

**CITY OF COSTA MESA
PUBLIC WORKS AGREEMENT FOR
CITY PROJECT NO. 19-07**

THIS PUBLIC WORKS AGREEMENT ("Agreement"), dated July 10, 2019 ("Effective Date"), is made by the CITY OF COSTA MESA, a political subdivision of the State of California ("CITY"), and QUALITY FENCE CO, INC., a California corporation ("CONTRACTOR").

CITY desires to construct the public work and improvements described below under Scope of Work, Paragraph 1 ("Work").

ACCORDINGLY, the parties hereto agree as follows:

1. SCOPE OF WORK.

The Work consists of furnishing and installing approximately nine hundred ten (910) feet of three (3) foot high curved spade ornamental wrought iron fencing, which will be attached to existing block walls and existing steel fence/pedestrian gates, along the perimeter of the Costa Mesa Police Department, 99 Fair Drive, Costa Mesa, CA 92626, and the installation of three (3) vehicle access gates, including one (1) double rolling and two (2) single rolling gates, at the locations set forth in the specifications, in accordance with the specifications; and all other work necessary to complete the work in accordance with the specifications and Contract Documents.

The Work is further described in the "Contract Documents" referred to below.

The Project is known as Costa Mesa Police Department Iron Fence Installation (99 Fair Drive, Costa Mesa), City Project No. 19-07 ("Project").

2. CONTRACT DOCUMENTS.

The complete Agreement consists of the following documents relating to the Project:

- a. This Agreement;
- b. CONTRACTOR's bid;
- c. Notice inviting bids;
- d. Complete plans, profiles, detailed drawings and specifications, including general provisions and special provisions;
- e. Certificates of Insurance;
- f. Faithful Performance Bond and Labor and Material Bond, including agent's Power of Attorney for each bond;
- g. The summary of Public Contract Code section 9204;
- h. Supplements, attachments, and exhibits attached to the above items;
- i. Provisions of the most current edition of The Greenbook: Standard Specifications for Public Works Construction ("The Greenbook"); and
- j. All addenda setting forth any modifications or interpretations of the above documents.

The documents attached hereto are incorporated herein by this reference. The Greenbook is incorporated by reference as if fully set forth herein. The documents comprising the complete Agreement will be referred to as the "Contract Documents."

All of the Contract Documents are intended to complement one another, so that any Work called for in one and not mentioned in another is to be performed as if mentioned in all documents.

In the event of an inconsistency in the Contract Documents, the terms of this Agreement shall prevail over all other Contract Documents. The order of precedence between the remaining Contract Documents shall be as set forth in The Greenbook.

The Contract Documents constitute the entire agreement between the parties and supersede any and all other writings and oral negotiations.

3. CITY'S REPRESENTATIVE.

The CITY's Representative is Irina Gurovich, referred to herein as the Project Manager ("Project Manager").

4. CONTRACTOR'S PROJECT MANAGER; PERSONNEL.

(a) Project Manager. CONTRACTOR's Project Manager must be approved by City. Such approval shall be at CITY's sole discretion.

(b) Personnel. CITY has the right to review and approve any personnel who are assigned to perform work under this Agreement. CONTRACTOR shall remove personnel from performing work under this Agreement if requested to do so by CITY.

This Paragraph 4 is a material provision of the Agreement.

5. SCHEDULE.

All Work shall be performed in accordance with the schedule approved on behalf of CITY by the Project Manager, and in accordance with the time of performance set forth in Paragraph 8 (Time of Performance).

6. EQUIPMENT - PERFORMANCE OF WORK.

CONTRACTOR shall furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete the Work of construction in a good and workmanlike manner in strict conformity with the Contract Documents.

The equipment, apparatus, facilities, labor and material shall be furnished and such Work performed and completed as required in the plans and specifications to the satisfaction of the Project Manager or his or her designee, and subject to his or her approval.

7. CONTRACT PRICE.

One Hundred Thirteen Thousand Nine Hundred Eighty Dollars (\$113,980.00).

8. TIME OF PERFORMANCE.

CONTRACTOR shall commence Work by the date specified in CITY's Notice to Proceed, unless a later date is agreed upon in writing by the parties. The Work shall be completed within fifteen (15) calendar days from the first day of commencement of the Work.

9. TERMINATION.

(a) Termination for Convenience.

CITY may terminate this Agreement at any time, with or without cause, by providing thirty (30) days' written notice to CONTRACTOR.

(b) Termination for Breach of Contract.

(i) If CONTRACTOR refuses or fails to prosecute the Work or any severable part of it with such diligence as will ensure its timely completion, or if CONTRACTOR fails to complete the Work on time, or if CONTRACTOR, or any subcontractor, violates any of the provisions of the Contract Documents, the Project Manager may give written notice to CONTRACTOR and CONTRACTOR's sureties of the CITY's intention to terminate this Agreement; and, unless within five (5) days after the serving of that notice, such conduct shall cease and arrangements for the correction thereof be made to the satisfaction of the CITY, this Agreement may be terminated at the option of CITY effective upon CONTRACTOR's receipt of a second notice sent by the CITY indicating that the CITY has exercised its option to terminate.

(ii) If CONTRACTOR is adjudged bankrupt or files for any relief under the Federal Bankruptcy Code or State insolvency laws, this Agreement shall automatically terminate without any further action or notice by CITY.

(iii) If CONTRACTOR is in breach of any material provision of this Agreement, CITY may immediately terminate this Agreement by providing written notice

to CONTRACTOR of same.

10. LIQUIDATED DAMAGES.

In the event the Work is not completed, for any reason, within the time required including any approved extensions of time, and to the satisfaction of the Project Manager, CITY may, in addition to any other remedies, equitable and legal, including remedies authorized by Paragraph 9 (Termination) of this Agreement, charge to CONTRACTOR or its sureties, or deduct from payments or credits due CONTRACTOR, a sum equal to \$250.00 as liquidated damages for each day beyond the date provided for the completion of such Work.

The parties hereto agree that the amount set forth above, as liquidated damages constitutes a fair and reasonable estimate of the costs the CITY would suffer for each day that the CONTRACTOR fails to meet the performance schedule. The parties hereby agree and acknowledge that the delays in the performance schedule will cause CITY to incur costs and expenses not contemplated by this Agreement.

11. PERFORMANCE BY SURETIES.

In the event CONTRACTOR fails or refuses to perform the Work, CITY may provide CONTRACTOR with a notice of intent to terminate as provided in Paragraph 9 (Termination), of this Agreement. The CITY shall immediately give written notice of such intent to terminate to CONTRACTOR and CONTRACTOR's surety or sureties, and the sureties shall have the right to take over and perform this Agreement; provided, however, that the sureties must, within five (5) days after CITY's giving notice of termination, (a) give the CITY written notice of their intention to take over the performance of this Agreement; (b) provide adequate assurances, to the satisfaction of the CITY that the Work shall be performed diligently and in a timely manner; and (c) must commence performance thereof within five (5) days after providing notice to the CITY of their intention

to take over the Work. Upon the failure of the sureties to comply with the provisions set forth above, CITY may take over the Work and complete it, at the expense of CONTRACTOR, and the CONTRACTOR and the sureties shall be liable to CITY for any excess costs or damages including those referred to in Paragraph 10 (Liquidated Damages), incurred by CITY. In such event, CITY may, without liability for so doing, take possession of such materials, equipment, tools, appliances, Contract Documents and other property belonging to CONTRACTOR as may be on the site of the Work and reasonably necessary therefor and may use them to complete the Work.

12. DISPUTES PERTAINING TO PAYMENT FOR WORK.

Should any dispute arise respecting whether any delay is excusable, or its duration, or the value of the Work done, or of any Work omitted, or of any extra Work which CONTRACTOR may be required to do, or respecting any payment to CONTRACTOR during the performance of this Agreement, such dispute shall be decided by the Project Manager, and his or her decisions shall be final and binding upon CONTRACTOR and its sureties.

13. SUPERINTENDENCE BY CONTRACTOR.

At all times during performance of the Work, CONTRACTOR shall give personal superintendence or have a competent foreman or superintendent on the worksite, with authority to act for CONTRACTOR.

14. INSPECTION BY CITY.

CONTRACTOR shall at all times maintain proper facilities and provide safe access for inspection by CITY to all parts of the Work and to all shops on or off-site where the Work or portions of the Work, are in preparation. CITY shall have the right of access to the premises for inspection at all times. However, CITY shall, at all times, comply with CONTRACTOR's safety requirements on the job site.

15. CARE OF THE WORK AND OFF-SITE AUTHORIZATION.

CONTRACTOR warrants that it has examined the site of the Work and is familiar with its topography and condition, location of property lines, easements, building lines and other physical factors and limitations affecting the performance of this Agreement. CONTRACTOR, at CONTRACTOR's sole cost and expense, shall obtain any permission, and all approvals, licenses, or easements necessary for any operations conducted off the premises owned or controlled by CITY. CONTRACTOR shall be responsible for the proper care and protection of all materials delivered to the site or stored off-site and for the Work performed until completion and final inspection and acceptance by CITY. The risk, damage or destruction of materials delivered to the site or to Work performed shall be borne by CONTRACTOR.

16. PAYMENTS TO CONTRACTOR.

On or before the last Monday of each and every month during the performance of the Work, CONTRACTOR shall meet with the Project Manager or his or her designee to determine the quantity of pay items incorporated into the improvement during that month. A "Progress Payment Order" will then be jointly prepared, approved, and signed by the Project Manager and the CONTRACTOR setting forth the amount to be paid and providing for a five percent (5%) retention. Upon approval of the progress payment order by the Project Manager, or his or her designee, it shall be submitted to CITY's Finance Department and processed for payment by obtaining approval from the City Council to issue a warrant.

Within three (3) days following City Council's approval to issue a warrant, CITY shall mail to CONTRACTOR a warrant for the amount specified in the progress payment order as the amount to be paid. The retained five percent (5%) shall be paid to CONTRACTOR thirty-five (35) days after the recording of the Notice of Completion of the

Work by the COUNTY and after CONTRACTOR shall have furnished releases of all claims against CITY by persons who furnished labor or materials for the Work, if required by CITY.

Upon the request of CONTRACTOR and at its expense, securities equivalent to the amount withheld pursuant to the foregoing provisions may be presented to CITY for substitution for the retained funds. If CITY approves the form and amount of the offered securities it will release the retained funds and will hold the securities in lieu thereof. CONTRACTOR shall be entitled to any interest earned on the securities.

In the event that claims for property damage or bodily injury are presented to CITY arising out of CONTRACTOR's or any subcontractor's Work under this Agreement; CITY shall give notice thereof to CONTRACTOR, and CONTRACTOR shall have thirty-five (35) days from the mailing of any such notice to evaluate the claim and to settle it by whole or partial payment, or to reject it, and to give notice of settlement or rejection to CITY. If CITY does not receive notice within the above-mentioned 35-day period that the claim has been settled, and if the Project Manager, after consultation with the City Attorney, determines that the claim is meritorious, CITY may pay the claim or a portion of it in exchange for an appropriate release from the claimant, and may deduct the amount of the payment from the retained funds that would otherwise be paid to CONTRACTOR upon completion of the Work; provided, however, that the maximum amount paid for any one claim pursuant to this provision shall be One Thousand Dollars (\$1,000.00), and the maximum amount for all such claims in the aggregate paid pursuant to this provision shall be Five Thousand Dollars (\$5,000.00).

17. PROMPT PAYMENT OF SUBCONTRACTORS.

The CONTRACTOR agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than seven (7) days from the receipt of

each payment the CONTRACTOR receives from CITY.

The CONTRACTOR agrees further to release retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the CITY.

18. CONTRACT SECURITY AND GUARANTEE.

Unless previously provided by CONTRACTOR to CITY, CONTRACTOR shall furnish, concurrently with the execution of this Agreement, the following: (1) a surety bond in an amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of this Agreement, and (2) a separate surety bond in an amount equal to at least one hundred percent (100%) of the contract price as security for the payment of all persons furnishing labor or materials in connection with the Work under this Agreement. Sureties for each of the bonds and the forms thereof shall be satisfactory to CITY. In addition, such sureties must be authorized to issue bonds in California; sureties must be listed on the latest revision to the U.S. Department of the Treasury Circular 570; and must be shown to have sufficient bonding capacity to provide the bonds required by the Contract Documents.

CONTRACTOR shall provide a certified copy of the certificate of authority of the surety issued by the Insurance Commissioner; a certificate from the clerk of the county in which the court or officer is located that the certificate of authority of the surety has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; and copies of the surety's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the

Insurance Code.

CONTRACTOR guarantees that all materials used in the Work and all labor performed shall be in conformity with the Contract Documents including, but not limited to, the standards and specifications set forth in the most current edition of The Greenbook. CONTRACTOR shall, at its own expense, make any and all repairs and replacements that shall become necessary as the result of any failure of the Work to conform to the aforementioned Contract Documents, and standard specifications; provided, however, that CONTRACTOR shall be obligated under this provision only to the extent of those failures or defects of which he is given notice within a period of twelve (12) months from the date that the Notice of Completion is recorded.

The rights and remedies available to CITY pursuant to this provision shall be cumulative with all rights and remedies available to CITY pursuant to statutory and common law, which rights and remedies are hereby expressly reserved, and neither the foregoing guarantee by CONTRACTOR nor its furnishing of the Bonds, nor acceptance thereof by CITY, shall constitute a waiver of any rights or remedies available to CITY against CONTRACTOR.

19. INDEMNIFICATION.

CONTRACTOR agrees to protect, defend, indemnify and hold harmless CITY and its elected and appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney fees, for injury to or death of any person, and for injury or damage to any property, including consequential damages of any nature resulting therefrom, arising out of or in any way connected with the performance of this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the CONTRACTOR, its employees, and/or authorized subcontractors, but shall be required

whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the CONTRACTOR, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the CITY, its elected officials, officers, agents and employees based upon the work performed by the CONTRACTOR, its employees, and/or authorized subcontractors under this Agreement, whether or not the CONTRACTOR, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the CONTRACTOR shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the CITY. This provision shall supersede and replace all other indemnity provisions contained either in the CITY's specifications or CONTRACTOR's proposal, which shall be of no force and effect.

CONTRACTOR shall comply with all of the provisions of the Workers' Compensation insurance laws and Safety in Employment laws of the State of California, including the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto and regulations promulgated pursuant thereto, and all similar State, Federal or local laws applicable; and CONTRACTOR shall indemnify and hold harmless CITY from and against all claims, liabilities, expenses, damages, suits, actions, proceedings and judgments, of every nature and description, including attorney fees, that may be presented, brought or recovered against CITY for or on account of any liability under or failure to comply with any of said laws which may be incurred by reason of any Work performed under this Agreement by CONTRACTOR or any subcontractor or others performing on behalf of CONTRACTOR.

CITY does not, and shall not, waive any rights against CONTRACTOR which it may have by reason of the above hold harmless agreements, because of the acceptance

by CITY or the deposit with CITY by CONTRACTOR of any or all of the insurance policies described in Paragraph 20 (Insurance) of this Agreement.

The hold harmless agreements by CONTRACTOR shall apply to all liabilities, expenses, claims, and damages of every kind (including but not limited to attorney fees) incurred or alleged to have been incurred, by reason of the operations of CONTRACTOR or any subcontractor or others performing on behalf of CONTRACTOR, whether or not such insurance policies are applicable. CONTRACTOR shall require any and all tiers of subcontractors to afford the same degree of indemnification to the CITY OF COSTA MESA and its elected and appointed boards, officers, agents, and employees that is required of CONTRACTOR and shall incorporate identical indemnity provisions in all contracts between CONTRACTOR and all tiers of its subcontractors.

In the event that CONTRACTOR and CITY are sued by a third party for damages caused or allegedly caused by negligent or other wrongful conduct of CONTRACTOR, or by a dangerous condition of CITY's property created by CONTRACTOR or existing while the property was under the control of CONTRACTOR, CONTRACTOR shall not be relieved of its indemnity obligation to CITY by any settlement with any such third party unless that settlement includes a full release and dismissal of all claims by the third party against the CITY.

20. INSURANCE.

CONTRACTOR shall not commence Work under this Agreement until it has obtained all insurance required under this section and CITY has approved the insurance as to form, amount, and carrier, nor shall CONTRACTOR allow any subcontractor to commence any Work until all similar insurance required of the subcontractor has been obtained and approved.

Neither the failure of CONTRACTOR to supply specified insurance policies and

coverage, nor the failure of CITY to approve same shall alter or invalidate the provisions of Paragraph 19 (Indemnification) of this Agreement.

(a) Workers' Compensation Insurance.

CONTRACTOR shall obtain and maintain during the life of this Agreement workers' compensation insurance and, if any Work is sublet, CONTRACTOR shall require all tiers of subcontractors to obtain workers' compensation insurance.

All workers' compensation insurance policies shall provide that the insurance may not be canceled without thirty (30) days' advance written notice of such cancellation to CITY.

CONTRACTOR agrees to waive, and obtain endorsements from its workers' compensation insurer waiving, subrogation rights under its workers' compensation insurance policy against the CITY and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

(b) Liability Insurance Coverage.

CONTRACTOR shall obtain and maintain during the life of this Agreement the following insurance coverage:

(i) Commercial General Liability, including coverage for premises-operations, products/completed operations hazard, blanket contractual, broad form property damage, and independent contractors. In addition, CONTRACTOR shall obtain and maintain during the life of this Agreement each of the following insurance coverage which are not stricken out and initialed by the Project Manager: Explosion and collapse hazard, underground hazard, personal injury, and automobile liability, including owned, hired, and non-owned vehicles. All insurance coverage shall have limits of not less than \$1,000,000.00 combined single limits, per occurrence and aggregate.

(ii) Below are approved endorsements which satisfy the basic

insurance requirements contained in contracts entered into by City of Costa Mesa. These have been approved by the City Attorney's Office. The terms of any specific contract with the City are controlling. Prior to the commencement of any work, the City requires that the Engineer receive Certificates of Insurance in DUPLICATE for liability coverage of at least \$1,000,000.00 combined single limits, per occurrence and in the aggregate. Endorsements to the policies providing the above insurance shall be obtained by CONTRACTOR, adding the following three provisions:

(1) Additional Insured:

"The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to the subject project and agreement."

(2) Notice:

"Said policy shall not terminate, nor shall it be canceled nor the coverage reduced, until thirty (30) days after written notice is given to CITY."

(3) Other Insurance:

"Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by CITY. No policy of insurance issued as to which the CITY is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

21. PROOF OF INSURANCE.

Prior to commencement of the Work, CONTRACTOR shall furnish CITY, through the Project Manager, proof of compliance with the above insurance requirements in a

form satisfactory to the Risk Management.

22. LEGAL WORK DAY - PENALTIES FOR VIOLATION.

Eight (8) hours of labor shall constitute a legal day's work during any one (1) calendar day. CONTRACTOR shall forfeit to CITY the sum of Twenty-Five Dollars (\$25.00) for each workman employed in the execution of this Agreement by CONTRACTOR or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of California Labor Code Sections 1810 through 1815, inclusive.

23. PREVAILING WAGE SCALE.

CONTRACTOR shall comply in all respects with California Labor Code sections 1770 et seq., including the keeping of all records required by the provisions of Labor Code section 1776.

CONTRACTOR shall furnish each week to CITY's Project Administration Division a statement with respect to the wages of each of its employees during the preceding weekly payroll period.

24. COMPLIANCE WITH ALL LAWS.

CONTRACTOR shall, at its own cost and expense, comply with all applicable local, state, and federal laws, regulations, and requirements in the performance of this Agreement, including but not limited to laws regarding health and safety, labor and employment, and wage and hours.

25. DRUG-FREE WORKPLACE POLICY.

CONTRACTOR, upon notification of the award of this Agreement, shall establish a Drug-Free Awareness Program to inform employees of the dangers of drug abuse in the workplace, the penalties that may be imposed upon employees for drug abuse

violations occurring in the workplace, and the employee assistance programs available to employees. Each employee engaged in the performance of a CITY contract must be notified of this Drug-Free Awareness Program, and must abide by its terms. CONTRACTOR shall conform to all the requirements of CITY's Policy No. 100-5, attached hereto as Attachment 1. Failure to establish a program, notify employees, or inform the CITY of a drug-related workplace conviction will constitute a material breach of contract and cause for immediate termination of the contract by the CITY.

26. NON-DISCRIMINATION.

In performing this Agreement, CONTRACTOR will not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex, or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Section 1735 of the California Labor Code.

27. CONTRACT ASSURANCE.

The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONTRACTOR shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as recipient deems appropriate.

The CONTRACTOR will require that the above provision is included in all subcontracts.

28. PROVISIONS CUMULATIVE.

The provisions of this Agreement are cumulative and in addition to, and not in

limitation of, any other rights or remedies available to CITY.

29. NOTICES.

It shall be the duty and responsibility of CONTRACTOR to notify all tiers of subcontractors and material men of the following special notice provision; namely, all preliminary 20-day notices or stop notices shall be directed only to the City Clerk and to no other department, and shall be either personally delivered or sent by certified mail, postage prepaid.

All other notices shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to CITY pursuant to this Agreement shall be addressed as follows:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Irina Gurovich

Notices required to be given to CONTRACTOR shall be addressed as follows:
Quality Fence Co., Inc.
14929 Garfield Ave.
Paramount, CA 90723
Attn: William Cavanaugh, President

Notices required to be given to CONTRACTOR's sureties shall be addressed as follows:

Developers Surety and Indemnity Company
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833-3505
Attn: Megan DeKoven

30. INDEPENDENT CONTRACTOR.

The parties hereto acknowledge and agree that the relationship between CITY and CONTRACTOR is one of principal and independent contractor and no other. All personnel to be utilized by CONTRACTOR in the performance of this Agreement shall be employees of CONTRACTOR and not employees of the CITY. CONTRACTOR shall pay

all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, employment relations, or any other relationship except as set forth between the parties. The parties specifically acknowledge and agree that CONTRACTOR is not a partner with CITY, whether general or limited, and no activities of CITY or CONTRACTOR or statements made by CITY or CONTRACTOR shall be interpreted by any of the parties hereto as establishing any type of business relationship other than an independent contractor relationship.

31. PERS ELIGIBILITY INDEMNIFICATION.

In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees' Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the CITY, CONTRACTOR shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CONTRACTOR and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by CITY, including but not limited to eligibility to enroll in PERS as an employee of CITY and entitlement to any contribution to be paid by CITY for employer contribution and/or employee contributions for PERS benefits.

32. VALIDITY.

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.

33. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of the County of Orange, California.

34. RESOLUTION OF CONTRACTOR CLAIMS.

CONTRACTOR claims, as defined in California Public Contract Code section 9204, shall be resolved in accordance with the provisions of Section 9204 and applicable law. A summary of Section 9204 is attached hereto and incorporated herein by reference.

35. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is entered into for the sole benefit of the CITY and CONTRACTOR and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

36. ASSIGNABILITY.

This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

37. WAIVER.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement

of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

38. HEADINGS.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

39. COUNTERPARTS.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one Agreement.

40. CORPORATE AUTHORITY.

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so, the Parties hereto are formally bound to the provisions of this Agreement.

41. ADDITIONAL SERVICES.

CONTRACTOR shall not receive compensation for any services provided outside the scope of the Contract Documents unless such additional services, including change orders, are approved in writing by CITY prior to CONTRACTOR performing the additional services.

It is specifically understood that oral requests or approvals of such additional services, change orders or additional compensation and any approvals from CITY shall be barred and are unenforceable.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

Justin Martin for
Lori Ann Farrell Harrison
City Manager

Date: 8/21/19

CONTRACTOR

W.C.
William Cavanaugh
President

Date: July 31st 2019

Frank Tobias
Frank Tobias
Secretary

Date: July 31st 2019

[REDACTED]
Social Security or Taxpayer ID Number

ATTEST:

Brenda Green
Brenda Green
City Clerk



Date: 8/22/19

APPROVED AS TO FORM

[Signature]
Kimberly Hall Barlow
City Attorney

Date: 8/21/19

APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 8/6/19

APPROVED AS TO PURCHASING:



Kelly A. Telford
Finance Director

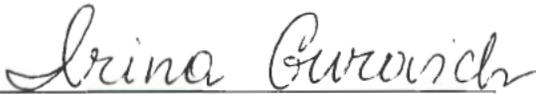
Date: 8/13/19

DEPARTMENTAL APPROVAL:



Raja Sethuraman
Public Services Director

Date: 8/8/19



Irina Gurovich
Project Manager

Date: 08/6/19

COUNCIL POLICY – DRUG FREE WORKPLACE

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8/08/89	1 OF 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a subgrantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This Policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or subgrantee hereby certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possessing, or use of a controlled substance is prohibited in Contractor's and/or subgrantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;
 - B. Establishing a Drug-Free Awareness Program to inform employees about:
 1. The dangers of drug abuse in the workplace;

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8/08/89	2 OF 3

2. Contractor's and/or subgrantee's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- C. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by Subparagraph A.
- D. Notifying the employee in the statement required by Subparagraph 1.A that, as a condition of employment under the contract, the employee will:
1. Abide by the terms of the statement; and
 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such violation.
- E. Notifying the City of Costa Mesa within ten (10) days after receiving notice under Subparagraph 1.D.2 from an employee or otherwise receiving the actual notice of such conviction.
- F. Taking one of the following actions within thirty (30) days of receiving notice under Subparagraph 1.D.2 with respect to an employee who is so convicted:
1. Taking appropriate personnel action against such an employee, up to and including termination; or
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency.
- G. Making a good faith effort to maintain a drug-free workplace through implementation of Subparagraph 1.A through 1.F, inclusive.
2. Contractor and/or subgrantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
- A. Contractor and/or subgrantee has made a false certification under Paragraph 1 above.

CITY OF COSTA MESA, CALIFORNIA

COUNCIL POLICY

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8/08/89	3 OF 3

B. Contractor and/or subgrantee has violated the certification by failing to carry out the requirements of Subparagraphs 1.A through 1.G above.

C. Such number of employees of Contractor and/or subgrantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the Contractor and/or subgrantee has failed to make a good faith effort to provide a drug-free workplace.

3. Should any Contractor and/or subgrantee be deemed to be in violation of this Policy pursuant to the provisions of 2.A, B and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, or local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a Contractor and/or subgrantee, the Contractor and/or subgrantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the Contractor and/or subgrantee, the Contractor and/or subgrantee shall be eligible for compensation as provided by law.

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT- CALIFORNIA
BLANKET BASIS**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

The additional premium for this endorsement shall be 2% of the total manual premium otherwise due on such remuneration. The minimum premium for this endorsement is \$350.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

BLANKET WAIVER

Person/Organization Blanket Waiver – Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

Job Description	Waiver Premium
All CA Operations	\$

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 10/1/18

Policy No. QUWC901257

Endorsement No.

Insured Quality Fence Company Inc

Premium \$

Insurance Company Cypress Insurance Company

Countersigned by _____

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS
(WITH LIMITED COMPLETED OPERATIONS COVERAGE)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
BUSINESSOWNERS COVERAGE FORM

SCHEDULE

NAME OF PERSON OR ORGANIZATION

Any person or organization to whom or to which the named insured is obligated by a virtue of a written contract to provide insurance that is afforded by this policy. Where required by contract, the officers, officials, employees, directors, subsidiaries, partners, successors, parents, divisions, architects, surveyors and engineers are included as additional insureds. All other entities, including but not limited to agents, volunteers, servants, members and partnerships are included as additional insureds, if required by contract, only when acting within the course and scope of their duties controlled and supervised by the primary (first) additional insured. If an Owner Controlled Insurance Program is involved, the coverage applies to off-site operations only. If the purpose of this endorsement is for bid purposes only, then no coverage applies.

WHO IS AN INSURED: (Section II)

This section is amended to include as an insured the person or organization within the scope of the qualifying language above, but only to the extent that the person or organization is held liable for your acts or omissions in the course of "your work" for that person or organization by or for you. The "products-completed operations hazard" portion of the policy coverage as respects the additional insured does not apply to any work involving or related to properties intended for residential or habitational occupancy (other than apartments). This clause does not affect the "products-completed operations" coverage provided to the named insured(s).

WAIVER OF SUBROGATION:

We waive any right of recovery, when required by written contract, that we may have against the person or organization within the scope of

the qualifying language above because of payments we make for injury.

LOCATION OF JOB:

The job location must be within the State of domicile of the named insured, or within any contiguous State thereto.

DESCRIPTION OF WORK:

The type of work performed must be that as described under classifications in the CGL Coverage Part Declarations.

PRIMARY CLAUSE:

When this endorsement applies and when required by written contract, such insurance as is afforded by the general liability policy is primary insurance and other insurance shall be excess and shall not contribute to the insurance afforded by this endorsement.

EXCLUSION

This insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of an architect's, engineer's or surveyor's rendering or failure to render any professional services, including:

1. The preparing, approving, or failing to prepare or approve, maps, designs, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
2. Supervisory, inspection, architectural or engineering activities.

Endorsement EFFECTIVE DATE: SEE DEC

Endorsement EXPIRATION DATE: SEE DEC

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALIFORNIA CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

- CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
- COMMERCIAL AUTOMOBILE COVERAGE PART
- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- COMMERCIAL INLAND MARINE COVERAGE PART
- COMMERCIAL PROPERTY COVERAGE PART
- CRIME AND FIDELITY COVERAGE PART
- EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
- EQUIPMENT BREAKDOWN COVERAGE PART
- FARM COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
- POLLUTION LIABILITY COVERAGE PART
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Paragraphs 2. and 3. of the **Cancellation** Common Policy Condition are replaced by the following:

2. All Policies In Effect For 60 Days Or Less

If this policy has been in effect for 60 days or less, and is not a renewal of a policy we have previously issued, we may cancel this policy by mailing or delivering to the first Named Insured at the mailing address shown in the policy and to the producer of record, advance written notice of cancellation, stating the reason for cancellation, at least:

- a. 10 days before the effective date of cancellation if we cancel for:
 - (1) Nonpayment of premium; or
 - (2) Discovery of fraud by:
 - (a) Any insured or his or her representative in obtaining this insurance; or
 - (b) You or your representative in pursuing a claim under this policy.
- b. 30 days before the effective date of cancellation if we cancel for any other reason.

3. All Policies In Effect For More Than 60 Days

- a. If this policy has been in effect for more than 60 days, or is a renewal of a policy we issued, we may cancel this policy only upon the occurrence, after the effective date of the policy, of one or more of the following:
 - (1) Nonpayment of premium, including payment due on a prior policy we issued and due during the current policy term covering the same risks.
 - (2) Discovery of fraud or material misrepresentation by:
 - (a) Any insured or his or her representative in obtaining this insurance; or
 - (b) You or your representative in pursuing a claim under this policy.
 - (3) A judgment by a court or an administrative tribunal that you have violated a California or Federal law, having as one of its necessary elements an act which materially increases any of the risks insured against.

- (4) Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by you or your representative, which materially increase any of the risks insured against.
- (5) Failure by you or your representative to implement reasonable loss control requirements, agreed to by you as a condition of policy issuance, or which were conditions precedent to our use of a particular rate or rating plan, if that failure materially increases any of the risks insured against.
- (6) A determination by the Commissioner of Insurance that the:
- (a) Loss of, or changes in, our reinsurance covering all or part of the risk would threaten our financial integrity or solvency; or
 - (b) Continuation of the policy coverage would:
 - (i) Place us in violation of California law or the laws of the state where we are domiciled; or
 - (ii) Threaten our solvency.
- (7) A change by you or your representative in the activities or property of the commercial or industrial enterprise, which results in a materially added, increased or changed risk, unless the added, increased or changed risk is included in the policy.
- b. We will mail or deliver advance written notice of cancellation, stating the reason for cancellation, to the first Named Insured, at the mailing address shown in the policy, and to the producer of record, at least:
- (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium or discovery of fraud; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason listed in Paragraph 3.a.
- B. The following provision is added to the **Cancellation Common Policy Condition**:
- 7. Residential Property**
- This provision applies to coverage on real property which is used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants' household personal property in a residential unit, if such coverage is written under one of the following:
- Commercial Property Coverage Part
Farm Coverage Part – Farm Property – Farm Dwellings, Appurtenant Structures And Household Personal Property Coverage Form
- a. If such coverage has been in effect for 60 days or less, and is not a renewal of coverage we previously issued, we may cancel this coverage for any reason, except as provided in b. and c. below.
 - b. We may not cancel this policy solely because the first Named Insured has:
 - (1) Accepted an offer of earthquake coverage; or
 - (2) Cancelled or did not renew a policy issued by the California Earthquake Authority (CEA) that included an earthquake policy premium surcharge.

However, we shall cancel this policy if the first Named Insured has accepted a new or renewal policy issued by the CEA that includes an earthquake policy premium surcharge but fails to pay the earthquake policy premium surcharge authorized by the CEA.
 - c. We may not cancel such coverage solely because corrosive soil conditions exist on the premises. This Restriction (c.) applies only if coverage is subject to one of the following, which exclude loss or damage caused by or resulting from corrosive soil conditions:
 - (1) Capital Assets Program Coverage Form (Output Policy);
 - (2) Commercial Property Coverage Part – Causes Of Loss – Special Form; or
 - (3) Farm Coverage Part – Causes Of Loss Form – Farm Property, Paragraph D. Covered Causes Of Loss – Special.



- C. The following is added and supersedes any provisions to the contrary:

NONRENEWAL

1. Subject to the provisions of Paragraphs C.2. and C.3. below, if we elect not to renew this policy, we will mail or deliver written notice stating the reason for nonrenewal to the first Named Insured shown in the Declarations and to the producer of record, at least 60 days, but not more than 120 days, before the expiration or anniversary date.

We will mail or deliver our notice to the first Named Insured, and to the producer of record, at the mailing address shown in the policy.

2. Residential Property

This provision applies to coverage on real property used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants' household property contained in a residential unit, if such coverage is written under one of the following:

Capital Assets Program (Output Policy) Coverage Part

Commercial Property Coverage Part

Farm Coverage Part – Farm Property – Farm Dwellings, Appurtenant Structures And Household Personal Property Coverage Form

- a. We may elect not to renew such coverage for any reason, except as provided in b., c. and d. below:
- b. We will not refuse to renew such coverage solely because the first Named Insured has accepted an offer of earthquake coverage.

However, the following applies only to insurers who are associate participating insurers as established by Cal. Ins. Code Section 10089.16. We may elect not to renew such coverage after the first Named Insured has accepted an offer of earthquake coverage, if one or more of the following reasons applies:

- (1) The nonrenewal is based on sound underwriting principles that relate to the coverages provided by this policy and that are consistent with the approved rating plan and related documents filed with the Department of Insurance as required by existing law;

- (2) The Commissioner of Insurance finds that the exposure to potential losses will threaten our solvency or place us in a hazardous condition. A hazardous condition includes, but is not limited to, a condition in which we make claims payments for losses resulting from an earthquake that occurred within the preceding two years and that required a reduction in policyholder surplus of at least 25% for payment of those claims; or

- (3) We have:

- (a) Lost or experienced a substantial reduction in the availability or scope of reinsurance coverage; or

- (b) Experienced a substantial increase in the premium charged for reinsurance coverage of our residential property insurance policies; and

the Commissioner has approved a plan for the nonrenewals that is fair and equitable, and that is responsive to the changes in our reinsurance position.

- c. We will not refuse to renew such coverage solely because the first Named Insured has cancelled or did not renew a policy, issued by the California Earthquake Authority that included an earthquake policy premium surcharge.

- d. We will not refuse to renew such coverage solely because corrosive soil conditions exist on the premises. This Restriction (d.) applies only if coverage is subject to one of the following, which exclude loss or damage caused by or resulting from corrosive soil conditions:

- (1) Capital Assets Program Coverage Form (Output Policy);

- (2) Commercial Property Coverage Part – Causes Of Loss – Special Form; or

- (3) Farm Coverage Part – Causes Of Loss Form – Farm Property, Paragraph D. Covered Causes Of Loss – Special.

3. We are not required to send notice of nonrenewal in the following situations:

- a. If the transfer or renewal of a policy, without any changes in terms, conditions, or rates, is between us and a member of our insurance group.

- b. If the policy has been extended for 90 days or less, provided that notice has been given in accordance with Paragraph C.1.
- c. If you have obtained replacement coverage, or if the first Named Insured has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.
- d. If the policy is for a period of no more than 60 days and you are notified at the time of issuance that it will not be renewed.
- e. If the first Named Insured requests a change in the terms or conditions or risks covered by the policy within 60 days of the end of the policy period.
- f. If we have made a written offer to the first Named Insured, in accordance with the timeframes shown in Paragraph C.1., to renew the policy under changed terms or conditions or at an increased premium rate, when the increase exceeds 25%.



CALIFORNIA CANCELLATION ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because California is shown in Item 3.A. of the Information Page.

The cancellation condition in Part Six (Conditions) of the policy is replaced by these conditions:

Cancellation:

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this Policy for one or more of the following reasons:
 - a. Non-payment of premium;
 - b. Failure to report payroll;
 - c. Non-payment of deductible billing;
 - d. Failure to permit us to audit payroll as required by the terms of this policy or of a previous policy issued by us;
 - e. Failure to pay any additional premium resulting from an audit of payroll required by the terms of this policy or any previous policy issued by us;
 - f. Material misrepresentation made by you or your agent;
 - g. Failure to cooperate with us in the investigation of a claim;
 - h. Failure to comply with Federal or State safety orders;
 - i. Failure to comply with written recommendations of our designated loss control representatives;
 - j. The occurrence of a material change in the ownership of your business;
 - k. The occurrence of any change in your business or operations that materially increases the hazard for frequency or severity of loss;
 - l. The occurrence of any change in your business or operation that requires additional or different classification for premium calculation;
 - m. The occurrence of any change in your business or operation which contemplates an activity excluded by our reinsurance treaties.
3. If we cancel your policy for any of the reasons listed in (a) through (g), we will give you 10 days advance written notice, stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to provide notice. If we cancel your policy for any of the reasons listed in Items (h) through (m), we will give you 30 days advance written notice; however, we agree that in the event of cancellation and reissuance of a policy effective upon a material change in ownership or operations, notice will not be provided.
4. The policy period will end on the day and hour stated in the cancellation notice.
5. A short rate penalty applies if you cancel this policy or if we cancel due to non-payment of premium, failure to report payroll, or non-payment of deductible billing. First, the standard premium, defined as the base premium (computed in accordance with Part 1, Section 2, Subsection 3 of the WCIRB's California Basic Underwriting Manual) adjusted for the experience modification factor and all other pricing factors except for premium discount and expense constant, will be multiplied by the quotient of the number of days for which the policy was written divided by the number of days the policy remained in force to produce the full standard premium. Second, the extended number of days will be determined by dividing the number of days the policy was in force by the number of days for which the policy was written and multiplying the quotient by 365 days. When the policy is written for a one-year period, the extended number of days will equal the number of days the policy remained in force. Third, the short rate percentage corresponding to the extended number of days will be obtained from the short rate cancellation table. Fourth, the short rate premium will be equal to the product of the full standard premium times the short rate percentage. The short rate table below will be used in computing the short rate premium. In no event will the final earned premium be less than the policy minimum premium.

Short Rate Table

Extended Number of Days	Percent of Full Policy Premium	Extended Number of Days	Percent of Full Policy Premium	Extended Number of Days	Percent of Full Policy Premium
1	5%	95-98	37%	219-223	69%
2	6%	99-102	38%	224-228	70%
3-4	7%	103-105	39%	229-232	71%
5-6	8%	106-109	40%	233-237	72%
7-8	9%	110-113	41%	238-241	73%
9-10	10%	114-116	42%	242-246 (8 mos.)	74%
11-12	11%	117-120	43%	247-250	75%
13-14	12%	121-124 (4 mos.)	44%	251-255	76%
15-16	13%	125-127	45%	256-260	77%
17-18	14%	128-131	46%	261-264	78%
19-20	15%	132-135	47%	265-269	79%
21-22	16%	136-138	48%	270-273 (9 mos.)	80%
23-25	17%	139-142	49%	274-278	81%
26-29	18%	143-146	50%	279-282	82%
30-32 (1 mo.)	19%	147-149	51%	283-287	83%
33-36	20%	150-153 (5 mos.)	52%	288-291	84%
37-40	21%	154-156	53%	292-296	85%
41-43	22%	157-160	54%	297-301	86%
44-47	23%	161-164	55%	302-305 (10 mos.)	87%
48-51	24%	165-167	56%	306-310	88%
52-54	25%	168-171	57%	311-314	89%
55-58	26%	172-175	58%	315-319	90%
59-62 (2 mos.)	27%	176-178	59%	321-323	91%
63-65	28%	179-182 (6 mos.)	60%	324-328	92%
66-69	29%	183-187	61%	329-332	93%
70-73	30%	188-191	62%	333-337 (11 mos.)	94%
74-76	31%	192-196	63%	338-342	95%
77-80	32%	197-200	64%	343-346	96%
81-83	33%	201-205	65%	347-351	97%
84-87	34%	206-209	66%	352-355	98%
88-91 (3 mos.)	35%	210-214 (7 mos.)	67%	356-360	99%
92-94	36%	215-218	68%	361-365 (12 mos.)	100%

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 10/01/2018

Policy No.: QUWC901257

Endorsement No.:

Insured:

Premium \$

Insurance Company: Cypress Insurance Company

Countersigned by _____

Policy# QUWC901257

PREMIUM

It is agreed that the policy is amended to read:

PART FIVE - PREMIUM

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

Minimum Premium means the minimum cost to be paid for this policy of insurance. The Minimum Premium must be paid prior to the inception date of the policy of insurance and the Minimum Premium is deemed fully earned at the inception of the policy period and non-refundable.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

- 1. If we cancel (except due to non-payment of premium), final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the Minimum Premium
- 2. If you cancel (or we cancel due to non-payment of premium), the premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancellation table and procedure. Final premium will not be less than the Minimum Premium.

If legal action is required to collect the Final Audit premium due and owing under this policy of insurance, you agree that the legal action shall be properly filed in the Superior Court of the State of California, County of San Francisco, California and consent to jurisdiction in that court. The prevailing party to such action to collect said premium shall be entitled to reasonable costs and attorney fees, as well as interest if applicable.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 10/01/2018

Policy No.: QUWC901257

Endorsement No.:

Insured:

Premium \$

Insurance Company: Cypress Insurance Company

Countersigned by _____

**FAITHFUL PERFORMANCE BOND
PUBLIC WORK**

Premium is for the contract term and is subject to adjustment based on the final contract price

(The premium charge on this bond is \$ 2,780.00 being at the rate of \$ _____ per thousand of the contract price)
2.5% for the first \$100,000
2% for the remaining \$13,980

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS the CITY OF COSTA MESA, 77 Fair Drive, Costa Mesa, California 92626, has entered into a contract dated _____, 20____, which is hereby incorporated by reference herein, with Quality Fence Co., Inc.

hereinafter designated as the "Principal," for the work described as follows:

Iron Fence Installation
Project No. 19-07
_____ ; and

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

NOW, THEREFORE, We the Principal, and Philadelphia Indemnity Insurance Company a corporation organized and existing under the laws of the State of Pennsylvania and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY OF COSTA MESA in the penal sum of One Hundred Thirteen Thousand Nine Hundred Eighty Dollars (\$ 113,980.00), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The Condition Of This Obligation Is Such, That, if the above bounden Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said contract and any alteration thereof made as therein provided, or his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the CITY OF COSTA MESA, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

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

IN WITNESS WHEREOF. We have hereunto set our hands and seals this 27th day of June, 2019.

Quality Fence Co., Inc.
[Signature]

Philadelphia Indemnity Insurance Company
[Signature]
Christina Mountz, Attorney-In-Fact

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.

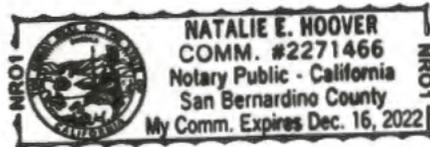
State of California
County of Los Angeles)

On July 2nd 2019 before me, Natalie E. Hoover, Notary Public
(insert name and title of the officer)

personally appeared William Cavanaugh,
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 signature(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 Natalie E. Hoover (Seal)

7 CALIFORNIA; ALL-PURPOSE ACKNOWLEDGEMENT

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 San Bernardino } ss.

On June 27, 2019 before me, Cynthia J. Young, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Christina Mountz

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person 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.

Cynthia J. Young
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
Title _____
- Partner -- Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing:

PHILADELPHIA INDEMNITY INSURANCE COMPANY
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That **PHILADELPHIA INDEMNITY INSURANCE COMPANY** (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint **Jay P. Freeman, Cynthia J. Young, Laurie B. Druck, Christina Mountz and Cynthia J. Russell of Alliant Insurance Services, Inc.**, its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.00.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November, 2016.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 27TH DAY OF OCTOBER, 2017.



(Seal)

Robert D. O'Leary Jr., President & CEO
Philadelphia Indemnity Insurance Company

On this 27th day of October, 2017, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the **PHILADELPHIA INDEMNITY INSURANCE COMPANY**; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.



(Notary Seal)

Notary Public:

Morgan Knapp

residing at:

Bala Cynwyd, PA

My commission expires:

September 25, 2021

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 27th day of October, 2017 are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 27th day of June, 2019.



Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY

LABOR AND MATERIAL BOND TO ACCOMPANY CONTRACT
PUBLIC WORK

Premium included in
charge for
Performance Bnd

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS the CITY OF COSTA MESA, 77 Fair Drive, Costa Mesa, California 92626, has awarded to Quality Fence Co., Inc. hereinafter designated as the "Contractor," a contract which is hereby incorporated by reference herein, for the work described as follows: Iron Fence Installation
Project No. 19-07

WHEREAS, said Contractor is required by the provisions of Chapter 7, Division 3, Title 15, Sections 3247-3248, Civil Code to furnish a bond in connection with said contract, as hereinafter set forth.

NOW, THEREFORE, We Quality Fence Co., Inc.

the undersigned Contractor, as Principal, and Philadelphia Indemnity Insurance Company, a corporation organized and existing under the laws of the State of Pennsylvania and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the CITY OF COSTA MESA in the penal sum of One Hundred Thirteen Thousand Nine Hundred Eighty Dollars (\$ 113,980.00), said sum being not less than one-half of the estimated amount payable by the said CITY OF COSTA MESA under the terms of the contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

The Condition Of This Obligation Is Such, That, if said Contractor, his or his heirs, executors, administrators, successors or assigns, or sub-contractors, shall fail to pay for any materials, provisions, provender or other supplies or teams, implements or machinery used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor performed under the above contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and sub-contractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, the surety or sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said Surety will pay a reasonable attorney's fee to be fixed by the court. This bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 27th day of June, 2019.

Quality Fence Co., Inc.

W.C.

Philadelphia Indemnity Insurance Company

Christina Mountz, Attorney-In-Fact

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 Los Angeles)

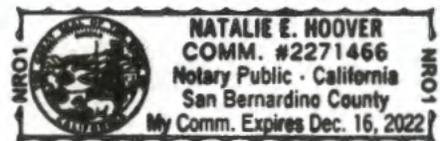
On July 2nd 2019 before me, Natalie E. Hoover, Notary Public
(insert name and title of the officer)

personally appeared William Cavanaugh,
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 signature(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 Natalie E. Hoover (Seal)



7 CALIFORNIA; ALL-PURPOSE ACKNOWLEDGEMENT

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 San Bernardino) ss.

On June 27, 2019 before me, Cynthia J. Young, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Christina Mountz

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person 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.

Cynthia J. Young
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
Title _____
- Partner -- Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer is Representing: _____

PHILADELPHIA INDEMNITY INSURANCE COMPANY
 One Bala Plaza, Suite 100
 Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That **PHILADELPHIA INDEMNITY INSURANCE COMPANY** (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint **Jay P. Freeman, Cynthia J. Young, Laurie B. Druck, Christina Mountz and Cynthia J. Russell of Alliant Insurance Services, Inc.**, its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.00.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November, 2016.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

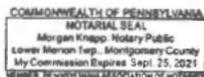
IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 27TH DAY OF OCTOBER, 2017.



(Seal)

Robert D. O'Leary Jr., President & CEO
 Philadelphia Indemnity Insurance Company

On this 27th day of October, 2017, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the **PHILADELPHIA INDEMNITY INSURANCE COMPANY**; that the seal affixed to said instrument is the Corporate seal of said Company, that the said Corporate Seal and his signature were duly affixed.



(Notary Seal)

Notary Public: Morgan Knapp
 residing at: Bala Cynwyd, PA
 My commission expires: September 25, 2021

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 27th day of October, 2017 are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 27th day of June, 2019.



Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY