

FEBRUARY 1, 2021

UNITED WATER WORKS, INC.
1313 E. HUNTER AVENUE
SANTA ANA, CA 92705

Dear UNITED WATER WORKS, INC.:

Letter Agreement for Material Supplies

Parties: This letter shall be our Agreement (“Letter Agreement”) regarding the Material Supplies described below (“Supplies”) to be provided by UNITED WATER WORKS, INC. (“Vendor”) as an independent contractor to the City of Pomona (the “City”). Vendor is retained as independent contractor and is not an employee of the City. City and Vendor are sometimes referred to herein as “Party” or “Parties.”

Supplies; Schedule of Performance: The Supplies to be provided include the following: utility systems materials, tools and equipment. The Supplies to be furnished are more particularly described in the “City of Azusa Water works Materials Purchase Agreement” attached hereto as Exhibit “A” and are incorporated herein by reference. Furnishing of Supplies to the City shall begin immediately and shall be completed by January 20, 2026, unless extended by the City in writing.

Standard of Care: Vendor shall furnish all supplies under this Letter 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, and consistent with all applicable laws. Vendor represents that it, its employees and its subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to furnish the Supplies, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Letter Agreement.

Compensation: Compensation shall be based on the actual amount of supplies furnished and shall be billed at the rate(s) described in the Vendor’s rate sheet, attached hereto as Exhibit “A” and incorporated herein by reference. The total compensation shall not exceed \$650,000 annually without written approval of the Water Resources Department Director, Chris Diggs. Vendor’s invoices shall include a detailed description of the Supplies furnished. Invoices shall be submitted to the City on a monthly basis as furnishing of the Supplies occur. The City shall review and pay the approved charges on such invoices in a timely manner.

Insurance: Vendor shall provide proof of commercial general liability and business auto liability insurance to the City in amounts and with policies, endorsements and conditions required by the City for the Supplies. The City, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insured on Vendor’s policies of commercial general liability and automobile liability insurance.

Termination: The City may terminate this Letter Agreement at any time with or without cause. If the City finds it necessary to terminate this Letter Agreement without cause before project completion, Vendor shall be entitled to be paid in full for those Supplies adequately completed prior to the notification of termination. Vendor may terminate this Letter Agreement only upon 30 calendar days' written notice to the City only in the event of City's failure to perform in accordance with the terms of this Letter Agreement through no fault of Vendor.

Indemnification: To the fullest extent permitted by law, Vendor shall defend (with counsel of City's choosing), indemnify and hold the City, its 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 acts, errors or omissions, or willful misconduct of Vendor, its officials, officers, employees, subcontractors, or agents in connection with the performance of the Vendor's Supplies, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Vendor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Vendor, the City, its officials, officers, employees, agents, or volunteers. If Vendor's obligation to defend, indemnify, and/or hold harmless arises out of Vendor's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Vendor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Vendor, and, upon Vendor obtaining a final adjudication by a court of competent jurisdiction, Vendor's liability for such claim, including the cost to defend, shall not exceed the Vendor's proportionate percentage of fault.

Laws & Regulations; Employee/Labor Certifications: Vendor 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 Supplies. By executing this Letter Agreement, Vendor 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. Vendor shall maintain records of its compliance, including its verification of each employee, 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 Vendor's compliance with the requirements. To the same extent and under the same conditions as Vendor, Vendor shall require all of its subcontractors, sub-subcontractors and contractors performing any work relating to the furnishing of Supplies or this Letter Agreement to make the same verifications and comply with all requirements and restrictions provided herein. Vendor's failure to comply or any material misrepresentations or omissions relating thereto shall be grounds for terminating this Letter Agreement for cause. By its signature hereunder, Vendor 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 Supplies. Finally, Vendor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment in violation of state or federal law. As provided for in the indemnity obligations of this Letter Agreement, Vendor shall indemnify City against any alleged violations of this paragraph, including, but not limited to, any fines or penalties imposed by any governmental agency.

Governing Law; Venue; Government Code Claim Compliance Attorneys' Fees: This Letter Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Letter Agreement, the action shall be brought in a state or federal court situated in Riverside County, State of California. 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, Vendor 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 Vendor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Vendor shall be barred from bringing and maintaining a valid lawsuit against the City. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Letter Agreement, the prevailing party shall be entitled to recover all reasonable fees and costs incurred, including reasonable attorneys' fees, as determined by the court.

Assignment; Amendment: Vendor shall not assign, sublet, or transfer this Letter Agreement or any rights under or interest in this Letter Agreement without the written consent of the City. This Letter Agreement may not be modified or altered except in writing signed by both Parties. There are no intended third party beneficiaries of any right or obligation of the Parties.

Entire Agreement; Construction & Captions: This is an integrated Letter Agreement representing the entire understanding of the Parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Letter Agreement, the language of this Letter Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Letter Agreement.

City of Pomona
United Water Works, Inc.
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If you agree with the terms of this Letter Agreement, please indicate by signing and dating where indicated below.

CITY OF POMONA

VENDOR

Approved By:

Signature

James Makshanoff
City Manager

Name

Attest:

Title

Date

Rosalia Butler
City Clerk

APPROVED AS TO FORM:

By:

City Attorney