

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (hereafter "Agreement"), dated on **November 7, 2019**, and is entered into by and between **Action Fence Contractors, Inc.** (hereafter "Contractor") and PALATINE TOWNSHIP (hereafter "Township").

WHEREAS, Contractor will be performing services and work for the Township as set forth in the Proposal, attached hereto as Exhibit A, dated **October 25, 2019** (hereinafter "Contract Work");

WHEREAS, Contractor may have subcontractors, material suppliers, employees, agents, volunteers, and/or one or more of anyone acting on its or their behalf engaged in the performance of the Contract Work; and

WHEREAS, the Exhibits attached hereto, contain the terms and conditions of the engagement of the Contractor by the Township and are hereby incorporated into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration received and to be received, the Contractor hereby agrees as follows:

1. To comply with all applicable laws, regulations, and rules promulgated by any Federal, State, County, Municipal and or other governmental unit or regulatory body now in effect during the performance of the Contract Work, and as amended. By way of example, the following are included within the scope of the laws, regulations, and rules referred to in this paragraph, but in no way to operate as a limitation on the laws, regulations and rules with which Contractor shall comply, are all forms of Workers Compensation Laws, all terms of the Equal Employment Opportunity Clause of the Illinois Fair Employment Practices Commission, the Illinois Preference Act, the Social Security Act, Statutes relating to contracts let by units of government, all applicable Civil Rights and Anti-Discrimination Laws and Regulations, and traffic and public utility regulations.
2. To the fullest extent permitted by law, to waive any and all rights of contribution against the Township and to indemnify, protect, save, defend, and hold harmless the Township and the Township Board of Trustees, its respective officers, officials, employees, volunteers agents, successors, and/or assigns, from and against any and all claims, causes of action, damages, demands, losses, penalties, obligations, liabilities, and expenses, including, but not limited to, attorneys' and paralegals' fees, expert fees, and court costs (hereafter "Legal Fees"), arising out of or resulting from the performance of the Contractor's work and the Contract Work, provided that any such claims, causes of action, damages, demands, losses, penalties, obligations, liabilities, or expenses are attributable to (i) any act, omission, wrongful act, or negligence attributable to Contractor and/or the Contractor's subcontractors, material suppliers, employees, agents, volunteers, and/or one or more of anyone acting on its or their behalf; (ii) any accident, injury, or damage whatsoever occurring, growing out of, incidental to, or resulting, directly or indirectly, from the Contract Work and/or use of the Township's property, whether such claims, causes of action, damages, demands, losses, penalties, obligations, liabilities or expenses are contributed by a condition of the Township property itself or any equipment thereon, whether latent or patent, or from other causes whatsoever, including, but not limited to, bodily injury, sickness, disease or death, or injury to or destruction of property, other than the work itself, including the loss of use

resulting therefrom, or is attributable to misuse or improper use of trademark or copyright protected material or otherwise protected intellectual property; and/or (iii) Contractor's breach or breach by Contractor's subcontractors, material suppliers, employees, agents, volunteers, and/or one or more of anyone acting on its or their behalf of any terms to this Agreement. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which the Township would otherwise have. The indemnification obligations under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor, material suppliers, employees, agents, volunteers, and/or one or more of anyone acting on its or their behalf under Workers' Compensation or Disability Benefit Acts or Employee Benefit Acts. This obligation to defend, hold harmless, and indemnify shall survive the expiration and/or termination of this Agreement. Nothing herein shall be construed to represent a waiver of any privileges and immunities granted, by statute or common law, to the Township as a unit of local government. The Contractor agrees to waive any right which it may have to punitive, consequential, special, indirect, incidental, and/or exemplary damages against the Township and the Township Board of Trustees, its respective officers, officials, employees, volunteers agents, successors, and/or assigns and agrees not to make any claim or demand for such damages against the Township and the Township Board of Trustees, its respective officers, officials, employees, volunteers agents, successors, and/or assigns.

3. To keep in force, to the satisfaction of the Township, at all times during the performance of any work referred to above, Workers' Compensation and Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Insurance in at least the type and amounts as follows:

a. Workers' Compensation:

i. State: Statutory

ii. Federal: Statutory

iii. Employer's Liability:

- | | | |
|----|----------------|------------------------|
| 1. | \$1,000,000.00 | Per Accident |
| 2. | \$1,000,000.00 | Disease, Policy Limit |
| 3. | \$1,000,000.00 | Disease, Each Employee |

b. Commercial General Liability:

i. \$3,000,000.00 General Aggregate

ii. \$3,000,000.00 Products Completed Operations Aggregate

- iii. \$1,000,000.00 Personal and Advertising Injury
 - iv. \$1,000,000.00 Each Occurrence
 - vi. \$5,000.00 Medical Expense (any one person)
 - c. Business Automobile Liability (including owned, non-owned and hired vehicles):
 - i. Combined single Limit:
 - 1. \$1,000,000.00 Each Accident
 - d. Umbrella Excess Liability:
 - i. \$10,000,000.00 Aggregate and Each Occurrence
- 4. All policies of insurance purchased or maintained in fulfillment of Section 3 shall name the Township as an additional insured thereunder and the Contractor shall provide Certificates of Insurance evidencing the coverages and the addition of the Township as an insured. Contractor shall furnish to the Township original Certificates of Insurance evidencing the required coverage to be in force on the date this Agreement is entered into, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurrence during the term of this Agreement. Contractor shall submit evidence on insurance prior to entering into the Agreement. The receipt of any certificate does not constitute agreement by the Township that the insurance requirements in the Agreement have been fully met or that the insurance policies on the certificate are in compliance with all Agreement requirements. The failure of the Township to obtain certificates or other insurance evidence from the Contractor shall not be deemed to be a waiver by the Township. The Contractor shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve the Contractor of its obligations to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the Township retains the right to terminate the Agreement until proper evidence of insurance is provided. The insurance shall provide for thirty (30) days prior written notice to be given to the Township in the event coverage is substantially changed, cancelled, or non-renewed. Any and all deductibles or self-insured retention on referenced insurance coverages shall be borne by the Contractor. The Contractor agrees that insurers shall waive their rights of subrogation against the Township and the Township Board of Trustees, its respective officers, officials, employees, volunteers agents, successors, and/or assigns. The Contractor expressly understands and agrees that any coverage and limits furnished by the Contractor shall in no way limit the Contractor's liabilities nor the Contractor's subcontractors, material suppliers, employees, agents, volunteers, and/or one or more of anyone acting on its or their behalf's liability and

responsibilities specified within the Agreement documents or by law. The Contractor expressly understands and agrees that any insurance or self-insurance programs maintained by the Township shall apply in excess of and not contribute with insurance provided by the Contractor under this Agreement. The required insurance shall not be limited by any limitations expressed in the liability language herein or any limitation placed on the liability therein given as a matter of law. The Township maintains the right to reasonably modify, delete, alter, or change these requirements. The Township shall provide the Contractor with thirty (30) day prior written notice of such modification, deletion, alteration, or change of these requirements. All insurance shall be written on an occurrence basis rather than a claims-made basis. All the insurance required of the Contractor shall state that the coverage afforded to the additional insureds shall be primary insurance of the additional insureds with respect to claims arising out of operations performed by or on their behalf. The Contractor agrees that the obligation to provide the insurance required by these documents is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction, or omission by the Township. Upon request, the Contractor will provide copies of any or all policies of insurance maintained in fulfillment hereof.

5. To the fullest extent permitted by law, Contractor assumes all liability for claims, causes of action, damages, demands, losses, penalties, obligations, liabilities, or expenses from any personal injury, personal loss, economic loss, or damage to property, intellectual, personal, and real, arising out of or attributable to the Contract Work and/or use of the Township property. Contractor is aware of the risks associated with the Contractor Work and/or use of the Township property, and the Contractor voluntarily assumes those risks in consideration of the Agreement herein granted. The Township shall not be liable for any damage occasioned from the Contract Work and/or use of the Township property. Contractor agrees to indemnify, protect, save, defend, and hold harmless the Township from any claims, causes of action, damages, demands, losses, penalties, obligations, liabilities, or expenses as a result of the Contract Work and/or use of the Township property. Furthermore, the Township shall not be liable for damages of any kind in the event the Township property becomes unusable by the Contractor for any reason whatsoever.
6. To furnish any affidavit or Certificate in connection with the work covered by this agreement as required by law. The Contractor will in every respect comply with the terms and provisions of this Agreement, as well as the ordinances, rules, and regulations of the Township as well as with all applicable laws, including the laws of any municipality in which the Contract Work is located. Contractor shall obtain at its sole cost any and all bonds, permits, and approvals from any federal, state, and/or local government and/or agency and/or body thereof that has jurisdiction over the Contract Work.
7. To the extent that the Prevailing Wage Act applies, to pay and require every Subcontractor to pay prevailing wages as established by the Illinois Department of Labor for each craft or type of work needed to execute the contract in accordance with 820 ILCS 130/.01 et seq. The Contractor shall prominently post the current schedule of

prevailing wages at the Contract site and shall notify immediately in writing all of its Subcontractors, of all changes in the schedule of prevailing wages. Any increases in costs to the Contractor due to changes in the prevailing rate of wage during the terms of any contract shall be at the expense of the Contractor and not at the expense of the Township. The change order shall be computed using the prevailing wage rates applicable at the time the change order work is scheduled to be performed. The Contractor shall be solely responsible to maintain accurate records as required by the prevailing wage statute and to obtain and furnish all such certified records to the Township as required by Statute. The Contractor shall be solely liable for paying the difference between prevailing wages and any wages actually received by laborers, workmen and/or mechanics engaged in the Work and in every way defend and indemnify the Township against any claims arising under or related to the payment of wages in accordance with the Prevailing Wage Act.

8. Contractor agrees to maintain, without charge to the Township, all records and documents for projects of the Township in compliance with the Freedom of Information Act, 5 ILCS 140/1 et seq. In addition, Contractor shall produce records which are responsive to a request received by the Township under the Freedom of Information Act so that the Township may provide records to those requesting them within the time frames required. If additional time is necessary to compile records in response to a request, then Contractor shall so notify the Township and if possible, the Township shall request an extension so as to comply with the Act. In the event that the Township is found to have not complied with the Freedom of Information Act due to Contractor's failure to produce documents or otherwise appropriately respond to a request under the Act, then Contractor shall indemnify and hold the Township harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.
9. This Agreement shall be binding upon and inure to the benefit of the Township and the Contractor and their respective successors and assigns. Notwithstanding the foregoing, the Contractor shall not assign, lease, or sub-lease this Agreement or any portion thereof without the express written consent of the Township which the Township may withhold in its sole and absolute discretion. Any such assignment shall be null and void.
10. Contractor expressly acknowledges that the Township makes no representation or warranties, express or implied, as to the adequacy, fitness, or condition of the Township properties where the Contract Work shall take place, for the purposes set forth herein, or for any other purpose or use, expressed or implied, by Contractor. ALL IMPLIED WARRANTIES OF QUALITY, FITNESS, MERCHANTABILITY, AND HABITABILITY ARE HEREBY EXCLUDED. Contractor accepts use of the Township properties and the improvements thereon, "AS-IS" and "WITH ALL FAULTS." Contractor acknowledges that Contractor has inspected the Township properties and is satisfied as to the adequacy, fitness, and condition thereof. Further, Contractor

expressly acknowledges the Township shall not provide any training regarding the Township property, use of the Township property, or any hazards contained therein.

11. It is understood, acknowledged and agreed by the parties that the relationship of the Contractor to Township arising out of this Agreement shall be that of an independent contractor. Neither Contractor, nor any employee or agent of Contractor, is an employee, partner, joint venture, and/or agent of Township, and therefore is not entitled to any benefits provided to employees of Township. Contractor has no authority to employ/retain any person as an employee or agent for or on behalf of Township for any purpose. Neither Contractor nor any person engaging in any work or services related to this Agreement at the request or with the actual or implied consent of the Contractor may represent himself to others as an employee of Township. Should any person indicate to the Contractor or any employee or agent of Contractor by written or oral communication, course of dealing or otherwise, that such person believes Contractor to be an employee or agent of Township, Contractor shall use its best efforts to correct such belief. In ordering or accepting delivery of or paying for any goods or services, Contractor shall do so in Contractor's own business.

Contractor shall at all times have sole control over the manner, means and methods of performing the Contract Work required by this Agreement according to its own independent judgment. Contractor acknowledges and agrees that it will devote such time and resources as necessary to produce the contracted for results. Township shall not have any control over, change of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the Contract Work since they are solely the Contractor's rights and responsibilities. The Contractor shall supervise and direct the Contract Work efficiently with its best skill and attention; and the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees and all other persons who may be affected thereby.

12. All payments under this Agreement shall be based on the previous determined contract price between Township and Contractor. See payment terms attached hereto as Exhibit A.
13. This Agreement sets forth the entire understanding of the Township and the Contractor. The Township and the Contractor agree there shall be no change or modification to this Agreement unless any such amendment is dated, reduced to writing, executed by both parties, and attached to and made a part of this Agreement. The Township and the Contractor agree that the titles of the items in this Agreement, hereinabove set forth, are for conveniences of identification only and shall not be considered for any other purpose. This Agreement shall be construed, governed, and enforced according to the laws of the State of Illinois and any action to enforce this Agreement shall take place in the Circuit Court of Cook County, Illinois. This

Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty or obligation to any third-party. Nothing in this Agreement shall be construed or interpreted in any way as a waiver, express or implied, of any common law and/or statutory privileges and/or immunities of the Township and/or the Township Board of Trustees, its respective officers, officials, employees, volunteers agents, successors, and/or assigns, as to any claims, causes of action, damages, demands, losses, penalties, obligations, liabilities, or expenses of any kind or nature whatsoever. If any clause, phrase, provision, or portion of this Agreement to any person or circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair, or render invalid or unenforceable the remainder of this Agreement.

IT IS MUTUALLY UNDERSTOOD AND AGREED that the Contractor shall have the full control of the ways and means of performing the work referred to above and that the Contractor or its employees, representatives or subcontractors are in no sense employees of the Township, it being specifically agreed that the Contractor bears the relationship of an independent contractor to the Township.

This agreement shall be in full force and effect from the **7th day of November 2019** until it is terminated by the Township.

IN WITNESS WHEREOF, THE PARTIES have executed this Agreement this **7th day of November, 2019.**

PALATINE TOWNSHIP

CONTRACTOR

Sharon Langlotz-Johnson

Print Name

Print Name

Supervisor

Title

Title

EXHIBIT A

ACTION FENCE CONTRACTORS, INC.

Phone (847) 949-6690

Fax (847) 949-6499

www.actionfence.com



945 TOWER ROAD
MUNDELEIN, ILLINOIS 60060-3811

Date October 25, 2019

PROPOSAL

Name: Palatine Township
721 S. Quentin Rd.
Palatine, IL 60067
Attn: Ken Lopez

Ship to: _____

We propose, subject to acceptance, to furnish and install:

Misc. Fencing Repairs and Replacements at Day Care

- Replace gate hardware on existing single walk gate
- Replace 2 ea. gate posts for double drive gate
- Replace 10' of 5' high galvanized mesh
- Tie in existing top rail to walk gate posts

Base Bid \$2,800.00

~~Dumpster Enclosure~~

- ~~Replace 2 ea. 12' opening dumpster gates~~

~~Add to Base \$3,800.00~~

RECOMMENDED BY: **Chris Kaechele**

PURCHASER:

ACCEPTED: ACTION FENCE CONTRACTORS, INC.

BY

11/7/19
DATE

BY _____ this _____ day of _____, 20 _____

Make Remittances Payable to Action Fence Contractors, Inc.

This contract is subject to terms, covenants, and conditions on the reverse side hereof, and is not binding upon Action Fence Contractors, until accepted.