

**CITY OF NEWPORT, OREGON  
GOODS AND SERVICES AGREEMENT**

THIS AGREEMENT is between the City of Newport, an Oregon municipal corporation (City), and Jimco Fence (Contractor). This Agreement shall be effective on the date last signed by a party below (Effective Date).

**RECITALS**

- A. Contractor represents it has the training, ability, knowledge, and experience to provide services desired by the City; and
- B. City selected Contractor to provide services, consistent with its public contracting rules.

**1. SERVICES TO BE PROVIDED**

- A. Contractor will provide the services described in Exhibit A (hereinafter "Services").
- B. In the course of providing Services under this Agreement, Contractor may have contact with the public. Contractor will maintain good relations with the public. The City may treat the failure to maintain good relations with the public as a non-curable breach of this Agreement and may disqualify Contractor from future work for the City.

**2. COMPENSATION & TIMEFRAME**

Contractor shall be compensated as described in Exhibit A. Unless otherwise set forth in Exhibit A, Contractor shall begin Services on the Effective Date and shall complete Services no later than such date set forth in Exhibit A or as agreed upon in writing by the parties.

**3. STATUS OF CONTRACTOR**

Contractor certifies that:

- A. Contractor is an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of the finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of the finding.

- B. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.
- C. No employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection this Agreement, except as specifically declared in writing.
- D. Contractor currently has a City business license or will obtain one prior to delivering Services under this Agreement.

**4. WARRANTY & INDEMNIFICATION**

- A. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed with good workmanship and in accordance with generally accepted professional practices and standards of the industry in which Contractor operates as well as the requirements of applicable federal, state and local laws. Contractor's work will conform to the requirements of this Agreement. Acceptance of Contractor's work by City shall not operate as a waiver or release of this warranty.
- B. Contractor is fully liable for the acts and omissions of Contractor and Contractor's subcontractors which cause any damage, injury, death, property damage or loss to any person or property.
- C. Contractor will indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this Agreement. Contractor's indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, the illegality or invalidity shall not affect the validity of the remainder of this indemnification.

**5. INSURANCE**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this Agreement. The insurance shall cover all activities of the Contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverages:

A. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	\$1,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$50,000
Medical Expense (Any one person)	\$5,000

B. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of the contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

C. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract that are either subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers or employers that are exempt under ORS 656.126. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

D. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City OF Newport, the United States Coast Guard, and the U.S. Department of Homeland Security as an additional insureds with respect to this Agreement.

E. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage of Contractor's insurance without 30 days prior written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days prior notice of cancellation to the City

F. Certificates of Insurance

As evidence of the insurance coverage required by the Agreement, the Contractor shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the City 10 days prior to coverage expiration.

G. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

H. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Agreement.

The procuring of required insurance shall not be construed to limit Contractor's liability under this Agreement.

6. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS

Unless otherwise set forth herein, payment to Contractor shall be made by City within thirty (30) days of receipt of an approved invoice. An approved invoice is an invoice that has been signed by an authorized City individual. Payment may be withheld in the event the Services performed or an invoice submitted is disputed by the City. All notices, bills and payments shall be made in writing and may be given by personal delivery mail. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices and other information:

City: City of Newport  
169 SW Coast Highway  
Newport, Oregon 97365  
Business Phone: 541-574-0604

Contractor: Jimco Fence  
9493 Porter Rd., Suite B  
Aumsville, OR 97325  
(541) 996-4474

Notices mailed to the address provided for notice in this section shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery.

7. TERMINATION WITHOUT CAUSE

At any time and without cause, City shall have the right in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the Agreement pursuant to this Section due to no fault of Contractor, City shall pay Contractor for all approved and undisputed services rendered up to the date of termination.

8. TERMINATION WITH CAUSE

A. City may modify or terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

1. If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services.
2. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the Services are no longer allowable or appropriate under this Agreement.
3. If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the Services required by this Agreement is for any reason denied, revoked, or not renewed.
4. If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this Agreement under subsection A will be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

B. City, by written notice to Contractor, may terminate the whole or any part of this Agreement:

1. If Contractor fails to provide Services as set forth in this Agreement within the time specified herein or any extension thereof, or
2. If Contractor fails to perform any provisions of this Agreement, or fails to pursue the work of this Agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in this Section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. If City terminates this

Agreement under Section, Contractor shall be entitled to receive as full payment for all Services actually satisfactorily rendered and expenses incurred, provided however, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of this Agreement by Contractor.

**9. ACCESS TO RECORDS**

For a period of not less than three years after City's final payment to Contractor, Contractor shall permit the City, the State of Oregon and the Federal Government (if State or Federal funding is involved) to have access to all books, documents, papers and records of Contractor which are pertinent to the Services provided hereunder for purposes of audit, examination, excerpts and transcripts. Contractor shall retain those records for at least three years, or until litigation is resolved if litigation is instituted.

**10. FORCE MAJEURE**

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of nature or of a public enemy, civil unrest, earthquake, fire, flood, epidemic, quarantine restriction, strike, freight embargo, unusually severe weather; provided that the parties so disenabled shall notify the other party in writing of the cause of delay. Each party shall make reasonable efforts to remove or eliminate the cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under the Agreement.

**11. NON-DISCRIMINATION**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

**12. ERRORS**

Contractor will perform additional work as may be necessary to correct errors in Services performed under this Agreement without undue delay and without additional cost.

**13. GOVERNING LAW**

The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement will be brought in the appropriate court of the State of Oregon. In any action arising under this Agreement, the losing party shall pay such sum as the court may adjudge including reasonable attorney fees and court costs.

**14. COMPLIANCE WITH LAWS AND RULES**

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, requirements concerning working hours, overtime, medical care, workers compensation insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapter 279, some provisions of which are attached to this Agreement as Exhibit B.

**15. CITY OWNERSHIP**

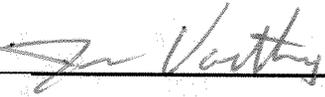
All Contractor's work product accomplished under this Agreement, whether in the form of designs, drawings, as-builts, diagrams, specifications, reports, or other writings, shall become the exclusive property of the City. The City is the owner of any copyrights thereto, upon City's final payment to Contractor.

**16. AGREEMENT**

- A. This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. This Agreement incorporates the City's Request for Proposal/Solicitation of Bids document and Contractor's Response/Bid. In the event of a conflict between the terms of this Agreement and any incorporated document, unless otherwise specifically stated, this Agreement will control.
- B. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties. Payment shall not be made for any Services not set forth in Exhibit A without the written agreement with the City. In the event Contractor and City agree to any modification in the Services set forth in Exhibit A, the parties will execute an amendment to this Agreement, reflecting such modification.
- C. Neither party shall assign or transfer any interest in or duty under this Agreement without the written consent of the other party.
- D. This Agreement and all exhibits and addenda hereto are complementary and what is required in one shall be binding as if required by all. If there is a conflict between terms of the documents, the more specific requirement shall govern over the more general. No term of this Agreement is intended to waive or supersede a legally mandated term of this Agreement under ORS Chapter 279, 279A, 279B, and 279C, and Administrative Rules promulgated to implement those ORS Chapters.
- E. The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

By authorized signature hereunder, each party sets their hand to this Agreement:

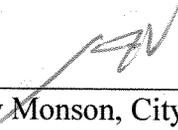
**CITY OF NEWPORT:**

  
\_\_\_\_\_

By: Jim Voetberg, City Manager

1-24-12  
Date

**APPROVED AS TO FORM:**

 1-24-12  
\_\_\_\_\_

By: Christy Monson, City Attorney

\_\_\_\_\_  
Date

**CONTRACTOR:**

  
\_\_\_\_\_

By: Contractor's Name Jimco Fence

1/17/12  
Date

**EXHIBIT A**  
**SCOPE OF WORK & RATES/COSTS**

See Attached.

## EXHIBIT B

### PROVISIONS OF ORS CHAPTER 279

(Not all provisions fully set forth herein. It is Contractor's obligation to be familiar and comply with all applicable provisions of relevant law)

**279B.220 Conditions concerning payment, contributions, liens, withholding.** The contractor shall:

1. Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
2. Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
5. In addition to the conditions specific in subsection 1-4 above, every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place. (279C.505)

**279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.**

1. If the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing a municipality, may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.
2. If the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within thirty days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90 day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date

that is thirty days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed thirty percent. The amount of interest may not be waived.

3. If the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
4. The payment of a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims.

**279B.230** Condition concerning payment for medical care and providing workers' compensation. (see 279C.530 for public improvement contracts)

1. The contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
2. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [2003 c.794 §76c].

**279B.020, 279B.235; 279C.520, 279C.540** Conditions concerning hours of labor.

1. An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
2. A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055 (or 279C.100) the employee shall be paid at least time and a half pay:
  - a. For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
  - b. For all overtime in excess of ten hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - c. For all work performed on Saturday and on any legal holiday specified in ORS 279B.020 (or ORS 279C.540).

2. In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
3. Persons employed shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

**279C.830 Relating to prevailing rate of wage in public works contracts.**

1. In the event this contract is a public works contract, the parties shall state in the contract the existing state prevailing rate of wage and if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract. When the prevailing rates of wage are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates.
2. Every contract and subcontract shall contain a provision that the workers shall contain a provision that the works shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.
3. Contractor will pay to the Commissioner of the Bureau of Labor and Industries (BOLI) a fee as provided in ORS 279C.825(1). The fee shall be paid to the commissioner under the administrative rule of the commissioner.
4. Every contract for public works shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).



24265

(503) 364-1919 Salem  
(541) 928-1344 Albany  
(541) 996-4474 Coast  
Fax: (503) 749-4421  
Email: info@jimco-fence.com

9493 Porter Rd. SE, Ste. B  
Aumsville, OR 97325  
OR CCB# 150420

Date: 12/28/2011

**Mailing Address**

Name: City of Newport Attn: Greg Schaecher Home: \_\_\_\_\_  
Address: 169 SW Coast Hwy Work: (541) 574-3376  
City: Newport State: OR Zip: 97365 Fax: (541) 265-3376

**Job Address**

Address: North Jetty Trail Fence - SW Naterlin Drive X Street: \_\_\_\_\_  
City: Newport State: OR Zip: 97365

**SPECIFICATIONS** Commercial chain link  
Fence Height: 8' Overall Length: arpx 440'  
Slats: none Fabric: 9 gauge KB  
Term. Post: 2 7/8" sch40 Line Posts: 2 3/8" sch40  
Top Rail: 1 5/8" sch40 Tension Wire: 7 gauge coil  
Barb Wire: none Footings: concrete  
Other: Customer to clear & mark fence line

**SPECIAL INSTRUCTIONS**

- Fabric: Inside   Outside
- Install Fence:  Follow Contour - Airline
- Concrete Footings:  Covered - Exposed
- Selvage: Knuckle up  Barb up
- Trash Removal:  Customer  Contractor
- Dirt Disposal: On Site  Off Site
- Utility Location: Power, Phone, Gas, TV  Jimco
- Other Location: Septic, Sprinkler, Private Lines, Water/Drain Lines -  Customer

**GATES**

Quantity	Opening	Height	Frame	Type	Hardware
<u>1</u>	<u>16'</u>	<u>8'</u>	<u>1 5/8" sch40</u>	<u>double drive</u>	<u>bulldogs</u>

**CONTRACT CONDITIONS**

1. Location of property lines and/or fence lines is the exclusive responsibility of the owner/customer. Customer is responsible for staking end/corners.
  2. Liability of damage caused to underground obstructions is the responsibility of the owner/customer.
  3. All materials are guaranteed to be as specified and labor to be performed in a workmanlike manner.
  4. Any alteration or change in specifications involving extra cost of material or labor will be executed only upon written authorization and will become an extra charge over and above the quoted price.
  5. All time agreements are contingent upon weather, accidents, delays, special order status, etc.
2. In the event of default of payment, customer agrees to pay all collection costs and any other costs or expenses resulting from the account being