

JT#3 BOS BCA 08-06-2014

TRANSMITTAL 4

CONTRACT NO. C- \_\_\_\_\_

AGREEMENT

BETWEEN

THE CITY OF LOS ANGELES

AND

PACWEST AMERICAN SCALE LLC

FOR

AS-NEEDED SCALE CALIBRATION, REPAIRS  
AND MAINTENANCE SERVICES

AS-NEEDED SCALE CALIBRATION REPAIRS  
AND MAINTENANCE SERVICES AGREEMENT

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AS-NEEDED SCALE CALIBRATION REPAIRS  
AND MAINTENANCE SERVICES AGREEMENT

This AGREEMENT, made and entered into by and between the City of Los Angeles, Bureau of Sanitation, Department of Public Works, a Municipal Corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and "PACWEST AMERICAN SCALE LLC" hereinafter referred to as the "CONTRACTOR"; is set forth as follows:

**W I T N E S S E T H**

WHEREAS, the CITY has a need for contracting services for AS-NEEDED SCALE CALIBRATION REPAIRS & MAINTENANCE SERVICES for BUREAU OF SANITATION (BOS) FACILITIES at LOPEZ CANYON LANDFILL, HARBOR MULCHING FACILITY and CENTRAL LOS ANGELES RECYCLING & TRANSFER STATION (CLARTS); and

WHEREAS, the CITY is committed to providing waste transfer operations at CLARTS and mulching and composting operations at LOPEZ CANYON LANDFILL and HARBOR MULCHING FACILITY and requires uninterrupted and reliable operation of the truck scales ; and

WHEREAS, the CONTRACTOR'S services are deemed to be vital to meet the CITY's commitment to continue the normal operation of BOS FACILITIES; and

WHEREAS, the CITY plans to utilize the CONTRACTOR to provide AS-NEEDED SCALE CALIBRATION REPAIRS & MAINTENANCE SERVICES for BOS FACILITIES, during the course of the CONTRACT Term; and

WHEREAS, on April 17, 2013, the Board of Public Works authorized the BOS to distribute a request for proposals for AS-NEEDED SCALE CALIBRATION REPAIRS & MAINTENANCE SERVICES; and

WHEREAS, on June 14, 2013, the BOS received two (2) proposals in response to the RFP; and

WHEREAS, on July 16, 2013, PacWest American Scale LLC was deemed the most qualified proposer to perform said services as determined by CITY staff based on the evaluation criteria set forth in the RFP; and

WHEREAS, the CONTRACTOR meets all State/Federal/Local requirements to perform the required services; and

WHEREAS, the services to be provided by CONTRACTOR are of an expert and technical nature; and

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this AGREEMENT, it is understood and agreed by and between the parties hereto as follows:

**ARTICLE 1 – SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS**

**AND TITLES HEREIN**

All titles, subtitles, and/or section headings appearing herein have been inserted for convenience and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, intent or construction of any of the terms or provisions hereof.

The language of this CONTRACT shall be construed according to its fair meaning and not strictly for or against the CITY or the CONTRACTOR. The singular shall include the plural; use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used. The terms "include" and "including" do not exclude items not enumerated that are in the same general class.

**ARTICLE 2 – DEFINITIONS**

It is understood that the following words and phrases are used herein; each shall have the meaning set forth opposite the same:

AGREEMENT/CONTRACT	This contractual agreement between the CITY and PACWEST AMERICAN SCALE LLC
APPLICABLE LAW	All statutes, rules, regulations, permits, orders, air pollution control laws or requirements of the United States, State of California, CITY, County of Los Angeles, and all regional, county and local government authorities and agencies having applicable jurisdiction, that apply to

or govern the performance' of the CONTRACTOR'S and CITY'S respective obligations under this AGREEMENT.

BOARD	The Board of Public Works of the City of Los Angeles.
BOS FACILITIES	City owned facilities managed by BOS
BUREAU	Bureau of Sanitation, Department of Public Works, City of Los Angeles.
CALENDAR DAYS	Each day beginning at 12:01 a.m. and ending twenty-four (24) hours thereafter at 12:00 midnight.
CITY	The City of Los Angeles, Board of Public Works or its subordinate Bureaus. Depending on the context in which it is used, the term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles who is authorized to represent the City of Los Angeles in manners concerning this document.
CONTRACT	Personal services contract for as needed scale calibration, repairs and maintenance services
CONTRACTOR	PACWEST AMERICAN SCALE LLC
CLARTS	Central Los Angeles Recycling & Transfer Station
DIRECTOR	Director of the Bureau of Sanitation or his/her designated representative

HARBOR MULCHING FACILITY	CITY owned mulching facility
LEGAL HOLIDAYS	New Year's Day, Independence Day, Labor Day, Thanksgiving, Christmas and other holidays officially designated as such by the CITY, on which holidays the CITY does not collect CITY waste.
LOPEZ CANYON LANDFILL MULCHING FACILITY	CITY owned mulching & composting facility
MBE/WBE/SBE/EBE/DVBE/OBE	Minority/Women/Small/Emerging/Disabled Veterans/Other Business Enterprises
PERMITS	All federal, State of California, local or any other pertinent governmental unit, permits, orders, licenses, and approvals required by APPLICABLE LAW (including, but not limited to, California Environmental Quality Act (CEQA) for providing the services under this AGREEMENT.
PROJECT MANAGER	CITY'S designated representative for all issues related to this AGREEMENT
SUBCONTRACTOR	An individual or company having an agreement with CONTRACTOR to provide services, equipment, or materials to CONTRACTOR

### **ARTICLE 3 – PROJECT DESCRIPTION**

#### 3.1 Site Description

City owned, Solid Resources Processing & Construction Division (SRPCD) Facilities requiring As Needed Scale Calibration Repairs & Maintenance Services are the following three:

- A Central Los Angeles Recycling & Transfer Station (CLARTS) located on 2201 E. Washington Blvd., Los Angeles, CA 90021 has 6 truck scales.
- B Lopez Canyon Landfill located on 11950 Lopez Canyon Road, Sylmar, CA 91342, has 2 truck scales.
- C Harbor Mulching Facility located on 1400 N Gaffey Street, San Pedro, CA 90731, has 1 truck scale.

### **ARTICLE 4 – RESPONSIBILITIES OF & SERVICES TO BE PERFORMED BY THE**

#### **CONTRACTOR**

Services shall include, but not be limited to the following:

- 4.1 CONTRACTOR shall perform the services described in Article 4.4. CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by contractors performing the same or similar services.

All CONTRACTOR operations shall be under the direction and supervision of qualified, trained personnel, and accordance with (i) the terms of this Agreement, and (ii) all applicable laws, ordinances, regulations and orders.

4.2 CONTRACTOR warrants that the services shall be performed consistent with generally accepted industry standards.

4.3 Maintenance of Records

CONTRACTOR shall maintain all records, in their original form, pertaining to the performance of this CONTRACT, including records of financial transactions.

These records shall be retained for a period of no less than four (4) years following final payment made by the CITY hereunder or the expiration date of this CONTRACT, whichever occurs last. Said records shall be subject to examination and audit by authorized CITY personnel or by the CITY'S representative at any time during the term of this CONTRACT and within the four (4) years following final payment made by the CITY hereunder or the expiration date of this CONTRACT, whichever occurs last. CONTRACTOR shall provide any reports requested by the CITY regarding performance of this CONTRACT within thirty (30) business days of the request by the CITY. Any subcontract entered into by CONTRACTOR, as authorized under the terms of this CONTRACT, shall include a like provision for work to be performed under this CONTRACT.

4.4 Scope of Services

Work required will include, but not be limited to:

Commercial truck scale testing, calibration, maintenance, repairs, replacement of parts, specialized welding, and certification of the weight scales per California Department of Food and Agriculture.

A. Calibration Service to be Performed Quarterly

Calibration service shall include but not be limited to the following:

- Visual inspection of the scale platform and instrumentation
- Sectional testing and overall span adjustment
- Testing and certification using weight traceable to National Institute of Standards and Technology (N.I.S.T) in accordance with Handbook 44 and be conducted according to manufacturer's specifications
- Providing a calibration report immediately upon completion of the service and affix a calibration sticker to the scale tested

B. Maintenance service as needed

Maintenance services shall include but not be limited to the following:

- Consult with the on duty scale operator to determine if any known problems exist.
- Visually check the condition of the scale platform and verify that platforms are clear of any obstructions.
- Perform a scale sectional test, record as found weight readings and adjust as needed, after visual inspection.
- Adjust the scale to conform to tolerances in accordance with N.I.S.T. handbook 44 and California code.
- Check digital indicator and printer to proper operation, print clarity, conformance to weights and measures.
- Clean scale indicator and printer.
- Confirm that all required indication markings for platform and indicator are in place and legible.

- Seal those components which must be secured from unauthorized adjustments.
- Instruct scale operating and maintenance personnel of proper operation and maintenance.
- Remove access cover plates, check pit condition and load cell mount alignment.
- Inspect junction box integrity, cabling and conduit condition, deck clearance, and curb angle.
- Remove or jack up platform for cleaning, examination and lubrication.
- Inspect the lever system for alignment, dirt, rust, plumb and level condition, pit condition and lubrication
- Inspect for possible deterioration of the mounting brackets or live connections
- Inspect the load receiver for worn or missing parts and proper adjustment of checking overload stops
- Provide additional services appropriate for each particular scale configuration and application.

C. Repair service

- Provide repair services on an as-needed, on-call basis.

**ARTICLE 5 – KEY CONTRACTOR PERSONNEL**

5.1 CONTRACTOR designates the following person to represent the CONTRACTOR in all matters pertaining to this AGREEMENT:

Name/Title            David W. Eccles III  
Address                21326 East Arrow Highway, Covina, CA 91724  
TEL/FAX Number    (909) 322-8889 / (909) 394-3326

Additional technical specialists shall be assigned subject to the PROJECT MANAGER'S approval.

- 5.2 CONTRACTOR agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and CONTRACTOR shall not change personnel assigned to these positions without the prior consent and approval of CITY'S PROJECT MANAGER, whose consent shall not be withheld unreasonably.
- 5.3 Unless otherwise provided or approved by the CITY, CONTRACTOR shall use its own employees to perform the services described in this CONTRACT. The CITY shall have the right to review and approve any personnel who are assigned to work under this CONTRACT. CONTRACTOR agrees to remove personnel from performing work under this CONTRACT if requested to do so by the CITY within thirty (30) business days of a request by the CITY.

CONTRACTOR shall not use subcontractors to assist in performance of this CONTRACT without the prior written approval of the CITY. If the CITY permits the use of subcontractors, CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT. The CITY has the right to approve CONTRACTOR'S subcontractors, and the CITY reserves the right to request replacement of

subcontractors. The CITY does not have any obligation to pay CONTRACTOR'S subcontractors, and nothing herein creates any privity of contract between the CITY and the subcontractors.

**ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY**

CITY designates Antranik Saiyan as its PROJECT MANAGER to represent the CITY in all matters within the scope of the AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term "approval of CITY," "consult with CITY," "confer with CITY," or similar terms are used, they shall refer to the PROJECT MANAGER. The PROJECT MANAGER may designate an assistant to act in his/her stead. The CITY may designate another CITY employee to succeed Antranik Saiyan as PROJECT MANAGER. The CONTRACTOR will be notified in writing in such event.

The CITY shall furnish, without charge, facilities and resources available to the CONTRACTOR as deemed reasonably necessary and appropriate by the CITY.

**ARTICLE 7 – TERM OF AGREEMENT AND TIME OF EFFECTIVENESS**

The term of this AGREEMENT shall be for five (5) years with one (1), five (5) year renewal option to be exercised at the CITY's sole discretion, from the date of full execution unless terminated as provided under Article 8 or extended by amendment to this AGREEMENT and signed by the parties.

In addition to exercising one (1) five (5) year renewal option, the CITY may elect to extend the AGREEMENT on a month-to-month basis for a maximum of twelve (12)

months, during which period the CITY and the CONTRACTOR shall continue performance under the terms of this AGREEMENT. The CITY may extend the AGREEMENT on month-to-month basis prior to the end of the one (1) five (5) year renewal option if the CITY elects not to renew, or if the CITY elected to renew, by providing the CONTRACTOR written notice at least 90 days prior to expiration of the AGREEMENT. During such period of month-to-month operation, if either party decides to terminate the relationship, the CONTRACTOR shall be obligated to continue performance for at least sixty (60) days after written notice from the terminating party.

The date of full execution is deemed to be the date when all the following events have occurred:

- This AGREEMENT has been signed on behalf of CONTRACTOR by the person or persons authorized to bind CONTRACTOR hereto; and
- This AGREEMENT has been approved by the City Council or by the board, officer or employee authorized to give such approval; and
- The Office of the City Attorney has indicated in writing its approval of this AGREEMENT as to form; and
- This AGREEMENT has been signed on behalf of the CITY by the person designated by the City Council, or by the board, officer or employee authorized to enter into this AGREEMENT.

## **ARTICLE 8 – TERMINATION**

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- 8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONTRACTOR is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONTRACTOR shall immediately take action not to incur any additional obligations, cost or expense, except as may be reasonably necessary to terminate its activities.
- 8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors or (2) CONTRACTOR engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

8.4 If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this AGREEMENT shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONTRACTOR'S default. If termination for default is effected by the CONTRACTOR or if termination for convenience is effected by the CITY, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the CONTRACTOR for services rendered and expenses incurred prior to the termination, excluding attorney's fees, in addition to termination settlement costs reasonably incurred by the CONTRACTOR relating to written commitments that were executed prior to the termination. Thereafter, CONTRACTOR shall have no further claims against the CITY under this AGREEMENT.

This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. If the CONTRACTOR does not cure such default or provide a plan to cure such default which is acceptable to the CITY within 30 CALENDAR DAYS from the receipt of written notice given by the CITY to the CONTRACTOR, then the CITY may

terminate this AGREEMENT due to CONTRACTOR'S breach of this AGREEMENT. The CONTRACTOR'S right to cure shall not extend to the following:

- a) The filing of an involuntary petition of bankruptcy without the consent of the CONTRACTOR, which is not dismissed within ninety (90) CALENDAR DAYS of the filing date, under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization, or similar law; or the filing of a voluntary petition of bankruptcy by the CONTRACTOR, under Title 11 of the United States Code, or any other applicable insolvency, reorganization or similar law; or the appointing of a receiver, liquidator, trustee or a similar official of CONTRACTOR; and
- b) Failure to maintain the insurance, or self insurance, required by the provisions of Article 12, hereof.

8.5 Upon receipt of a termination action under Articles 8.1, 8.2 or 8.3 above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY within thirty (30) business days of said termination action all finished or unfinished documents and materials produced or procured under this CONTRACT, including all intellectual property rights thereto, which shall become CITY property upon date of such termination. CONTRACTOR agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein within thirty (30) business days of said termination.

- 8.6 Upon termination under Articles 8.1, 8.2 or 8.3 above, the CITY may take over the work and may award another party an AGREEMENT to complete the work under this AGREEMENT.
- 8.7 If, after the termination for failure of the CONTRACTOR to fulfill contractual obligations, it is determined that the CONTRACTOR had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this article.
- 8.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this AGREEMENT.

#### **ARTICLE 9 – SUBCONTRACT APPROVAL**

All subcontracts in excess of \$10,000.00 shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the PROJECT MANAGER showing the SUBCONTRACTOR'S name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered subcontractors.

CONTRACTOR shall not substitute subcontractors listed in this AGREEMENT without the prior written approval of the CITY. CONTRACTOR shall not add subcontractors to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subcontractors, CONTRACTOR shall remain responsible

for performing all aspects of this CONTRACT. The CITY has the right to approve CONTRACTOR'S SUBCONTRACTORS, and the CITY reserves the right to request replacement of subcontractors. The CITY does not have any obligation to pay CONTRACTOR'S SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS.

## **ARTICLE 10 - COMPENSATION, INVOICING, AND PAYMENT**

### 10.1 General Payment Obligation

The CITY'S sole payment obligation for all services to be provided under the terms of this AGREEMENT shall be payment per agreed rates for the type of services performed for the CITY. The CONTRACTOR will be responsible for preparing and submitting, in a form suitable to the CITY, an invoice indicating the amount due and payable by the CITY for services rendered. This invoice will include the details of the type of service and location as backup documents for calibration, repairs or maintenance service charges. Records will be maintained at the CONTRACTOR'S office for inspection and verification by the CITY for four (4) years from the expiration of this contract. The CITY shall pay the amount due to the CONTRACTOR, when submitted on a proper invoice, in accordance with existing CITY payment practices and the service rates in Table A in this AGREEMENT.

10.2 Invoices shall be prepared in such form and supported by such copies of invoices and other documents of proof as may be reasonably required by CITY to

establish the amount of such invoices as allowable expenses. All invoices shall be subject to audit for a period of four (4) years from the termination of this AGREEMENT.

#### 10.3 Supporting Documentation and other Invoice Items

An invoice shall only be considered complete when it is accompanied by all of the appropriate supporting documentation as specified herein.

#### 10.4 Proposed Service Fees

The CITY shall pay the CONTRACTOR the service fees for the services rendered according to the service rates specifically set forth on Table A hereto, which includes all applicable Fees and Taxes. The City's obligations under this contract shall only be to the extent of the present City appropriation to fund the contract. No action, statement, or omission of any officer, agent, or employee of CITY shall impose any obligation upon CITY, such officer, agent, or employee, except to the extent CITY has appropriated funds and otherwise in accordance with the terms of this AGREEMENT. CONTRACTOR and CITY agree that no indebtedness for work performed which results in costs under this AGREEMENT shall arise against CITY until and unless there is an appropriation of funds to pay for such work. However, if the City shall appropriate funds for any succeeding years, the City's obligations shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract.

Table A. Service rates

ITEM	TYPE OF SERVICE	RATE*
1	Quarterly calibration service fee for six existing CLARTS scales (2 incoming scales, 1 outgoing scale, 2 tunnel scales and 1 green waste transfer scale, total 6). Service fee shall include applicable equipment and transportation cost.	\$750.00
2	Semi-annual calibration service for existing Lopez Canyon scales (1 incoming scale, 1 outgoing scale and 1 mulch & compost loading scale, total 3). Service fee shall include applicable equipment and transportation cost.	\$700.00
3	Semi-annual calibration service for existing Harbor mulching facility mulch loading scale. Service fee shall include applicable equipment and transportation cost.	\$500.00
4	As needed emergency service (response within 4 hours) Scale Repairs & Maintenance Service labor hourly rate.	\$103.50
5	As needed regular service (response within 24 hours) Scale Repairs & Maintenance Service labor hourly rate.	\$69.00
6	Service truck per return trip	\$100.00
7	Heavy capacity test truck per return trip	\$200.00

\*Material shall be billed at cost plus 10% markup.

#### 10.5 Pass-through Government Taxes and Fees

At the start of the CONTRACT, the service fees shall include current taxes and fees. Increases in the pass-through taxes and fees will be paid by the CITY after written notification by the CONTRACTOR and validation by the CITY. The service fees shall exclude the cost of obtaining a Business Tax Registration Certificate.

The pass-through taxes and governmental fees include, but are not limited to:

Any fees, charges, or taxes by regulatory agencies Local or State.

#### 10.7 Invoice Procedures

The CONTRACTOR shall prepare service invoices on the following basis:

The invoices shall be for work that has been completed to the CITY's satisfaction.

The CONTRACTOR is responsible for the preparation of a complete and accurate invoice. Invoices shall be prepared in such form and supported by such copies of invoices and other documents of proof as may be reasonably required by the CITY to establish the monetary amount of such invoices as being allowed.

Invoices and associated documentation shall be prepared at the sole expense and responsibility of the CONTRACTOR. The CITY will not compensate the CONTRACTOR for any costs incurred for invoice preparation.

#### 10.8 Invoice Submittal

CONTRACTOR shall submit all invoices to:

Central Los Angeles Recycling & Transfer Station

Attn: Antranik Saiyan

1149 S. Broadway Room 500

Los Angeles, CA 90015

#### 10.9 Invoice Submittal Deadline

The CITY shall not be responsible for payment of invoices or supplemental invoices submitted to the CITY more than six (6) months after the date of expiration of the AGREEMENT.

#### 10.10 Invoice Approval and Processing

Payments shall be made upon the submission of a complete and accurate invoice. The CITY shall review the CONTRACTOR'S invoice and attachments and notify CONTRACTOR of exceptions or disputed items within thirty (30) days of receipt of invoice. If an invoice is not properly submitted, then a new thirty (30) day review period will begin upon receipt of a corrected invoice by the CITY. Once approved, the CITY will make a good faith effort to process payments within a timely manner. To expedite the approval process, CONTRACTORS are encouraged to submit draft invoices for review, prior to submitting a final invoice.

#### 10.11 Discount

The CITY will consider a shorter payment schedule should the CONTRACTOR offer a discount for more immediate payment. CONTRACTOR agrees to offer the CITY any discount terms that are offered to its best customers for the goods and services to be provided herein, and apply such discount to payments made under the AGREEMENT, which meet the discount terms.

#### 10.12 Late Charges

The CITY does not pay late penalties or interest on outstanding invoices. The CITY is not responsible for the payment of any interest, late charges or penalties incurred by the CONTRACTOR from any SUBCONTRACTOR or supplier for any time provided under the CONTRACT.

#### 10.13 Disputes

In the event that a dispute arises over an invoice, the CITY shall pay any undisputed portion of the amount due within the time period required for such payment, and any required payment of the disputed amount in accordance with existing CITY practices.

#### 10.14 False Claims Act

CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the False Claims Act (Cal. Gov. Code §§ 12650 et seq.), including treble damages, costs of legal actions to recover payments, and civil penalties of up to \$10,000 per false claim.

#### 10.15 Maintenance of Records

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of the CONTRACT, in their original form, in accordance with requirements prescribed by the CITY. These records shall be retained for a period of no less than four (4) years following final payment made by the CITY hereunder or the expiration date of this CONTRACT, whichever occurs last. Said records shall be subject to examination and audit by

authorized CITY personnel or by the CITY's representative at any time during the term of the CONTRACT or within the four (4) years following final payment made by the CITY hereunder or the expiration date of the CONTRACT, whichever occurs last. CONTRACTOR shall provide any reports requested by the CITY regarding performance of the CONTRACT within thirty (30) business days of the request. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under the CONTRACT.

#### **ARTICLE 11 – AMENDMENTS, CHANGES, OR MODIFICATIONS**

Amendments, changes or modifications in the terms of this AGREEMENT may be made at any time by mutual written AGREEMENT between the parties hereto and shall be signed by the persons authorized to bind the parties thereto.

#### **ARTICLE 12 – INDEMNIFICATION AND INSURANCE**

##### 12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless CITY and any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in

house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damage or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR'S employees and agents or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason to the extent of the negligent acts, errors, omissions or willful misconduct incident to the performance of this AGREEMENT by the CONTRACTOR or its SUBCONTRACTORS of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this paragraph shall survive expiration or termination of this AGREEMENT.

## 12.2 INSURANCE

During the term of this CONTRACT and without limiting the CONTRACTOR'S indemnification of the CITY, the CONTRACTOR shall provide and maintain at its own expense during the term of this CONTRACT a program of insurance having the coverage and limits customarily carried and actually arranged by CONTRACTOR but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT 3 hereto, covering its operations hereunder. Such insurance shall conform to CITY requirements as established by Charter, ordinance, or policy and shall comply with the instructions set forth, in EXHIBIT 3, and which can also be found at the Board of Public Work's website: <http://bpw.lacity.org/Secretariat/Insurance.html>, in the

form Instructions and Information on Complying with CITY Insurance Requirements, rev05/12, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONTRACTOR shall comply with all insurance Contractual Requirements shown on EXHIBIT 3 hereto. EXHIBIT 3 is hereby incorporated by reference and made a part of this CONTRACT.

### 12.3 BONDS

All bonds required shown on EXHIBIT 3 hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

## **ARTICLE 13 – INDEPENDENT CONTRACTORS**

CONTRACTOR is acting hereunder as an independent contractor and not as an agent or employee of the CITY. CONTRACTOR shall not represent or otherwise hold out itself or any of its Directors, officers, partners, employees, or agents to be an agent or employee of the CITY. CITY shall not represent or otherwise hold itself out or any of its Directors, officers, partners, employees or agents to be an agent or employee of CONTRACTOR.

## **ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONTRACTOR**

- 14.1 CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within CONTRACTOR'S profession, doing the same or similar work under the same or similar circumstances.
- 14.2 CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by CONTRACTOR under this AGREEMENT. CONTRACTOR shall, at no additional cost to CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.
- 14.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by CITY in Article 6. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, CONTRACTOR will notify the CITY within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.

14.4 CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.

14.5 Except as specified in ARTICLE 12 and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with applicable law, for all damages to CITY caused by CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to CITY, CITY-furnished data, or any third party.

#### **ARTICLE 15 – INTELLECTUAL PROPERTY INDEMNIFICATION**

The CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software,

hardware, or firmware used by CONTRACTOR, or its SUBCONTRACTORS of any tier, in performing the work under this CONTRACT; or (2) as a result of the CITY'S actual or intended use of any Work Product furnished by CONTRACTOR, or its SUBCONTRACTORS of any tier, under the AGREEMENT. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this CONTRACT and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this article shall survive expiration or termination of this CONTRACT.

#### **ARTICLE 16 – INTELLECTUAL PROPERTY WARRANTY**

The CONTRACTOR represents and warrants that its performance of all obligations under this CONTRACT do not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, right of publicity and proprietary information.

#### **ARTICLE 17 – OWNERSHIP AND LICENSE**

Unless otherwise provided for herein, all Work Products originated and prepared by CONTRACTOR or its SUBCONTRACTORS of any tier under this CONTRACT shall be and remain the exclusive property of the CITY for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this CONTRACT including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks,

logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. CONTRACTOR hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by CONTRACTOR under this CONTRACT. CONTRACTOR further agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein.

For all Work Products delivered to the CITY that are not originated or prepared by CONTRACTOR or its SUBCONTRACTORS of any tier under this CONTRACT, CONTRACTOR hereby grants a non-exclusive perpetual license to use such Work Products for any CITY purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of the CITY.

Any subcontract entered into by CONTRACTOR relating to this CONTRACT, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT to contractually bind or otherwise oblige its SUBCONTRACTORS performing work under this CONTRACT such that the CITY'S ownership and license rights of all Work Products are preserved and protected as intended herein. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S CONTRACT with the CITY.

**ARTICLE 18 – SUCCESSORS AND ASSIGNS**

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 27.

**ARTICLE 19 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION**

All notices shall be made in writing and may be given by personal delivery or by mail. Such notices sent by mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

To The CITY:

Contact Person: Antranik Saiyan

Address: 1149 S. Broadway Suite 500, Los Angeles, CA 90015

To CONTRACTOR:

Contact Person: David W. Eccles III

Address: 21326 East Arrow Highway, Covina, CA 91724

**ARTICLE 20 – FORCE MAJEURE**

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and

negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

#### **ARTICLE 21 – SEVERABILITY**

Should any portion of this AGREEMENT be determined to be void or unenforceable, such shall be severed from the whole and the AGREEMENT will continue as modified.

#### **ARTICLE 22 – DISPUTES**

Should a dispute or controversy arise concerning provisions of this AGREEMENT or the performance of work hereunder, the parties may elect to submit such to a court of competent jurisdiction.

## **ARTICLE 23 – ENTIRE AGREEMENT**

This AGREEMENT contains all of the agreements, representations, and understandings of the parties hereto and supersedes and/or incorporates any previous understandings, proposals, commitments, or agreements, whether oral or written, and may be modified or amended only as herein provided.

## **ARTICLE 24 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT**

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This AGREEMENT and its performance shall be enforced and interpreted under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONTRACTOR shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

If any part, term or provision of this AGREEMENT is held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this AGREEMENT, the validity of the remaining parts, terms or provisions of the AGREEMENT shall not be affected thereby.

**ARTICLE 25 – CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION**

**CERTIFICATE REQUIRED**

If applicable, CONTRACTOR represents that it has obtained and presently holds the Business Tax Registration Certification(s) required by the CITY'S Business Tax Ordinance, section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this AGREEMENT, the CONTRACTOR shall maintain, or obtain as necessary, all such Certificates required of it under Business Tax Ordinance and shall not allow any such Certificate to be revoked or suspended. Should any such certificate(s) become suspended or revoked, it is the CONTRACTOR'S responsibility to report the matter immediately to the PROJECT MANAGER.

**ARTICLE 26 – WAIVER**

A waiver of a default of any part, term or provision of this AGREEMENT shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

**ARTICLE 27 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION**

The CONTRACTOR may not, unless it has first obtained the written permission of the CITY:

- a) Assign or otherwise alienate any of its rights hereunder this AGREEMENT, including the right of payment; or
- b) Delegate, subcontract, or otherwise transfer any of its duties hereunder.

### **ARTICLE 28 – PERMITS**

The CONTRACTOR and its directors, officers, partners, agents, employees, and SUBCONTRACTORS, to the extent allowed hereunder, shall obtain and maintain all permits, licenses, certifications, and other documents necessary for the CONTRACTOR'S performance of the services hereunder and shall pay any fees required therefore. CONTRACTOR certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

### **ARTICLE 29 – DISCOUNTS**

CONTRACTOR agrees to offer the CITY any discount terms that are offered to its best customers for the goods and services to be provided hereunder and apply such discounts to payments made under this AGREEMENT which meet the discount terms.

### **ARTICLE 30 – CLAIMS FOR LABOR AND MATERIALS**

The CONTRACTOR shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this AGREEMENT, so as to prevent any lien or

other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produced by the CONTRACTOR hereunder), against the CONTRACTOR'S rights to payments hereunder, or against the CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

### **ARTICLE 31 – BREACH**

Except for Force Majeure, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

### **ARTICLE 32 – NON-DISCRIMINATION**

Unless otherwise exempt, this CONTRACT is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this CONTRACT, CONTRACTOR shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin,

ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT.

Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONTRACTOR'S CONTRACT with the CITY.

### **ARTICLE 33 – EQUAL EMPLOYMENT PRACTICES**

Unless otherwise exempt, this CONTRACT is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this CONTRACT, CONTRACTOR agrees and represents that it will provide equal employment practices and CONTRACTOR and each SUBCONTRACTOR hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
  - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.

2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  3. CONTRACTOR agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONTRACTOR shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. On their or either of their request CONTRACTOR shall provide evidence that he or she has or will comply therewith.

- E. The failure of any CONTRACTOR to comply with the Equal Employment Practices provisions of this CONTRACT may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONTRACTOR.
- F. Upon a finding duly made that CONTRACTOR has failed to comply with the Equal Employment Practices provisions of a CITY contract, the CONTRACT may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of Section 10.40, et seq. of the City of Los Angeles Administrative Code. In the event of such a determination, CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this CONTRACT, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.

- I. Nothing contained in this CONTRACT shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONTRACTOR shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY Contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
  - 1. Hiring practices;
  - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
  - 3. Training and promotional opportunities; and
  - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its SUBCONTRACTORS with all such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONTRACTOR'S CONTRACT with the CITY.

## **ARTICLE 34 – AFFIRMATIVE ACTION PROGRAM**

Unless otherwise exempt, this CONTRACT is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a CITY contract, CONTRACTOR certifies and represents that CONTRACTOR and each SUBCONTRACTOR hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  3. CONTRACTOR shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, CONTRACTOR shall certify on an electronic or hard copy form to be supplied, that CONTRACTOR has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of its records within ten (10) days pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR.
- F. Upon a finding duly made that CONTRACTOR has breached the Affirmative Action Program provisions of a CITY contract, the CONTRACT may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding

authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of the City of Los Angeles Administrative Code Section 10.40, et seq. In the event of such determination, such CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONTRACTOR has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, there may be deducted from the amount payable to CONTRACTOR by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.

K. CONTRACTOR shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the CONTRACT. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONTRACTOR may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONTRACTOR must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the CONTRACT is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
2. CONTRACTOR may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.

- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and CONTRACTOR.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning and other on-the-job training for non-apprenticeable occupations;
  2. Classroom preparation for the job when not apprenticeable;
  3. Pre-apprenticeship education and preparation;
  4. Upgrading training and opportunities;
  5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and

practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;

6. The entry of qualified women, minority and all other journeymen into the industry; and
  7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's work force to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.
- Q. All CONTRACTORS subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the CONTRACT with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the CONTRACTOR to comply with this

requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONTRACTOR'S CONTRACT with the CITY.

### **ARTICLE 35 – CHILD SUPPORT ASSIGNMENT ORDERS**

This CONTRACT is subject to the Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code, as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONTRACTOR will fully comply with all applicable State and Federal employment reporting requirements for CONTRACTOR'S employees. CONTRACTOR shall also certify (1) that the Principal Owner(s) of CONTRACTOR are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONTRACTOR will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with Section 5230, et seq. of the California Family Code; and (3) that CONTRACTOR will maintain such compliance throughout the term of this CONTRACT.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally,

shall constitute a default by the CONTRACTOR under this CONTRACT, subjecting this CONTRACT to termination if such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this CONTRACT. Failure of CONTRACTOR to obtain compliance of its SUBCONTRACTORS shall constitute a default by CONTRACTOR under this CONTRACT, subjecting this CONTRACT to termination where such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the CITY.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

## **ARTICLE 36 – LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR**

### **WORKER RETENTION ORDINANCE**

- A. Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time, which is attached hereto as Exhibit 7 and incorporated herein by this reference, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., of the Los Angeles

Administrative Code, as amended from time to time. These Ordinances require the following:

1. The CONTRACTOR assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of benefits of compensated and uncompensated days off and health benefits, as defined in the LWO.
2. The CONTRACTOR further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONTRACTOR shall require each of its SUBCONTRACTORS within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONTRACTOR shall receive and retain on file the executed pledges from each such SUBCONTRACTOR within ninety (90) days of the execution of the Subcontract. CONTRACTOR'S evidence of executed pledges from each such SUBCONTRACTOR shall fully discharge the obligation of the CONTRACTOR to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
3. The CONTRACTOR, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the CITY with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice

proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONTRACTOR shall post the Notice of Prohibition Against Retaliation provided by the CITY.

4. Any Subcontract entered into by the CONTRACTOR relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.
  5. The CONTRACTOR shall comply with all rules, regulations and policies promulgated by the CITY'S Designated Administrative Agency, which may be amended from time to time.
- B. Under the provisions of Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONTRACTOR has violated provisions of the LWO and the SCWRO or both.
- C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that the CONTRACTOR is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the CITY in such circumstances may impound monies otherwise due the CONTRACTOR in accordance with the following procedures. Impoundment shall mean that from monies due the CONTRACTOR, the CITY

may deduct the amount determined to be due and owing by the CONTRACTOR to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d) (3) and disposed of under procedures there described through final and binding arbitration. Whether the CONTRACTOR is to continue work following an impoundment shall remain in the sole discretion of the CITY. The CONTRACTOR may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

- D. The AGREEMENT shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). CONTRACTOR shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONTRACTOR.

### **ARTICLE 37 – AMERICANS WITH DISABILITIES ACT**

The CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 et seq. and its implementing regulations. The CONTRACTOR will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. The CONTRACTOR will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any

subcontract entered into by the CONTRACTOR, relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

### **ARTICLE 38 – CONTRACTOR RESPONSIBILITY ORDINANCE**

Unless otherwise exempt, this CONTRACT is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of the Los Angeles Administrative Code, as amended from time to time, which requires CONTRACTOR to update its responses to the responsibility questionnaire within thirty (30) calendar days after any change to the responses previously provided if such change would affect CONTRACTOR'S fitness and ability to continue performing this CONTRACT.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this CONTRACT, CONTRACTOR pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this CONTRACT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. CONTRACTOR further agrees to: (1) notify the CITY within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that CONTRACTOR is not in compliance with all applicable federal, state and local laws in performance of this CONTRACT; (2) notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that CONTRACTOR has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its SUBCONTRACTOR(S), as

defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its SUBCONTRACTOR(S), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the CITY within thirty (30) calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

### **ARTICLE 39 – LOS ANGELES BUSINESS INCLUSION PROGRAM**

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women, Small, Emerging, Disabled Veteran and Other Business Enterprise (MBE/WBE/SBE/EBE/DVBE/OBE) firms on a level so designated in its proposal, if any. CONTRACTOR certifies that it has complied with Mayoral Directive ED-14 regarding the Outreach Program for Personal Services Contracts (if applicable). CONTRACTOR shall not change any of these designated subcontractors, nor shall CONTRACTOR reduce their level of effort, without prior written approval of the CITY, provided that such approval shall not be unreasonably withheld.

CONTRACTOR agrees and obligates itself to submit a signed MBE/WBE/SBE/EBE/DVBE/OBE Utilization Profile, provided herein as Exhibit 2, for each invoice as described in Article 10, listing current MBE/WBE/SBE/EBE/DVBE/OBE amounts invoiced as part of the invoicing procedures.

## **ARTICLE 40 – EQUAL BENEFITS ORDINANCE**

Unless otherwise exempt, this CONTRACT is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of the CONTRACT, the CONTRACTOR certifies and represents that the CONTRACTOR will comply with the EBO.
- B. The failure of the CONTRACTOR to comply with the EBO will be deemed to be a material breach of this CONTRACT by the CITY.
- C. If the CONTRACTOR fails to comply with the EBO, the CITY may cancel, terminate or suspend this CONTRACT, in whole or in part, and all monies due or to become due under this CONTRACT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the CITY'S Designated Administrative Agency determines that a CONTRACTOR has set up or used its contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the CONTRACT. Violation of this provision may be used as evidence against CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

The CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles’ Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-2625.”

#### **ARTICLE 41 – SLAVERY DISCLOSURE ORDINANCE**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this AGREEMENT is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as may be amended from time to time, which is attached hereto as Exhibit 5 and incorporated herein by this reference. CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this AGREEMENT.

#### **ARTICLE 42 – CONTRACTOR PERFORMANCE EVALUATION ORDINANCE**

At the end of this AGREEMENT, the CITY will conduct an evaluation of the CONTRACTOR’S performance. The CITY may also conduct evaluations of the CONTRACTOR’S performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the

timeliness of performance, financial issues, and the expertise of personnel that the CONTRACTOR assigns to the AGREEMENT. A Contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed fourteen (14) calendar days to respond. The CITY will use the final CITY evaluation, and any response from the CONTRACTOR, to evaluate proposals and to conduct reference checks when awarding other service contracts.

#### **ARTICLE 43 – MUNICIPAL LOBBYING ORDINANCE**

Any Contractor for the CITY shall submit a certification, on a form prescribed by the City Ethics Commission, that the CONTRACTOR acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, Exhibit 13, if the CONTRACTOR qualifies as a lobbying entity under the Ordinance. The exemptions contained in Los Angeles Administrative Code Section 10.40.4 shall not apply to this subsection.

#### **ARTICLE 44 – FIRST SOURCE HIRING ORDINANCE**

Unless otherwise exempt in accordance with the provisions of this Ordinance, this CONTRACT is subject to the applicable provisions of the First Source Hiring Ordinance (FSHO), Section 10.44 et seq. of the Los Angeles Administrative Code, as amended from time to time.

CONTRACTOR shall, prior to the execution of the CONTRACT, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that

CONTRACTOR estimate they will need to fill in order to perform the services under the CONTRACT. The Department of Public Works Office of Contract Compliance is the DAA. CONTRACTOR further pledges that it will, during the term of the CONTRACT, shall a) At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONTRACTOR shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONTRACTOR interviewed and the reasons why referred individuals were not hired.

Any Subcontract entered into by the CONTRACTOR relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.

CONTRACTOR shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the Designated Administrative Agency has determined that the CONTRACTOR intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the CONTRACTOR'S subsequent Contractor Responsibility

Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq.

This measure does not limit the CITY'S authority to act under this article.

Under the provisions of Section 10.44.8 of the Los Angeles Administrative Code, the Awarding Authority shall, under appropriate circumstances, terminate this CONTRACT and otherwise pursue legal remedies that may be available if the Designated Administrative Agency determines that the subject CONTRACTOR has violated provisions of the FSHO.

**ARTICLE 45 – COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING**

The CONTRACTOR, Subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected CITY officials or candidates for elected CITY office if the contract is valued at \$100,000 or more and requires approval of a CITY elected official. Additionally, CONTRACTOR is required to provide and update certain information to the CITY as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this contract:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are subcontractor on City of Los Angeles contract #\_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are

prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to contractor within 5 business days. Failure to comply may result in termination of contract or any other available legal remedies includes fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.

CONTRACTOR, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the CITY to terminate this AGREEMENT and pursue any and all legal remedies that may be available.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year written below.

**CITY OF LOS ANGELES**

**PACWEST AMERICAN SCALE LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Commissioner, Board of Public Works

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Commissioner, Board of Public Works

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

**MICHAEL N. FEUER, City Attorney**

By: \_\_\_\_\_  
Laurie Rittenberg

Title: Assistant City Attorney

Date: \_\_\_\_\_

**ATTEST:**

**HOLLY WOLCOTT, Interim City Clerk**

By: \_\_\_\_\_

Title: Deputy City Clerk

Date: \_\_\_\_\_