

**CITY OF POMONA
ON-CALL MAINTENANCE SERVICES AGREEMENT**

1. Parties And Date.

This Agreement is made and entered into this 1st day of July, 2024 by and between the City of Pomona (“City”) and **Enco Engineering, Inc.**, a Plumbing Services Corporation, with its principal place of business at 627 S. 1st Avenue, Suite B, Covina, CA 91723 (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. Recitals.

2.1 Contractor.

Contractor desires to perform and assume responsibility for the provision of certain maintenance and repair services required by the City on the terms and conditions set forth in this Agreement to be issued pursuant to this Agreement and executed by the City and Contractor. Contractor represents that it is experienced in providing maintenance and repair services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that it is familiar with the plans of City. Contractor will perform the Services and shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

2.2 Project.

City desires to engage Contractor to render such maintenance and repair services for As-needed citywide plumbing services (“Project”) as set forth in this Agreement on an on-call, as-needed basis.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Contractor promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the maintenance and repair services necessary for the Project (“Services”). The types of Services to be provided are generally described in Exhibit “A” attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance, with this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall commence on the date first set forth above and expire on June 30, 2027, unless earlier terminated as provided herein. Contractor shall complete the Services within the term of this Agreement, and shall meet any other established and mutually agreed upon schedules and deadlines shall complete the Services within the term of this Agreement. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement. The Parties may, by mutual, written consent, further extend the term of this Agreement if necessary to complete the Services.

3.2 Responsibilities of Contractor.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Contractor on an independent contractor basis and not as an employee. Contractor retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Contractor shall also not be employees of City and shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with each Schedule, the City shall respond to Contractor's submittals in a timely manner. Upon the City's request, Contractor shall provide a more detailed schedule of anticipated performance to meet the relevant Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work undertaken by Contractor shall be subject to the approval of City.

3.2.4 City's Representative. The City hereby designates Matt Sampson, Facilities Maintenance Supervisor, and Robert Izabal, Lead Facilities Maintenance Technician or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.5 Contractor's Representative. Contractor hereby designates Susana V. Perez Lopez, President, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.6 Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.7 Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors, if any, shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors, if any, have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a city or county business license, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its sub-contractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.8 Period of Performance. Contractor shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Contractor shall perform the Services in strict accordance with any completion schedule or Project milestones described in this Agreement, or which may be provided separately and agreed upon in writing by the Parties. Contractor shall be responsible for the cost of any damages suffered by the City by reason of delay caused by Contractor, its employees or subcontractors, if any.

3.2.9 Disputes. Should any dispute arise respecting the true value of any work done, of any work omitted, or of any extra work which Contractor may be required to do, or respecting the size of any payment to Contractor during the performance of this Agreement, Contractor shall continue to perform the Services while said dispute is decided by the City. If Contractor disputes the City's decision, Contractor shall have such remedies as may be provided by law.

3.2.10 Laws and Regulations; Employee/Labor Certifications. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts are a part of this Agreement to the

same extent as though set forth herein and will be complied with. These include but are not limited to the payment of prevailing wages, the stipulation that eight (8) hours' labor shall constitute a legal day's work and that no worker shall be permitted to work in excess of eight (8) hours during any one calendar day except as permitted by law. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations, except for any claims or liabilities arising out of the sole negligence or willful misconduct of City, its officials, directors, officers, employees, agents or independent contractors.

3.2.10.1 Employment Eligibility; Contractor. By executing this Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Contractor shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for in Section 3.2.10 or any of its subsections.

3.2.10.2 Employment Eligibility; Subcontractors, Sub-subcontractors and consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants, if any, performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Contractor verifies that they are a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Contractor or its subcontracts, sub-subcontractors or consultants, if any, to meet any of the requirements provided for in Sections 3.2.10.1; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Contractor under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Labor Certification. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California 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 agrees to comply with such provisions before commencing the performance of the Services.

3.2.10.5 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, if any, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.10.6 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, if any, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement, except for any fines or penalties arising through the sole negligence or willful misconduct of City, its officials, directors, officers, employees, agents or independent contractors.

3.2.10.7 Water Quality.

(A) Management and Compliance. To the extent applicable, Contractor's Services must account for, and fully comply with, all local, state and federal laws, rules and regulations that may impact water quality compliance, including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); laws, rules and regulations of the Environmental Protection Agency and the State Water Resources Control Board, the City's ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the state.

(B) Liability for Non-Compliance. Failure to comply with the laws, regulations and policies described in this Section is a violation of law that may subject Contractor or City to penalties, fines, or additional regulatory requirements. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from and against any and all fines, penalties, claims or other regulatory requirements imposed as a result of Contractor's non-compliance with the laws, regulations and policies described in this Section, unless such non-

compliance is the result of the sole negligence or willful misconduct of the City, its officials, officers, agents, employees or authorized volunteers.

(C) Training. In addition to any other standard of care requirements set forth in this Agreement, Contractor warrants that all employees and subcontractors, if any, shall have sufficient skill and experience to perform the Services assigned to them without impacting water quality in violation of the laws, regulations and policies described in this Section. Contractor further warrants that it, its employees and subcontractors, if any, will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in this Section as they may relate to the Services provided under this Agreement. Upon request, City will provide Contractor with a list of training programs that meet the requirements of this paragraph.

3.2.11 Insurance.

3.2.11.1 Time for Compliance. Contractor shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Contractor shall not allow any subcontractor, if any, to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Section.

3.2.11.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors, if any. Contractor shall also require all of its subcontractors, if any, to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the minimum levels of coverage set forth in Exhibit "B", attached hereto and incorporated herein by this reference.

3.2.12 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, if any, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.13 [RESERVED]

3.2.14 Accounting Records. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business

hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.3 Fees and Payments.

3.3.1 Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "A" attached hereto and incorporated herein by reference. The maximum compensation for Services to be provided pursuant to the Scope of Services in Exhibit "A". The total compensation to be provided under this Agreement, in the aggregate, shall not exceed ONE HUNDRED THOUSAND DOLLARS \$100,000.00 ("Total Compensation") without written approval of the City. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Contractor shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Contractor shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.



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Pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Project and require the same of any subcontractors, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements.

3.4 Termination of Agreement.

3.4.1 Grounds for Termination. City may, by written notice to Contractor, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Contractor may, by written notice to City, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to City of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services which have been adequately rendered to City, and Contractor shall be entitled to no further compensation.

3.4.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished Documents and Data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request

3.4.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5 General Provisions.

3.5.1 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Contractor:

Enco Engineering
627 S. 1st Ave., Suite B
Covina, CA 91723
Attn: Susana V Perez Lopez, President

City:

City of Pomona
505 S. Garey Avenue
Pomona, CA 91766
Attn: City Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.2 Indemnification.

3.5.2.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, if any, consultants or agents in connection with the performance of the Contractor's Services, the Project, this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses, except for any claims, demands, causes of action, costs, expenses, liabilities, losses, damage or injuries arising through the sole negligence or willful misconduct of the City, or its officials, directors, officers, employees, agents or independent contractors.

3.5.2.2 Additional Indemnity Obligations. Contractor shall defend, with Counsel of City's choosing and at Contractor's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.2.1 that may be brought or instituted against the City or its directors, officials, officers, employees, volunteers and agents. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding, except for any judgments, awards or decrees arising through the sole negligence or willful misconduct of City, or its officials, directors, officers, employees, agents or independent contractors. Contractor shall also reimburse City for the cost of any settlement paid by the City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding, except for any costs of settlements arising through the sole negligence or willful misconduct of the City, or its officials, directors, officers, employees, agents or independent contractors. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse the City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided, except for any legal expenses and costs arising through the sole negligence or willful misconduct of the City, or its officials, directors, officers, employees, agents or independent contractors. Contractor's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.5.3 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in Sacramento County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 900 et

seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

3.5.4 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.5 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project.

3.5.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.7 Assignment or Transfer. Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.8 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, subcontractors, if any, and agents of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.5.9 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.10 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.5.11 No Third Party Beneficiaries. Except to the extent expressly provided for in Section 3.5.7, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.13 Prohibited Interests. Contractor warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Contractor further agrees to file, or shall cause its employees or subcontractors, if any, to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.14 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.15 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.16 Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.5.18 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

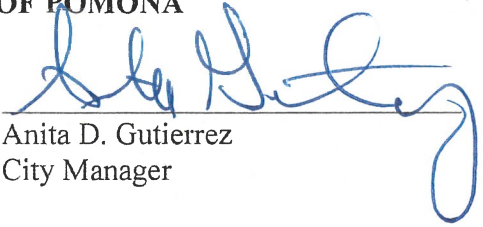
3.5.19 Recitals. The recitals set forth above are true and correct and incorporated herein by reference.


[signatures on following page]


**SIGNATURE PAGE FOR MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY OF POMONA
AND ENCO ENGINEERING, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

CITY OF POMONA

By: 
Anita D. Gutierrez
City Manager

Attest: 
10/7/2024
Rosalia A Butler, MMC
City Clerk

Approved as to Form:

Best Best & Krieger LLP
City Attorney

ENCO ENGINEERING, INC.


By: 
Signature
SUSANA V. PEREZ LOPEZ
Name (Print)
PRESIDENT
Title (Print)

EXHIBIT "A"
SCOPE OF SERVICES

On-call and as-needed PLUMBING services

Such PLUMBING services may include, but are not limited to, the following work activities:

SCOPE OF SERVICES AND/OR SPECIFICATIONS

A - General

The City of Pomona, is currently requesting informal bids for Plumbing Services used within the City. This is considered an Informal Request for Bids. The bids submitted will be used by The City of Pomona, primarily the Public Works Department and any Divisions under the Public Works Department.

The City will base the award on the lowest bids submitted as specified on the "Bid Sheet". The award of this bid has an original one Fiscal Year term.

B. Bid Sheet

| | Description | Cost | City Staff Use | Percent of Score |
|-----|--|---|----------------|------------------|
| 1. | Run 200 feet of cable to clear backed up sewer line Pricing = Pricing per foot = | \$ 580.00 \$ 2.90/foot | | |
| 2. | Camera 200 foot of sewer line to determine the cause of sewer line back up Pricing = Pricing per foot = | \$ 650.00 \$ 3.25/foot | | |
| 3. | Remove urinal from wall snake line 50 feet reinstall urinal with new gasket and rebuild Sloan valve with new parts Pricing = | \$ 485.00 | | |
| 4. | Remove wall hung toilet from wall snake line 50 feet reinstall toilet with new gasket and rebuild Sloan valve with new parts Pricing = | \$ 585.00 | | |
| 5. | Remove Sloan power flush toilet clear obstruction in toilet trap and reinstall toilet with new wax ring Pricing = | \$ 485.00 | | |
| 6. | Hourly rates for journeymen plumber 1 Straight time = \$ 35. ⁰⁰ 2 Overtime = \$ 52. ⁵⁰ 3 Prevailing wage = \$ 88. ⁰⁰ | 1- \$ 35. ⁰⁰ 2- \$ 52. ⁵⁰ 3- \$ 88. ⁰⁰ | | |
| 7. | Hourly rates for apprentice plumber 1 Straight time = \$ 24. ⁰⁰ 2 Overtime = \$ 36. ⁰⁰ 3 Prevailing wage = \$ 55. ⁰⁰ | 1- \$ 24. ⁰⁰ 2- 36. ⁰⁰ 3- 55. ⁰⁰ | | |
| 8. | After hours emergency call out must be able to respond in two hours. Pricing = \$ 135. ⁰⁰ | \$ 135. ⁰⁰ | | |
| 9. | Truck charge Pricing = \$ 250. ⁰⁰ | \$ 250. ⁰⁰ | | |
| 10. | Percentage mark up of parts supplied and installed % = 15.50% | 15.50% | | |

| | | |
|-----|--|----------------|
| 11. | Sec. 2-971. – Local Preference: In order to promote the economic health of the City and to encourage local participation in the procurement process, the City, in determining the lowest responsible bidder, may take into consideration the sales tax which would be returned to the City as a result of the award. | City Staff Use |
| | BASE BID TOTAL SUM (Summation of Items No. 1 – 10) | 3,466.65 |

UNIT PRICES: Each bidder shall provide unit pricing. The unit price is to be used in arriving at the Base Bid Total Sum 1-10 will be summed to determine the lowest base bid total sum. A 1% discount may be given as part of the local participation. City will base award on the lowest, responsive, responsible bidder.

The unit prices shall include the cost for all labor and equipment necessary to complete the work as indicated and specified herein, including: travel time, overhead; Insurance; Sales tax, and profit on "Wage Rate" and/or "cost" and other expenses.

**(Quantities and pricing are not guaranteed)*

EXHIBIT "B"
MINIMUM INSURANCE REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Contractor, its agents, representatives, employees or subcontractors, if any. Contractor shall also require all of its subcontractors, if any, to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the minimum levels of coverage set forth below:

(A) Commercial General Liability.

(i) The Contractor shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include the following: (1) Bodily Injury and Property Damage; (2) Personal coverage for Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Contractors Coverage.

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give the City, the Board and each member of the Board, its officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

(B) Automobile Liability.

(i) At all times during the performance of the work under this Agreement, the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give the City, the Board and each member of the Board, its officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

(C) Workers' Compensation/Employer's Liability.

(i) Contractor certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Contractor has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Contractor shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Contractor shall require all subcontractors, if any, to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

(D) Minimum Policy Limits Required.

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

| | |
|------------------------------|---|
| Commercial General Liability | \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage |
| Automobile Liability | \$1,000,000 per occurrence for bodily injury and property damage |
| Employer's Liability | \$1,000,000 per occurrence |

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any

coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

(E) Evidence Required.

Prior to execution of the Agreement, the Contractor shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

(F) Policy Provisions Required

(i) Contractor shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Contractor shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Contractor shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Contractor shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Contractor shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors, if any.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in

excess of such coverage, nor shall it limit the Contractor's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

(vi) The City, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Contractor's and its subcontractors', if any, policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

(G) Qualifying Insurers.

All policies required shall be issued by acceptable insurance companies, as determined by the City. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

(H) Additional Insurance Provisions.

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Contractor to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor the Board, nor any member of the Board, nor any of their respective officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

(v) Contractor shall not allow any subcontractors, if any, to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors, if any, shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Contractor, City may approve different scopes or minimum limits of insurance for particular subcontractors, if any.