

EXHIBIT B

MAINTENANCE, REPAIR, AND SERVICES AGREEMENT BETWEEN THE CITY OF EL SEGUNDO AND SAMPLE CUSTODIAL FIRM

THIS MAINTENANCE, REPAIR, and SERVICES AGREEMENT (“Agreement”) is made and entered into this 19th day of MAY, 2020, by and between the CITY OF EL SEGUNDO, a general law city and municipal corporation (“CITY”) and SAMPLE CUSTODIAL FIRM, a sole proprietor (“CONTRACTOR”).

The Parties agree as follows:

1. CONSIDERATION.

- A. As partial consideration, CONTRACTOR agrees to perform the work listed in the SCOPE OF SERVICES, “Exhibit A”, attached;
- B. As additional consideration, CONTRACTOR and CITY agree to abide by the terms and conditions contained in this Agreement;
- C. As additional consideration, CITY agrees to pay CONTRACTOR for CONTRACTOR’s services an amount not to exceed a total of \$XXX plus year-over-year increase in the Consumer Price Index, all Urban Consumers (CPI-U) for the Los Angeles-Long Beach-Anaheim areas, or 3%, whichever is less for the services provided in the attached Exhibit “A”, which is incorporated by reference. Additional amount increase will be amended if the minimum wage increase exceeds the CPI adjustment.

2. **TERM.** The term of this Agreement will be from August 1, 2020, to July 31, 2023 with two one-year optional renewal terms. The Agreement may be renewed upon mutual, written consent of the parties.

3. SCOPE OF SERVICES.

- A. CONTRACTOR will perform services listed in the attached Exhibit A.
- B. CONTRACTOR will, in a workmanlike manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by CITY, necessary

or proper to perform and complete the work and provide the professional services required of CONTRACTOR by this Agreement.

4. FAMILIARITY WITH WORK.

- A. By executing this Agreement, CONTRACTOR represents that CONTRACTOR has
 - i. Thoroughly investigated and considered the scope of services to be performed;
 - ii. Carefully considered how the services should be performed; and
 - iii. Understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.
- B. If services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing the services hereunder. Should CONTRACTOR discover any latent or unknown conditions that may materially affect the performance of the services, CONTRACTOR will immediately inform CITY of such fact and will not proceed except at CONTRACTOR's own risk until written instructions are received from CITY.

5. INSURANCE.

- A. Before commencing performance under this Agreement, and at all other times this Agreement is effective, CONTRACTOR will procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial general liability:	\$2,000,000
Business automobile liability	\$1,000,000
Workers compensation	Statutory requirement.

- B. Commercial general liability insurance will meet or exceed the requirements of ISO-CGL Form No. CG 00 01 11 85 or 88. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies will be endorsed to name City, its officials, and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary"

such that any other insurance that may be carried by City will be excess thereto. Such insurance will be on an "occurrence," not a "claims made," basis and will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to City.

- C. Automobile coverage will be written on ISO Business Auto Coverage Form CA 00 01 06 92, including symbol 1 (Any Auto).
- D. CONTRACTOR will furnish to City duly authenticated Certificates of Insurance evidencing maintenance of the insurance required under this Agreement, endorsements as required herein, and such other evidence of insurance or copies of policies as may be reasonably required by City from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Certificate(s) must reflect that the insurer will provide thirty (30) day notice of any cancellation of coverage. CONTRACTOR will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- E. Should CONTRACTOR, for any reason, fail to obtain and maintain the insurance required by this Agreement, City may obtain such coverage at CONTRACTOR's expense and deduct the cost of such insurance from payments due to CONTRACTOR under this Agreement or terminate.

6. TIME FOR PERFORMANCE. CONTRACTOR will not perform any work under this Agreement until:

- A. CONTRACTOR furnishes proof of insurance as required under Section 5 of this Agreement; and
- B. CITY gives CONTRACTOR a written Notice to Proceed.
- C. Should CONTRACTOR begin work in advance of receiving written authorization to proceed, any such services are at CONTRACTOR's own risk.

7. TERMINATION.

- A. Except as otherwise provided, CITY may terminate this Agreement at any time with or without cause. Notice of termination will be in writing.
- B. CONTRACTOR may terminate this Agreement upon providing written notice to CITY at least thirty (30) days before the effective termination date.
- C. Should the Agreement be terminated pursuant to this Section, CITY may procure

on its own terms services similar to those terminated.

- D. By executing this document, CONTRACTOR waives any and all claims for damages that might otherwise arise from CITY's termination under this Section.

8. INDEMNIFICATION.

- A. **CONTRACTOR indemnifies and holds CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance, except for such loss or damage arising from CITY's sole negligence or willful misconduct. Should CITY be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, CONTRACTOR will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify CITY for any judgment rendered against it or any sums paid out in settlement or otherwise.**
- B. For purposes of this section "CITY" includes CITY's officers, officials, employees, agents, representatives, and certified volunteers.
- C. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.

9. INDEPENDENT CONTRACTOR. CITY and CONTRACTOR agree that CONTRACTOR will act as an independent contractor and will have control of all work and the manner in which it is performed. CONTRACTOR will be free to contract for similar service to be performed for other employers while under contract with CITY. CONTRACTOR is not an agent or employee of CITY and is not entitled to participate in any pension plan, insurance, bonus or similar benefits CITY provides for its employees. Any provision in this Agreement that may appear to give CITY the right to direct CONTRACTOR as to the details of doing the work or to exercise a measure of control over the work means that CONTRACTOR will follow the direction of the CITY as to end results of the work only.

10. NOTICES.

- A. All notices given or required to be given pursuant to this Agreement will be in writing and may be given by personal delivery or by mail. Notice sent by mail will be addressed as follows:

To CITY: Ken Berkman
 City of El Segundo
 350 Main Street
 El Segundo, CA 90245

(310) 524-2356
kberkman@elsegundo.org

To CONTRACTOR:

- B. When addressed in accordance with this paragraph, notices will be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices will be deemed given at the time of actual delivery.
- C. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

11. TAXPAYER IDENTIFICATION NUMBER. CONTRACTOR will provide CITY with a Taxpayer Identification Number.

12. WAIVER. A waiver by CITY of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

13. CONSTRUCTION. The language of each part of this Agreement will be construed simply and according to its fair meaning, and this Agreement will never be construed either for or against either party.

14. SEVERABLE. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

15. CAPTIONS. The captions of the paragraphs of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

16. WAIVER. Waiver of any provision of this Agreement will not be deemed to constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver.

17. INTERPRETATION. This Agreement was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in Los Angeles County.

18. AUTHORITY/MODIFICATION. This Agreement may be subject to and conditioned upon approval and ratification by the El Segundo City Council. This Agreement is not binding upon CITY until executed by the City Manager. The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this

Agreement and to engage in the actions described herein. This Agreement may be modified by written agreement. CITY's city manager may execute any such amendment on behalf of CITY.

19. ACCEPTANCE OF FACSIMILE SIGNATURES. The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.

20. EFFECT OF CONFLICT. In the event of any conflict, inconsistency, or incongruity between any provision of this Agreement, its attachments, the purchase order, or notice to proceed, the provisions of this Agreement will govern and control.

21. CAPTIONS. The captions of the paragraphs of this Agreement are for convenience of reference only and will not affect the interpretation of this Agreement.

22. FORCE MAJEURE. Should performance of this Agreement be prevented due to fire, flood, explosion, war, terrorist act, embargo, government action, civil or military authority, the natural elements, or other similar causes beyond the Parties' control, then the Agreement will immediately terminate without obligation of either party to the other.

23. ENTIRE AGREEMENT. This Agreement and its attachment(s) constitute the sole agreement between CONTRACTOR and CITY with regard to Plumbing Maintenance, Repair, and On-call Services. To the extent that there are additional terms and conditions contained in Exhibit "A" that are not in conflict with this Agreement, those terms are incorporated as if fully set forth above. There are no other understandings, terms or other agreements expressed or implied, oral or written.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF EL SEGUNDO
a general law city.

SAMPLE CUSTODIAL FIRM

Scott Mitnick,
City Manager

Name:
Title:

ATTEST:

Tracy Weaver,
City Clerk

Taxpayer ID No.

Business License No.

State License No.

APPROVED AS TO FORM:

Mark D. Hensley,
City Attorney

Insurance Reviewed By: _____