

PUBLIC WORKS CONTRACT

Between

The City of Pomona

and

Onyx Paving Company, Inc.

For

Street Preservation Local Citywide (FY 24-25),

Project No. 428-68593

[Construction]

IFB NO: 2025-10

(Updated 7/16/2024)

PUBLIC WORKS CONTRACT

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PUBLIC WORKS CONTRACT

Street Preservation – Local Citywide (FY 24-25)
Project No. 428-68593
[Construction]
IFB No. # 2025-10

THIS CONTRACT ("Contract") is made and entered into on **June 17, 2025**, in the County of Los Angeles, State of California, by and between the City of Pomona, hereinafter called City, and **Onyx Paving, Inc.**, hereinafter called Contractor. The City and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1. SCOPE OF WORK.

The Contractor shall perform all Work within the time stipulated in the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 4 below for the following Project(s):

Street Preservation – Local Citywide (FY 24-25)
Project No. 428-68593
[Construction]
IFB No. # 2025-10

The Contractor and its surety shall be liable to the City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION.

The Work shall be commenced on the date stated in the City's Full Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within **70 consecutive working days for all the base bid work and 30 consecutive working days for all the additive alternate work (if awarded)**, and if only a portion of the additive alternate work is awarded the allowed additive alternate working days will be prorated based on the dollar amount) beginning on the date stipulated in the written "Notice to Proceed" issued by the City Engineer. **All base bid work shall be completed shall be completed**

ARTICLE 3. CONTRACT PRICE.

Sec. 3.1 Contract Price.

The City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, for Base Bid A & B, and Additive Alternate Item No. 1, in the sum of **Three Million Six Hundred and Eighty-Two Thousand Dollars (\$3,682,000).**

Sec. 3.2 Payment Terms

Payment shall be made as set forth in the Section 7 of Special Provisions.

ARTICLE 4. COMPONENT PARTS OF THE CONTRACT. (Blank)

The "Contract Documents" include the following:

- Purchasing Specifications
- Special Provisions
Contractor's Bid Forms
- Contractor's Certificate Regarding Workers' Compensation
- Bid Bond
- Statement of Non-Collusion by Contractor
- Agreement for Indemnification by Contractor and Acceptance and Acknowledgment of Procurement Practices of the City of Pomona
- Public Works Contract
- Performance Bond
- Payment (Labor and Materials) Bond
- Worker's Compensation/Employers Liability Endorsement
- General Liability Endorsement
- Automobile Liability Endorsement
- Special Provisions (or Special Conditions)
- Technical Specifications
- Green book Standard Specifications (Sections 1-9 Excluded, except as specifically referenced herein)
- Addenda
- Approved and fully executed change orders
- All other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

ARTICLE 5. PROVISIONS REQUIRED BY LAW.

Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Project. Such laws, rules and regulations shall include, but not be limited to the following.

Sec. 5.1 Contractors License.

The Contractor shall possess a Type "A" California Contractor's license at the time of award of the Contract.

Sec. 5.2 Ineligible Contractor Prohibited.

Any contractor or subcontractor who is ineligible to perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code is prohibited from performing work under this Contract.

Sec. 5.3 Unfair Business Practices Claims.

The Contractor or subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the City renders final payment to the Contractor without further acknowledgment by the parties. (California Public Contract Code Section 7103.5.).

Sec. 5.4 Trenches, Excavations and Unknown Conditions.

Pursuant to California Public Contract Code Section 7104, in the event the work included in this Contract requires excavations more than four (4) feet in depth, the following shall apply.

(a) Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of all: (1) material that Contractor believes is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site different from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 3 of the Special Provisions.

(c) That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

Sec. 5.5 Trench and Pipeline Safety.

If this Contract is for more than \$25,000 and involves excavation of any trench five feet or more in depth, the Contractor shall submit a detailed plan of shoring, bracing, sloping or other provisions to be made for worker protection in accordance with Labor Code Section 6705. Such plan shall be reviewed by the City, and if no exceptions are taken by the City the plan shall be deemed accepted by the City. In addition, the Contractor, in accordance with California Labor Code Sections 6500, 6501 and 6502, shall submit a Permit Application Form (see Appendix, Part 7 for sample of this document) to State of California, Department of Industrial Relation, Division of Occupational Safety & Health for a permit.

Sec. 5.6 Utility Relocation.

City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse contractor for any costs incurred in locating, repairing damage not caused by Contractor and removing or relocating such unidentified utility facilities, including equipment

idled during such work. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

Sec. 5.7 Third Party Claims Notification.

The City shall timely notify the Contractor in writing of any third party claims relating to the contract.

Sec. 5.8 State License Board Notice.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

ARTICLE 6. INSURANCE, BONDS AND INDEMNIFICATION.

Insurance. All insurance issued in compliance with this section shall be issued in the form, and by an insurer or insurers, satisfactory to and first approved by the City in writing. Certificates of insurance in the amounts required shall be furnished by the Contractor to the City prior to the commencement of work. Refer to ACC Environmental Consultants specifications for additional requirements.

The Contractor shall maintain adequate workman's compensation insurance under the laws of the State of California for all labor employed by him or by any Subcontractor under him who may come within the protection of such workman's compensation insurance laws. At the time of execution of the Contract, the Contractor shall provide the certificate in substantially the following form: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." (California Labor Code 1860-1861).

The Contractor shall maintain during the life of this Contract public liability and property damage insurance in which the City shall be named as an additional insured, and which shall protect the Contractor or any subcontractor performing work covered by the contract from claims for personal injury, including accidental death as well as for claims for personal damages and property damages which may arise from the operations under any contract entered into whether such operations shall be performed by the Contractor or any subcontractor, or by anyone directly or indirectly employed by any one of them. The City of Pomona and its elected or appointed officials, directors, officers, agents, employees, volunteers, or contractors shall be named as an "Additional Insured" under public liability and property damage insurance. The issuing insurance company must have A.M. Best rating no less than A-:VII. All said insurance policies, as described in this section, shall provide that the same is non-cancelable except upon thirty (30) calendar days written notice to the City.

The limit of liability for such insurance shall be as follows:

1. General Liability:

	Each Person	Each Occurrence	Aggregate
Bodily Injury	\$500,000	\$1,000,000	\$2,000,000
Property Damage	---	\$1,000,000	\$2,000,000

A combined single limit policy with aggregate limits in the amount of \$2,000,000 will be considered equivalent to the above minimum limits.

2. Automobile Liability

Any vehicle, combined single limit \$1,000,000

Bonds. The Contractor shall secure with a responsible corporate surety or corporate sureties, satisfactory bonds conditioned upon faithful performance by the Contractor of all requirements under the contract and upon the payment of claims of material, men and laborers there-under. The Faithful Performance Bond shall be in the sum of not less than one hundred percent (100%) of the estimated aggregate amount of the payments to be made under the contract computed on the basis of the prices stated in the bid. The Faithful Performance Bond shall convert to a Warranty Bond in the amount of Fifty (50%) percent of the amount of the contract price plus all change orders, and shall cover warranty of the work and materials for a period of one year after the recordation of the Notice of Completion. The Labor and Material Bond shall be in the sum of not less than one hundred percent (100%) of the estimated aggregate amount of the payments to be made under the contract computed on the basis of the prices stated in the bid. Both bonds shall be on forms provided by the City. At the time of submitting the Faithful Performance Bond and the Labor and Material bond the insurer shall submit to the City the following:

- (a) the original, or certified copy of the unrevoked appointment, power of attorney, bylaws, or other instrument entitling or authorizing the person who executed the bond; or
- (b) a certified copy of the certificate of authority of the insurer issued by the Insurance Commissioner; or
- (c) a certificate from the Los Angeles County Clerk stating that the certificate of authority of the insurer has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; or
- (d) copies of the insurer'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, Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

Indemnity. Contractor hereby agrees to indemnify, including the cost to defend the City, and its officers, officials, agents, employees, and volunteers, from any and all losses, claims, liens, demands, liability, and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees, expert costs, expert fees and other all expenses incurred by the City to the maximum extent allowed by law arising in favor of any party, that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, its agents, subcontractor's or subcontractor's agents, in the

performance of services under this contract, but this indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, arising from the sole negligence, willful misconduct or defects in design by City or the agents, servants, or independent contractors who are directly responsible to City, or arising from the active negligence of City.

ARTICLE 7. LABOR AND WAGE PROVISIONS.

Sec. 7.1 Prevailing Wages.

Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the City Engineer's office or may be obtained online at <http://www.dir.ca.gov/dlsr> and which must be posted at the job site. The Contractor shall forfeit as a penalty to the City not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

Sec. 7.2 Apprentice Program.

The Contractor's attention is directed to the provisions of Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any Subcontractor under him. The Contractor and any Subcontractor under him shall comply with the requirements of said sections in the employment of apprentices.

Information relative to apprenticeship standards and administration of the apprenticeship program may be obtained from the Director of Industrial Relations, P.O. Box 603, San Francisco, California 94101 or from the Division of Apprenticeship Standards and its branch office.

Sec. 7.3 Legal Hours of Work and Overtime.

Pursuant to Labor Code Section 1810, et seq., eight hours of work is a legal days work, and hours worked in excess of that amount must be paid as overtime at a rate of not less than one and one-half time the basic rate of pay. The Contractor and subcontractors shall keep an accurate record showing the name and actual hours worked for each calendar day and week for each workman. The Contractor shall pay a penalty of \$25 per day for each violation of these wage provisions.

Sec. 7.4 Payroll Records.

(a) The Contractor's attention is directed to the following provisions of Labor Code Section 1776. The Contractor shall be responsible for compliance with its provisions by Contractor and his Subcontractors.

(b) In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations on the specified interval and format prescribed by the Department of Industrial Relations, which may include electronic submission. Contractor shall comply with all requirements and regulations from the Department of Industrial Relations relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records

directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

(c) Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

(d) Each Contractor and Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(e) The payroll records enumerated under subdivision (b) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (b) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (b) shall be made available upon request to the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

(f) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(g) Each Contractor shall file a **certified copy** of the records enumerated in subdivision (b) with the entity that requested such records within **10 days** after receipt of a written request.

(h) Any copy of records made available for inspection as copies and furnished upon

request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the contract or performing the contract shall not be marked or obliterated.

(i) The Contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (b), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

(j) The contractor shall have **10 days** in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the **10-day period**, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit **one hundred dollars (\$100.00)** for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

(k) The Contractor and Subcontractors shall submit to the City Engineer certified payrolls and copies of all payroll checks and pay stubs showing all itemized deductions for each employee on a weekly basis during the term of this contract.

ARTICLE 8. COORDINATION OF WORK

Sec. 8.1 Representative of Contractor.

The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith:

Name / Title:	<u>Corey R. Kirschner / CEO</u>
Company / Firm:	<u>Onyx Paving Company, Inc.</u>
Address:	<u>2890 East La Cresta Ave.</u>
City/State/Zip:	<u>Anaheim, CA 92806</u>
Phone/Email:	<u>714-632-6699 // Bids@onyxpaving.com</u>

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Contract. Therefore, the foregoing principals shall be responsible during the term of this Contract for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Contract, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

Sec. 8.2 Contracting Officer.

The Contracting Officer shall be such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contracting Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contracting Officer. Unless otherwise specified herein, any

approval of City required hereunder shall mean the approval of the Contracting Officer. The Contracting Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Contract.

Sec. 8.3 Prohibition Against Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Contract. Neither this Contract nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Contract shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

Sec. 8.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its subcontractors, agents or employees, performs the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, subcontractors, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its subcontractors, agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor.

Sec. 8.5 Identity of Persons Performing Work.

Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services set forth herein. Contractor represents that the tasks and services required herein will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

ARTICLE 9. ENFORCEMENT OF CONTRACT

Sec. 9.1 California Law.

This Contract shall be construed and interpreted both as to validity and as to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Contract shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

Sec. 9.2 Disputes.

In the event either party fails to perform its obligations hereunder, the non-defaulting party shall provide the defaulting party written notice of such default. The defaulting party shall have ten (10) days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) day period, the defaulting party shall have a reasonable time to cure the default, not to exceed a maximum of thirty (30) days, so long as the defaulting party commences to cure such default within ten (10) days of service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety and general welfare, the defaulting party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the non-defaulting party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting party fail to cure the default within the time period provided in this Section, the non-defaulting party shall have the right, in addition to any other rights the non-defaulting party may have at law or in equity, to terminate this Contract. Compliance with the provisions of this Section 9.2 shall be a condition precedent to bringing any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

Sec. 9.3 Waiver.

No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Contract.

Sec. 9.4 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Contract, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Sec. 9.5 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Contract, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Contract.

Sec. 9.6 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Contract, Contractor shall vacate any City owned property which Contractor is permitted to occupy hereunder and City may, after compliance with the provisions of Section 9.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of setoff or partial payment of the amounts owed the City as previously stated.

Sec. 9.7 Termination for Convenience.

The City may terminate this Contract without cause for the convenience of the City upon giving contractor thirty (30) days prior written notice of termination of the Contract. Upon receipt of the notice of termination, the Contractor shall cease all further work pursuant to the Contract unless otherwise indicated in the notice. Upon such termination by the City, the Contractor shall not be entitled to any other remedies, claims, actions, profits, or damages except as provided in this paragraph. Upon the receipt of such notice of termination, Contractor shall be entitled to the following compensation:

- a) The contract value of the work completed to the City's satisfaction as solely determined by the City up to and including the termination date indicated in the notice of termination, less the amount of progress payments received by contractor.
- b) Actual move-off costs including labor, rental fees, equipment transportation costs, the costs of maintaining on-site construction office for supervising the mover-off.
- c) The cost of materials custom-made for this Contract which cannot be used by the Contractor in the normal course of his business, and which have not been paid for by City in progress payments.
- d) All costs shall not include any markups as might otherwise be allowed by any plans or specifications which were a part of the Contract.

The provisions of this paragraph shall supersede any other provision of the Contract or any provision of any plans, specification, addendums or other documents which are or may become a part of this Contract. City and Contractor agree that the provisions of this paragraph are a substantive part of the consideration for this Contract.

Sec. 9.8 Attorneys' Fees.

If either party to this Contract is required to initiate or defend or made a party to any action or proceeding in any way connected with this Contract, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

Sec. 9.9 Legal Actions Against the City

In the event litigation is brought against the City concerning compliance by the City with State or Federal laws, rules or regulations applicable to highway work, the provisions of this section shall apply.

- a) If, pursuant to court order, the City prohibits the Contractor from performing all or any portion of the work, the delay will be considered a right of way delay within the meaning of Subsection 6-6 of the Standard Specification unless the contract is terminated as hereinafter provided, in which event compensation payable to the Contractor shall be determined in accordance with said termination provisions.

- b) If, pursuant to court order (other than an order to show cause) the City is prohibited from requiring the Contractor to perform all or any portion of the work, the City may, if it so elects, eliminate the enjoined work pursuant to Section 3 of the Standard Specifications or terminate the contract in accordance with Subsections 6-3 and 6-5 of the Standard Specifications.
- c) If the final judgment in the action prohibits the City from requiring the Contractor to perform all or any portion of the work, the City will either eliminate the enjoined work pursuant to Sections 3 of the Standard Specifications or terminate the contract in accordance with Subsections 6-3 and 6-5 of the Standard Specifications.
- d) Termination of the contract and the total compensation payable to the Contractor in the event of termination shall be governed by the following:

(1) The City Engineer will issue the Contractor a written notice specifying that the contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the City Engineer, the Contractor shall:

- a. Stop all work under the contract, except that specifically directed to be completed prior to acceptance.
- b. Perform work the City Engineer deems necessary to secure the project for termination.
- c. Remove equipment and plan from the site of the work.
- d. Take such action as is necessary to protect materials from damage.
- e. Notify all Subcontractors and suppliers that the contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the City Engineer.
- f. Provide the City Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including its storage location and such other information as the City Engineer may request.
- g. Dispose of materials not yet used in the work as directed by City Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including materials for which partial payment has been made as provided in Subsection 9-3.2 of the Standard Specifications, and with bills of sale or other documents of title for such materials.
- h. Subject to the prior written approval of the City Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the City Engineer, the Contractor shall assign to the City all the right title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
- i. Furnish the City Engineer with the documentation required to be furnished by the Contractor under the provisions of the contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the contract.
- j. Take such other actions as the City Engineer may direct.

- (2) Acceptance of the contract as hereinafter specified shall not relieve the

Contractor of responsibility for damage to materials except as follows:

- a. The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Subsection 9-3.2 of the Standard Specifications, and for materials furnished by the City for use in the work and unused, shall terminate when the City Engineer certifies that such materials have been stored in the manner and at the locations he has directed.
- b. The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of the materials has been taken by the City.
- c. When the City Engineer determines that the Contractor has completed the work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, he will recommend that the City Engineer formally accept the contract, and immediately upon and after such acceptance by the City Engineer, the Contractor will not be required to perform any further work thereon and shall be relieved of his contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the City Engineer.

- (3) The total compensation to be paid to the Contractor shall be determined by the City Engineer on the basis of the following:

- a. The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for termination. Reasonable cost will include a reasonable allowance for project overhead and general administrative overhead not to exceed a total of seven percent (7%) of direct costs of such work.

When in the opinion of the City Engineer, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

- b. A reasonable allowance for profit on the cost of the work performed as determined under Subsection (a), provided the Contractor establishes to the satisfaction of the City Engineer that it is reasonably probable that he would have made a profit had the contract been completed and provided further that the profit allowed shall in no event exceed four percent (4%) of said cost.

- c. The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the City Engineer

- d. A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the contract.
- e. All records of the Contractor and his Subcontractors, necessary to determine compensation in accordance with the provisions of this section, shall be open to inspection or audit by representatives of the City at all times after issuance of the notice that the contract is to be terminated and for a period of three years, and such records shall be retained for that period.
- f. After acceptance of the work by the City Engineer, the City Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate when in his opinion the amount thus paid, together with all amounts previously paid allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

ARTICLE 10. CITY OFFICERS AND EMPLOYEES, NONDISCRIMINATION

Sec. 10.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

Sec. 10.2 Conflict of Interest.

The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

Sec. 10.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. To the extent required by law, Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

Any Contractor who shall be found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of Federal law or executive order in the performance of any contract with the City, thereby shall be found in material breach of such contract and thereupon the City shall have power to cancel or suspend the contractor, in whole or in part, or to deduct from the amount payable to such Contractor the sum of twenty-five dollars (\$25.00) for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract; or both. Only a finding of the

State of California Fair Employment Practices Commission or the equivalent Federal agency or officer shall constitute evidence of a violation of contract under this section.

ARTICLE 11. MISCELLANEOUS PROVISIONS

Sec. 11.1 Notice.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and shall be deemed to be given when served personally or deposited in the U.S. Mail, prepaid, first-class mail, return receipt requested, addressed as follows:

To City: City of Pomona
 Public Works Department, Engineering Division
 City Hall, 505 S. Garey Ave., PO BOX 660
 Pomona, CA 91767
 Attention: City Engineer

To Contractor: Name, Title: Corey R. Kirschner / CEO
 Company/Firm: Onyx Paving Company, Inc.
 Address: 2890 East La Cresta Ave.
 City/State/ZC: Anaheim, CA 92806

The above address of Contractor is designated as the place to which all notices, letters and other communications to the Contractor shall be mailed or delivered. The mailing to or delivering at the above-named place of any notice, letter or other communication to the Contractor, shall be deemed sufficient service thereof upon the Contractor. The date of said service shall be the date of such mailing or delivery. Such address may be changed at any time by a written notice signed by the Contractor and delivered to the City Engineer.

Sec. 11.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

Sec. 11.3 Integration; Amendment.

It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

Sec. 11.4 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or

sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

Sec. 11.5 Hiring of Undocumented Workers Prohibited

Contractor shall not hire or employ any person to perform work within the City of Pomona or allow any person to perform work required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States.

Sec. 11.6 Corporate Authority

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

Sec. 11.7 Independent Contractor.

The Contractor is and shall at all times remain as to the City, a wholly independent contractor. Neither the City, nor any of its officers, employees or agents shall have control over the conduct of the Contractor or any of the Contractors' officers, employees or agents, except as herein set forth. The Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City, nor shall City officers, employees or agents be deemed the officers, employees, or agents of Contractor as a result of this Agreement.

Sec.11.8 Legal Responsibilities.

The Contractor shall keep itself informed of City, State, and Federal laws, ordinances and regulations, which may in any manner affect the performance of its services pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws, ordinances and regulations. Neither the City, nor its officers, agents, or employees shall be liable at law or in equity as a result of the Contractor's failure to comply with this section.

Sec. 11.9 Sales And/or Taxes:

Except as may be otherwise specifically provided herein, all sales and/or use taxes assessed by Federal, State or local authorities on materials used or furnished by the Contractor in performing the work hereunder shall be paid by the Contractor.

This Contract is executed by the **CITY** pursuant to the approval by its Governing Body in session on June 16, 2025, authorizing the same, and **CONTRACTOR** has caused this Contract to be duly executed.

CITY OF POMONA CALIFORNIA

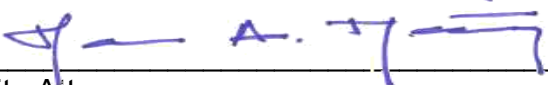
By:

City Manager

ATTEST:

City Clerk

Approved as to form:



City Attorney

Contractor: _____

By:

Name

Title

Date:

(Use of City Bond Form is Required)

**FAITHFUL PERFORMANCE BOND
PUBLIC WORK (CALIFORNIA)**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, _____ (as Principal) has entered into a contract dated _____, _____, (the "Contract") with the City of Pomona (Obligee) referred to and made a part hereof to perform the following work of public improvement, to wit: **Street Preservation Local Citywide (FY 24-25) [Construction]** and all appurtenant work in accordance with the plans and specifications for **Project No. 428-68593, IFB# 2025-10**, which agreement requires the Principal to provide Obligee with this bond.

NOW THEREFORE, we, _____ (as Principal) and _____ (as Surety) a corporation organized under the laws of _____, and duly authorized to transact business in the State of California, as Surety, are held firmly bound unto the City of Pomona (as Obligee) in the sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment whereof well and truly to be made the Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The address at which the Surety may be served with notices, papers and other documents is:

The address at which the Principal may be served with notices, papers and other documents is:

The condition of the foregoing obligation is such that if the Principal, his or its heirs, executors, administrators, successors or assigns, and each of his or its subcontractors shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall remedy the default pursuant to the Contract, or shall promptly, at the Obligee's option:

- i. Take over and complete the Project in accordance with all terms and conditions in the Contract; or
- ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Obligee, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other

costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Principal by the Obligees under the Contract and any modification thereto, less any amount previously paid by the Obligees to the Principal and any other set offs pursuant to the Contract.

- iii. Permit the Obligees to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Principal by the Obligees under the Contract and any modification thereto, less any amount previously paid by the Obligees to the Principal and any other set offs pursuant to the Contract.

Surety expressly agrees that the Obligees may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal.

Surety shall not utilize Principal in completing the Project nor shall Surety accept a bid from Principal for completion of the Project if the Obligees, when declaring the Principal in default, notifies Surety of the Obligees' objection to Principal's further participation in the completion of the Project.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the Obligees in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way 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 agreement or to the work or to the specifications.

This document is signed by the respective parties on the dates next to their names.

PRINCIPAL

Signature: _____ Date: _____

Name and Title (Print): _____

SURETY

Signature: _____ Date: _____

Name and Title (Print): _____

I declare under penalty of perjury under the laws of the State of California that the contents of the above Bid Bond are true and correct, and that I have been duly authorized to sign this Bid

Bond on behalf of Surety. This Declaration is signed on _____, in the City of _____, State of California.

SURETY

Signature: _____ Date: _____

Name and Title (Print): _____

--OR--

State of California)
County of Los Angeles)

On _____, before me, _____ (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their 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.

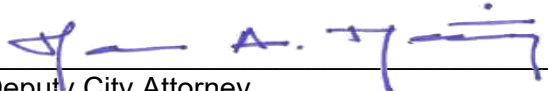
WITNESS my hand and official seal.

Signature _____ (Seal)

-- AND --

(Proof of signature authorization or power of attorney must be attached)

APPROVED AS TO FORM:



Deputy City Attorney

(Use of City Bond Form is Required)

**LABOR AND MATERIAL PAYMENT BOND
PUBLIC WORK (CALIFORNIA)**

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, _____ (as Principal) has entered into a contract dated _____, _____, (the "Contract") with the City of Pomona (Obligee) referred to and made a part hereof to perform the following work of public improvement, to wit: **Street Preservation Local Citywide (FY 24-25) [Construction]** and all appurtenant work in accordance with the plans and specifications for **Project No. 428-68593, IFB# 2025-10**, which requires Principal to file this bond to secure claims made under Civil Code Section 8000, *et seq.*

NOW THEREFORE, we, _____ (as Principal) and _____ (as Surety) a corporation organized under the laws of _____ and duly authorized to transact business in the State of California, are held firmly bound unto the City of Pomona (as Obligee), and all subcontractors, laborers, materialpersons and other persons employed in the performance of the referenced agreement, _____ in _____ the _____ sum _____ of _____ Dollars (\$ _____), lawful money of the United States of America, which is 100% of the amount of the Contract, for the payment whereof well and truly to be made the Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The address at which the Surety may be served with notices, papers and other documents is:

The address at which the Principal may be served with notices, papers and other documents is:

If the above bounden Principal, his or its heirs, executors, administrators, successors, assigns, or any of his or its subcontractors, fails 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 to persons named in Section 9100 of the Civil Code, or for amounts due under the Unemployment Insurance Code with respect to such work or labor performed under the 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 subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, then the Surety on this bond will pay the same, in an amount not exceeding the sum specified in this bond, and also, in case suit is brought upon this bond, a reasonable attorney's fee, which shall be awarded by the court to the prevailing party in said suit, said attorney's fee to be taxed as costs in said suit and to be included in the judgment herein rendered.

As part of the obligation secured hereby, the Surety shall not be exonerated or released from the obligation of the bond by any change, alteration, or modification in or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme of work of improvement, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement, or under the bond, nor, where the bond is given for the benefit of claimants, by any fraud practiced by any person other than the claimant seeking to recover on the bond.

This bond shall inure to the benefit of any and all persons, companies and corporations named in Civil Code Section 9100 so as to give them a right of action in a suit on this bond.

This bond is executed for the purpose of complying with the laws of the State of California designated as Title 3, Chapter 5, Works of Improvement, commencing with Section 9550 of the Civil Code of the State of California and all amendments thereto, and shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code of the State of California.

This document is signed by the respective parties on the dates next to their names.

PRINCIPAL

Signature: _____ Date: _____

Name and Title (Print): _____

SURETY

Signature: _____ Date: _____

Name and Title (Print): _____

I declare under penalty of perjury under the laws of the State of California that the contents of the above Bid Bond are true and correct, and that I have been duly authorized to sign this Bid Bond on behalf of Surety. This Declaration is signed on _____, in the City of _____, State of California.

SURETY

Signature: _____ Date: _____

Name and Title (Print): _____

--OR--

State of California)
County of Los Angeles)

On _____, before me, _____ (here
insert name and title of the officer), personally
appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their 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.

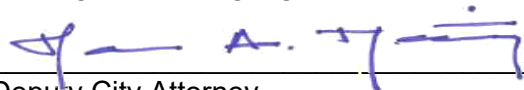
WITNESS my hand and official seal.

Signature _____ (Seal)

-- AND --

(Proof of signature authorization or power of attorney must be attached)

APPROVED AS TO FORM:



Deputy City Attorney

CONTRACTOR'S CERTIFICATE REGARDING WORKMEN'S COMPENSATION

Labor Code Section 3700

"Every employer except the State and all political subdivisions of institutions thereof, shall secure the payment or compensation in one or more of the following ways:"

"(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State."

"(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees."

I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONTRACTOR:

Name of Contractor

By: _____

Date: _____

(printed name of signer)

(In accordance with Article 5 {commencing at Section 1860}, Chapter 1, Part 7, Division 2, of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

CITY OF POMONA**CONTRACT RETENTION POLICY**

(To be completed when escrow account is requested)

Pursuant to Section 22300 of the Public Contract Code of the State of California, the City of Pomona offers the attached Escrow Agreement for Security Deposits in Lieu of Retention with the following specifications:

1. The Escrow Agent shall be the **Citizens Business Bank** located at 1095 N. Garey Avenue, Pomona, CA 91767.
2. The City (Owner) shall receive monthly statements from the Escrow Agent on any retention payments to the Escrow Agent and shall reconcile the balance of the account to the City's general ledger retention liability account each month. A copy of the Escrow statement shall be provided to the Contractor upon request.
3. The retention account will be closed by the Owner and the balance therein released to the Contractor thirty-five (35) days after the Notice of Completion is recorded by the Los Angeles County Recorder. If, however, the Owner receives claims for any amount held in retention, or the Owner identifies valid unpaid notices, the Owner shall retain amounts necessary to address such claims and notices.

CONTRACTOR

Signature: _____ Date: _____

Name and Title: _____

CITY OF POMONA

Signature: _____ Date: _____

Name and Title: _____

ESCROW AGENT

Signature: _____ Date: _____

Name and Title: _____

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between:

- 1) The **CITY OF POMONA**, whose address is 505 S. Garey Avenue, Pomona, CA 91769, hereinafter called "**Owner**," whose address is 505 S. Garey Avenue, Pomona, CA 91769;
- 2) _____, hereinafter called "**Contractor**," whose address is _____; and
- 3) **Citizens Business Bank**, hereinafter called "**Escrow Agent**," whose address is 1095 North Garey Avenue, Pomona, CA 91767.

For the consideration hereinafter set forth, the Owner, Contractor and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of \$ _____, dated _____ (hereinafter referred to as the "**Contract**"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contractor earnings, the Escrow Agent shall notify the Owner within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of City of Pomona, and shall designate the Contractor as the beneficial owner. All securities used as a substitute for retention earnings will be in compliance with the California State Government Code Section 16430.
2. The Owner shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the Owner makes payment of retention earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by the Escrow Agent in administering the Escrow Account and all expenses of the Owner. The expenses and payment terms shall be determined by the Owner and Contractor.
5. The interest earned on the securities or the money market accounts held in Escrow and all interest earned on the interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied with written authorization from the Owner

to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

7. The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven (7) days' written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.
8. Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, the Escrow Agent shall release to Contractor all securities and interest on deposit, less escrow fees and charges of the Escrow Account. If the Owner determines that any portion of the securities (and interest) on deposit shall be retained in response to third party claims (and any related notices), the Owner shall provide the Escrow Agent with written notice of said retention. The Escrow Agent shall withhold amounts from release pursuant to said notice. The Escrow Account shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. The Escrow Agent shall rely on the written notification from the Owner and Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

[Intentionally left blank – signatures follow on the next page.]

On Behalf of Owner:

Signature: _____
Andrew Mowbray, Finance Director
City of Pomona
505 S. Garey Avenue
Pomona, CA 91769

On Behalf of Contractor:

Signature: _____

Name and Title: _____

Address: _____

On Behalf of Escrow Agent:

Signature: _____

Name and Title: _____

Address: 1095 N. Garey Avenue, Pomona, CA 91767

At the time of escrow account if opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the dates first set forth above.

OWNER

Signature: _____ Date: _____
Andrew Mowbray, Finance Director

CONTRACTOR

Signature: _____ Date: _____

Name and Title: _____

APPROVED AS TO FORM

Signature: _____ Date: _____
City Attorney

NOTICE

Labor Code, Division 2, Part 7, Chapter 1, Article 2, Section 1773.3 states:

"An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five (5) calendar days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee making the request. Within five (5) calendar days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards."

(Added by Stats. 1978, Ch. 1249.)

Submission of the "Extract of Public Works Contract Award" (see Appendix, Part 7 for sample of this document) will satisfy the above noted requirement.

Also note Labor Code Sections 1776(g), 1777.5 and 1777.7.

NOTICE

THE CONTRACTOR WILL BE REQUIRED TO FURNISH THE CITY OF POMONA WITH THE CLASSIFICATIONS OF LABORERS TO BE USED FOR THE COMPLETION OF THIS PROJECT WITHIN THREE (3) WORKING DAYS AFTER NOTIFICATION OF AWARDING OF CONTRACT.

RELEASE

OWNER: _____

CONTRACTOR: _____

PROJECT: _____

In consideration of final payment of undisputed Contract amounts relating to all labor, services, equipment or material furnished to Owner on the above referenced Project, Contractor hereby waives and releases any right to a stop notice, mechanic's lien, or against a labor and materials bond on the Project and hereby releases Owner from any and all claims for payment on the Project except for the disputed work and the disputed amounts both of which are set forth below:

DESCRIPTION OF DISPUTED WORK	DISPUTED AMOUNTS
<div>CHECK IF NONE: _____</div>	<div>CHECK IF NONE: _____</div>

Contractor acknowledges that it has been advised by its attorneys concerning, and is familiar with, the provisions of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Contractor, in that connection, acknowledges that it may have sustained damages, loss, cost, or

expense that is presently unknown or unsuspected, and that such damages, loss, cost, or expense as may have been sustained, may give rise to additional damages, loss, cost, or expense in the future. Nevertheless, Contractor acknowledges that this Release has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which it may have under California Civil Code Section 1542 or under any other state or federal statutes or common law principle of similar effect.

Date: _____

CONTRACTOR

By:
(signature)

Typed Name:

Title:

NOTICE: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.

PART 5

APPENDICES

APPENDIX A

STANDARD DRAWINGS

APPENDIX B

PROJECT INFORMATION SIGN

APPENDIX C

CITY PERMIT FORMS

**(Right of Way Encroachment Permit to be
obtained from City by Contractor, after
award of contract, at no fee)**

APPENDIX D

GEOTECHNICAL INVESTIGATION LOGS

APPENDIX E

PROJECT LOCATION MAPS

APPENDIX F

CONCRETE REPAIR LOCATIONS

APPENDIX G

BABA(Buy America Build America)

APPENDIX H

NOT USED

APPENDIX I

UPCOMING POMONA COMMUNITY EVENT LIST