized Agent Signature

Address of Surety

Print Name and Title

Telephone

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: _____

By: _____
Aaron C. Harp
City Attorney

*NOTARY ACKNOWLEDGMENTS OF
CONTRACTOR AND SURETY MUST BE ATTACHED*

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____ } ss.

On _____, 20____ before me, _____,

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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WITNESS my hand and official seal.

Signature

(seal)