



**CITY OF EVERETT, WASHINGTON  
ON-CALL CONTRACT #2023-127**

THIS CONTRACT is dated and effective as of the date of the Mayor's signature below and is by and between the City of Everett, a Washington municipal corporation (the "City"), and the Contractor shown below in the Basic Provisions.

1. Basic Provisions:

<b>Solicitation Name</b>	Fencing Repairs
<b>Brief Description of Work</b>	Provide fencing and pedestrian guard repairs throughout the City to protect against loss of property, public safety, or safety for the environment.
<b>Contractor</b>	Economy Fence Center
	11709 Cyrus Way
	Mukilteo, WA 98275
	cmorgan@economyfence.com
<b>City Project Manager</b>	Jenny Chang
	City of Everett -- Procurement
	2930 Wetmore Avenue, Suite 9E
	Everett, WA 98201
<b>Contract Documents</b>	bids@everettwa.gov
	The following documents ("Contract Documents") are incorporated by reference and are hereby made a part of this Contract: this Contract document; Invitation for Quote and addenda thereto, including without limitation any Instructions, General Conditions, Specifications, Contractor Commitment and Information, Price Sheet, Certification of Compliance, Minority Business Certification, Contractor References, and any other document included in the Invitation to Quote; Work Orders; change orders; all provisions required by law, and the following document(s), if any:
	N/A
	Contractor's response to the solicitation is a Contract Document, but only to the extent it is responsive to the solicitation.

<b>Contractor Insurance Contact Information</b>	Joann Pfeifer, ACSR
	425.952.2664
	joann.pfeifer@assuredpartners.com

2. The Work. In consideration of the sums to be paid to it by the City, the Contractor hereby covenants and agrees to furnish all labor, tools, materials, equipment, and supplies required to complete all work as set forth in the Contract Documents. The Contract Documents are shown in the Basic Provisions. The work set forth in the Contract Documents is referred to herein as either the “Work” or the “Project.” If there is any inconsistency in the parts of the Contract Documents, then the most stringent on the Contractor applies, unless the City’s authorized representative determines otherwise in writing. The Work required in one part must be furnished even if not mentioned in other parts of the Contract. These parts complement each other in describing the complete Work. Any requirement in one part binds as if stated in all parts. The Contractor shall provide any work or materials clearly implied in the Contract even if the Contract does not mention it specifically. This Contract is an on-call contract under RCW 35.22.620(11), and the Contract Documents will be interpreted and applied so that the City and Contractor are in compliance with that statute.

2. Contract Term. In compliance with RCW 35.22.620(c), the term of this Contract is three (3) years starting on the Effective Date. The City has an option to extend the Contract Term by one (1) year. The City may exercise this option by deliver of a written notice no later than the end of the Contract Term.

3. Work Orders.

(a) Work Orders for Work. During the Contract Term, the City will issue work orders to the Contractor for items of Work. A work order will operate as notice to proceed only for the Work specified in the work order. The Contractor will not undertake any Work that is not specified in a work order. In addition to specifying the Work to be completed, a work order will state the amount to be paid for the Work specified in the work order, which will be based on the unit prices in Form 3.02 or as such unit prices may be adjusted elsewhere in the Contract Documents. A work order will state a reasonable number of days allowed for completion of the Work specified in the work order. Upon receipt of the work order, the Contractor will begin the Work specified in the work order and shall complete such Work within the number of days stated in the work order. If a purchase order is issued for Work under this Contract, it is only a Work Order. Such purchase order’s pre-printed terms and conditions are not part of the Contract.

(b) Revised Work Orders. After issuance of a work order for Work, the City reserves the right at any time to issue one or more revised work orders, changing the Work under that work order. Revised work orders may result in an increase or decrease in compensation paid to the Contractor or in the time allowed for the Contractor to do

the Work. These changes will be shown in the revised work orders. Such changes shall not invalidate the Contract nor release the surety, and the Contractor agrees to perform the Work as changed by the revised work orders. The Contractor shall not proceed with a change to the Work without a revised work order or other written directive from the City.

- (c) No Guarantee by City as to Amount or Combination of Work. The City does not guarantee any specific amount of Work will be given to Contractor under this Contract. Issuance of work orders is at the City's sole discretion. The City reserves the right to issue no work orders at all. The City also does not guarantee that work orders will combine Work in ways that are advantageous to the Contractor. The City reserves the right to issue work orders on a piecemeal basis, issuing multiple work orders with single Work items. Such piecemealing does not affect the unit prices and does not affect the Contractor's obligation to complete the Work as set forth in such work orders.
- (d) Unit Prices Fixed Regardless of Number of Units Ordered. The line item unit prices in Form 3.02 are fixed regardless of the number of line items actually ordered by the City. Adjustments to unit prices are governed solely by Section 2.16, Pricing Adjustments. The estimated quantities of line items in Form 3.02 are only for bidding convenience and actual quantities ordered by the City may vary from such estimates.

4. Compensation. The basis for payment to the Contractor will be the actual amount of Work performed according to the Contract Documents and payments, whether partial or final, shall be made as specified therein. Although the City will pay the Contractor for all Work completed in accordance with the Contract, this Contract guarantees no specific amount of Work, as the amount of Work under this Contract is dependent on the City issuance of work orders, which is at the City's sole discretion. In no event shall the total amount paid Contractor exceed the amounts calculated by the unit prices in Form 3.02 (or as such unit prices may be adjusted elsewhere in the Contract Documents) for completed Work. The City may, in its sole discretion, withhold amounts from payments otherwise due as offsets or back charges for expenses, damages, liquidated damages or costs for which the Contractor is liable for not to exceed 10% of the total amount of the contract. If the City chooses not to offset or deduct any such expenses, damages, liquidated damages or costs from one or more payments or return of retainage, the City does not waive its claim for such damages and hereby expressly reserves its right to assert a claim against the Contractor for such damages.

5. Withholding. Five percent (5%) of amounts due Contractor shall be retained and withheld to ensure to comply with RCW Chapter 60.28. Retained amounts shall only be released: (A) as required by law or (B) sixty (60) days after completion of all contract work if there are no claims against the retained funds. In addition to the amounts required by RCW 60.28 to be withheld from the progress or retained percentage payments to the Contractor, the City may, in its sole discretion, withhold any amounts sufficient to pay any claim against the Contractor of which the City may have knowledge and regardless of the informalities of notice of such claim arising out of the performance of this contract. The City may withhold the amount until either the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment

in favor of the claimant on such claim. The City shall not be liable for interest during the period the funds are so held.

6. Compliance with Employment and Wage Laws. Contractor agrees to comply with all state and federal laws relating to the employment of labor and wage rates to be paid.

7. Disadvantaged Business Enterprises. Contractor agrees that the contractor shall actively solicit the employment of minority group members. Contractor further agrees that the contractor shall actively solicit bids for the subcontracting of goods or services from qualified minority businesses. Contractor shall furnish evidence of the Contractor's compliance with these requirements of minority employment and solicitation. Contractor further agrees to consider the grant of subcontracts to said minority bidders on the basis of substantially equal proposals in the light most favorable to said minority businesses. The Contractor shall be required to submit evidence of compliance with this section as part of the bid. As used in this section, the term "minority business" means a business at least fifty-one percent (51%) of which is owned by minority group members. Minority group members include, but are not limited to, African-Americans, Women, Native Americans, Asian/Pacific Islander-Americans, and Hispanic-Americans.

8. Indemnification. Except as otherwise provided in this section, the Contractor hereby agrees to save, hold harmless, defend, and indemnify the City, its officers, employees and agents from any and all loss, claims, demands, suits, damage, or liability of any kind whatsoever, whether or not reduced to judgment or arbitration award, in connection with, or arising out of, this Contract, or resulting from Contractor's (or its subcontractor's or supplier's) performance of, or failure to perform, its express and implied obligations under the Contract. Contractor shall pay any judgment that may be obtained against the City, its officers, employees, agents or third persons in such suit. The Contractor's obligations under this Section 8 shall not apply to loss, claims, demands, suits, damage, or liability caused by the sole negligence of the City. If (1) RCW 4.24.115 applies to a particular loss, claim, demand, suit, damage, or liability, and (2) such loss, claim, demand, suit, damage, or liability is caused by or results from the concurrent negligence of (a) the Contractor, its employees, subcontractors/subconsultants or agents and (b) the City or its agents or employees, then the Contractor's obligations under this Section 8 shall apply only to the extent allowed by RCW 4.24.115. The City shall give Contractor reasonable notice of such claim. The City retains the right to approve claims investigation and counsel assigned to said claim and all investigation and legal work regarding said claim shall be performed under a fiduciary relationship to the City.

9. Insurance. The Contractor shall purchase and maintain such insurance as set forth in the Contract Documents. Failure to maintain such insurance shall be a material breach of the Contract. City shall be entitled to damages for such a breach that include, but are not limited to, any loss (including, but not limited to, third party litigation expenses and professional fees) suffered by the City if the City is determined to be solely or concurrently negligent, and if the City suffers any loss or must pay or defend against any such claim, suit, demand or damage as a result of such breach.

10. Waiver of Industrial Insurance Immunity. Contractor waives any right of contribution against the City. It is agreed and mutually negotiated that in any and all claims against the City, its agents or employees, the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts any of them may be liable, the defense and indemnification obligations hereunder shall not be limited in any way by any limitation on the amount

of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under industrial worker's compensation acts, disability benefit acts, or other employees' benefit acts.

Contractor's and City's initials hereto indicate specific waiver of Contractor's industrial insurance immunity in order to fulfill this indemnity. Solely for the purpose of indemnification and defense as provided in this Contract, the Contractor specifically waives any immunity under the State Industrial Insurance Law, Title 51 RCW. The Contractor expressly acknowledges that this waiver of immunity under Title 51 RCW was the subject of mutual negotiation and was specifically entered into pursuant to the provisions of RCW 4.24.115.

11. Repair of Damage. The Contractor agrees to repair and replace all property of the City and all property of others damaged by it, its employees, subcontractors, suppliers and agents.

12. Pre-Bid Inspection and Risk of Loss. It is understood that the whole of the work under this Contract is to be done at the Contractor's risk and that: (1) prior to submitting its proposal or bid, it became familiar with the conditions of excavation, subsurface, backfill, materials, climatic conditions, location, traffic, and other contingencies that may affect the work and has made its bid or proposal accordingly and (2) that it assumes the responsibility and risk of all loss or damage to materials or work which may arise from any cause whatsoever prior to completion.

13. Headings for Convenience Only. The headings in this document are for convenience only, and shall not be used or considered to interpret or construe this document.

14. Effective Date. This Contract is effective as of the date of the Mayor's signature.

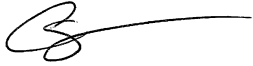
15. Counterparts/Signatures. This Contract may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Contract may also be exchanged electronically and any electronic version of any party's signature or any electronic signature (including without limitation AdobeSign) shall be deemed to be an original signature for all purposes.

***[Remainder of Page Intentionally Left Blank; Signature Page Follows]***

IN WITNESS WHEREOF, the City and Contractor have executed this Contract.

**CITY OF EVERETT  
WASHINGTON**

**ECONOMY FENCE CENTER**



\_\_\_\_\_  
Cassie Franklin, Mayor

10/23/2023

\_\_\_\_\_  
Date

ATTEST



\_\_\_\_\_  
Office of the City Clerk

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



Name of Signer: Chad Morgan

Signer's Email Address: cmorgan@economyfence.com

Title of Signer: Vice President



STANDARD DOCUMENT  
APPROVED AS TO FORM  
OFFICE OF THE CITY ATTORNEY  
JULY 14, 2023

# 2023-127 Fencing Repairs











## Contract\_101823\_SD

Final Audit Report

2023-10-23

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Agreement completed.

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