

0150-12452-0000

**T R A N S M I T T A L**

|                        |                    |                         |
|------------------------|--------------------|-------------------------|
| TO<br>The City Council | DATE<br>09/11/2023 | COUNCIL FILE NO.        |
| FROM<br>The Mayor      |                    | COUNCIL DISTRICT<br>ALL |

**Personal Services Contract with the Ashpaugh & Sculco, CPAs, PLC for the provision of public, educational, and governmental fee auditing services.**

Transmitted for your consideration. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a). See the attached report from the City Administrative Officer.



MAYOR  
(Chris Thompson for)

MWS:ADP:11240015h

**Report From**  
**OFFICE OF THE CITY ADMINISTRATIVE OFFICER**  
**Analysis of Proposed Contract**  
(\$25,000 or Greater and Longer than Three Months)


|   |                |  |                                  |  |     |    |     |
|---|----------------|--|----------------------------------|--|-----|----|-----|
| To: The Mayor   | Date: 08-22-23 | C.D. No.<br>All  | CAO File No.:<br>0150-12452-0000 |  |     |    |     |
| Contracting Department/Bureau:<br>Information Technology Agency (ITA)                         |                | Contact:<br>Tita Zara 213-978-3346   |                                  |  |     |    |     |
| Reference: Transmittal from ITA dated March 7, 2023   |                |  |                                  |  |     |    |     |
| Purpose of Contract: Provision of public, educational, and governmental fee auditing services |                |  |                                  |  |     |    |     |
| Type of Contract:<br>( X ) New contract<br>( ) Amendment                                      |                | Contract Term Dates:<br>Three years effective April 1, 2023 through March 31, 2026 with two one-year extension options |                                  |  |     |    |     |
| Contract/Amendment Amount: \$500,000  |                |  |                                  |  |     |    |     |
| Proposed amount \$500,000+ Prior award(s) \$0 = Total \$500,000                               |                |  |                                  |  |     |    |     |
| Source of funds: General Funds Budgeted within ITA's Contractual Services Account             |                |  |                                  |  |     |    |     |
| Name of Contractor: Ashpaugh & Sculco, CPAs, PLC  |                |  |                                  |  |     |    |     |
| Address: 300 North New York Avenue, Winter Park, Florida 32790                                |                |  |                                  |  |     |    |     |
|   | Yes            | No   | N/A                              | Contractor has complied with:                      | Yes | No | N/A |
| 1. Council has approved the purpose   | X              |  |                                  | 8. Business Inclusion Program                      |     |    | X   |
| 2. Appropriated funds are available   | X              |  |                                  | 9. Equal Benefits & First Source Hiring Ordinances | X   |    |     |
| 3. Charter Section 1022 findings completed  | X              |  |                                  | 10. Contractor Responsibility Ordinance            | X   |    |     |
| 4. Proposals have been requested  | X              |  |                                  | 11. Disclosure Ordinances                          | X   |    |     |
| 5. Risk Management review completed   | X              |  |                                  | 12. Bidder Certification CEC Form 50               | X   |    |     |
| 6. Standard Provisions for City Contracts included  | X              |  |                                  | 13. Prohibited Contributors (Bidders) CEC Form 55  | X   |    |     |
| 7. Workforce that resides in the City: 0 %  |                |  |                                  | 14. California Iran Contracting Act of 2010        |     |    | X   |

**RECOMMENDATION**

That the Council authorize the General Manager of the Information Technology Agency, or his designee, to execute a Personal Services Contract with Ashpaugh & Sculco, CPAs, PLC in an amount not to exceed \$500,000, for a term of three years effective April 1, 2023 through March 31, 2026 with two one-year options to extend, to provide public, educational, and governmental fee auditing services, subject to the approval of the City Attorney as to form.

**SUMMARY**

The Information Technology Agency (ITA) requests approval to execute a Personal Services Contract (Contract) with Ashpaugh & Sculco, CPAS, PLC (Contractor) for the provision of public, educational, and governmental (PEG) fee auditing services. Pursuant to the Digital Infrastructure and Video Competition Act of 2006 (California Public Utilities Code Section 5800, et seq.) and Los Angeles Administrative Code (LAAC) Section 13.64, ITA is responsible for the audit of the franchise and PEG fees paid by cable service providers operating under State-issued franchises. The five providers operating within City boundaries are AT&T, Cox Communications, Frontier Communication, Race TV, and Spectrum/Charter Communications (Providers). The City collects approximately \$36 million in revenue from these fees annually, which is deposited to the General Fund (\$30 million) and the

|                |         |           |   |
|----------------|---------|-----------|---|
| Austin Patrick |         |           |  |
| ADP            | Analyst | 11240015h | Assistant City Administrative Officer   |

Telecommunications Development and the Public, Educational, and Government (PEG) Development special funds (\$6 million).

The Contractor will provide various financial auditing services including, but not limited to: 1) Verifying that the gross revenues reported, and the amount of franchise and PEG fees paid by Providers are in accordance with the applicable accounting standards as well as local, State, and Federal guidance; 2) Performing analysis of Providers' methodology of franchise and PEG fee calculation; 3) Reviewing the franchise fee pass-through rates and recommending any adjustments and corrections; 4) Comparing the estimated franchise and PEG fees calculated by formula to the actual remittance noting any underpayment; 5) Participating as necessary in settlement meetings with the reviewed Providers and ITA; and, 6) Potentially participating in any litigation brought by the City to collect unpaid fees.

The Contractor was selected through a competitive Request for Proposals process conducted in 2022. The Contractor has provided similar services to the City since 2004 through previous contracts C-132660 and C-107581. The Contractor has complied with all applicable City contracting requirements. In accordance with Charter Section 1022, the Personnel Department determined that City employees do not have the expertise to perform the work under the Contract as it requires highly specialized financial accounting knowledge specific to the cable television industry. In accordance with LAAC Section 10.5, the Contract requires approval of the City Council as the term will exceed three years if the extension options are exercised.

### **FISCAL IMPACT STATEMENT**

Funding for the proposed contract is available in ITA's Contractual Services Account as part of the funding approved in the 2023-24 Adopted Budget for Cable Franchise Oversight. There is no additional impact to the General Fund.

### **FINANCIAL POLICIES STATEMENT**

The recommendation of this report is in compliance with the City's Financial Policies as contract expenditures are limited to the appropriation of funds made by the City for this purpose.

**TED M. ROSS**  
GENERAL MANAGER  
CHIEF INFORMATION OFFICER

**JOYCE J. EDSON**  
EXECUTIVE OFFICER

**MARYAM ABBASSI**  
ASSISTANT GENERAL MANAGER

**BHAVIN PATEL**  
ASSISTANT GENERAL MANAGER

**TITA ZARA**  
ASSISTANT GENERAL MANAGER

# CITY OF LOS ANGELES

CALIFORNIA



**KAREN BASS**  
MAYOR



INFORMATION TECHNOLOGY AGENCY

CITY HALL EAST  
200 N MAIN ST, ROOM 1400  
LOS ANGELES, CA 90012  
213.978.3311

[ita.lacity.org](http://ita.lacity.org)

March 7, 2023

REF: EXE-089-23

Honorable Karen Bass  
Mayor, City of Los Angeles  
Room 303, City Hall  
Los Angeles, CA 90012

Attention: Heleen Ramirez, Legislative Coordinator

Subject: **REQUEST FOR PERSONAL SERVICES CONTRACTS – CABLE/VIDEO TELEVISION FRANCHISE AND PUBLIC, EDUCATIONAL, AND GOVERNMENTAL FEE AUDITING SERVICES**

Dear Mayor Bass:

Attached for your review and approval is the draft contract with Ashpaugh & Sculco, CPAs, PLC for cable/video television franchise and public, educational, and governmental (PEG) fee auditing services for \$500,000 (Five Hundred Thousand Dollars) to start April 1, 2023, and end March 31, 2026, with two one-year options to extend.

## Background

The Information Technology Agency (ITA) is responsible for conducting reviews of the franchise and PEG fees paid by cable/video service providers that operate under State-issued franchises, pursuant to the Digital Infrastructure and Video Competition Act of 2006 (California Public Utilities Code Section 5800, et seq.) and the Los Angeles Administrative Code, Video Franchise Fees, Customer Service and Other Video-Related Matters, Section 13.64, Division 13, Chapter 2, Article 3. These reviews verify that the amount of franchise and PEG fees paid, and the reported gross revenues on which the fees are based, are in accordance with the requirements of applicable standards and laws. These requirements include, but are not limited to: financial provisions of the State Franchise Agreements (for which the City relies on), federal law interpreting the applicability of those provisions, and the State's current broad definition of gross revenue.

Pursuant to franchises granted by the State of California in 2006, the following five cable/video service providers have operated within City boundaries:

1. AT&T;
2. Cox Communications;

Honorable Karen Bass

March 7, 2023

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3. Frontier Communications;
4. Race TV; and
5. Spectrum/Charter Communications

For more than 20 years, ITA has contracted for these services because we have neither the expertise nor the staff to do the audits.

On August 30, 2022, ITA released a Request for Proposals to provide franchise and PEG fee reviews of current cable providers, on an as-needed basis. As part of the evaluation process, a committee of three City employee evaluated proposals based on the following: qualifications and skills, prior work experience, proposed project cost and rates, and financial audit methodology.

Proposers received ratings on a scale of 1 to 100. None of the proposers were certified under the Local Business Preference Program. As a result of the evaluation, the committee and ITA recommend awarding the contract to Ashpaugh & Sculco CPAs, PLC.

### **Contract Compliance**

The Personnel Department has determined, in accordance with Charter 1022, that although the City possesses classifications such as Auditor and Internal Auditor, the City classes do not require expertise in auditing the specialized cable television industry. Additionally, ITA does not have sufficient staff with the required expertise and skills to provide the services needed to perform the PEG fee auditing services.

The Business Inclusion Program requirement was waived as the work to be provided requires highly specialized auditors with financial accounting knowledge specific to the cable/video television industry, as well as prior experience in the performance of such audits. In addition, cable/video TV auditors generally do not subcontract this type of work, due to its confidential nature.

The Equal Benefits Ordinance/First Source Hiring Ordinance and the Disclosure Ordinance affidavits have been verified.

The Contractor Responsibility Ordinance Questionnaire was filed on December 1, 2022, and verified by the Authorized Designated Administrative Agency (DAA) Representative in Public Works.

The Bidder Certification CEC Form 50 and Ethics CEC Form 55 were completed by the vendor, and CEC Form 55 was filed with the Ethics Commission on December 5, 2022.

The Living Wage Ordinance Exemption Application form was filed on December 5, 2022, and verified by the Authorized DAA Representative in Public Works;

The Business Tax Registration Certificate was filed with the Office of Finance.

The headquarters address and workforce information are as follows:

Ashpaugh & Sculco, CPAs, PLC  
300 N. New York Ave., #879  
Winter Park, FL 32790  
% of Workforce residing in the City: 0%

All other forms required by virtue of this RFP have been completed, reviewed, and recorded for ITA's records. The draft agreement has been reviewed by the City Attorney as to form.

### **Fiscal Impact Statement**

Funding for this engagement is available in the ITA's Contractual Services Account. No additional impact to the General Fund.

### **Recommendation**

Authorize the General Manager of ITA, or his designee, to execute a three-year contract with two one-year options to extend with Ashpaugh & Sculco, CPAs, PLC, to provide PEG fee auditing services.

Please contact Tita Zara, Assistant General Manager, at (213) 978-3346 with any questions.

Respectfully submitted,



Ted Ross  
General Manager

### **Attachments**

ec: Melissa Velasco, CAO  
Austin Patrick, CAO  
Maryam Abbassi, ITA  
Tita Zara, ITA  
Roger Fernandez, ITA  
Manuel Giron, ITA  
Maria Ramos, ITA  
Maggie McNally, ITA  
Arik Bibicoff, ITA  
Maria Delas Alas, ITA

CONTRACT  
between  
CITY OF LOS ANGELES

and  
ASHPAUGH & SCULCO, CPAS, PLC

THIS CONTRACT ("Contract") is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "City"), acting by and through the Information Technology Agency ("ITA"), and Ashpaugh & Sculco, CPAs, PLC, a Florida Limited Liability Company (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, on January 1, 2007, all new cable/video TV service providers in the City of Los Angeles began to operate under State-issued franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA");

WHEREAS, on January 1, 2008, all of the City's incumbent cable/video TV providers applied for and were granted State-issued franchises pursuant to DIVCA;

WHEREAS, ITA is responsible for providing franchise and public, educational, and governmental ("PEG") fee auditing services for the purpose of analyzing the financial compliance of cable/video TV service providers;

WHEREAS, the City intends to verify the accuracy of the financial information that cable/video TV service providers report to the City;

WHEREAS, the City requires the expertise of a contractor with a Certified Public Accounting ("CPA") license and expertise in auditing the cable television industry to conduct franchise and PEG fee reviews of its cable/video TV service providers, including Time Warner Cable/Charter Communications/Spectrum, Cox Communications, Frontier Communications/Verizon, AT&T/DirecTV, and Race TV LLC;

WHEREAS, ITA issued a request for proposals ("RFP") on August 30, 2022, for cable/video TV and PEG fee auditing services;

WHEREAS, the City desires to engage the services of the Contractor to audit and verify that the gross revenues reported by cable/video TV service providers as the basis for their franchise and PEG fees have been paid in accordance with the requirements of applicable accounting standards and the law;

WHEREAS, the Contractor has demonstrated to the City, through the RFP process, that Contractor is well qualified to perform the services required herein;

WHEREAS, the Contractor possesses experience performing financial audits of cable/video TV service providers and can perform the reviews efficiently, seamlessly, and at a fair value to the City;

WHEREAS, the City performed a Charter Section 1022 evaluation and determined that ITA does not possess sufficient staff with the required expertise and skills to provide the needed services within the limited duration of the project; and

WHEREAS, it is deemed that the service is both necessary and in the best interest of the City.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements hereinafter set forth, the parties hereby promise, covenant, and agree as follows:

### **1.0 TERM OF CONTRACT**

The term of this Contract shall commence on April 1, 2023, and shall terminate three (3) years therefrom on March 31, 2026, or at such time as all funding provided herein has been expended, whichever occurs first. This Contract shall be subject to termination by the City if funds are not appropriated for these services in the ensuing fiscal year commencing July 1.

The City reserves the right and option to renew the contract for two (2) additional one-year periods subject to the same terms and conditions upon written notification by the ITA General Manager or his/her designee.

### **2.0 COMPENSATION AND PAYMENT**

#### **2.1. Total Contract Expenditure**

The City's total obligation under this Contract shall not exceed \$500,000.00 (five hundred thousand dollars). The Contractor understands and agrees that execution of this Contract does not guarantee that the Contractor's employees or services will be utilized.

#### **2.2. Personnel/Hourly Rates**

| <b>HOURLY BILLING RATES</b>       |                    |
|-----------------------------------|--------------------|
| <b>Personnel, Title</b>           | <b>Hourly Rate</b> |
| Garth T. Ashpaugh, President      | \$175.00           |
| Carolyn A. Sculco, Vice President | \$175.00           |



Contractor's Hourly Rates are inclusive of all overhead and expenses, including travel, salaries, benefits, overhead, administrative, accounting computer support, telephone calls, and duplication. Reimbursement for incidental expenses that may be incurred by the Contractor in the performance of the Contractor's duties under this Contract are deemed included in the Hourly Rates specified above. Contractor and the City agree that the City shall not be liable to the Contractor for separate reimbursement of incidental or out-of-pocket expenses.

**2.3. Franchise and PEG Fees Review Services – Estimated Cost**

| <b>Cable/Video TV Service Providers</b>           | <b>Estimated Cost for 2-Year Review Period</b> |
|---|--|
| AT&T/DirecTV                                      | \$20,000.00                                    |
| Cox Communications                                | \$25,000.00                                    |
| Frontier Communications/Verizon                   | \$20,000.00                                    |
| Race TV LLC                                       | \$10,000.00                                    |
| Spectrum/Time Warner Cable/Charter Communications | \$20,000.00                                    |

**2.4. Invoices**

Contractor shall submit monthly invoices to the City. Payment of invoices shall be subject to approval by the City. No payment shall be made for any incidental expense.

Contractor's invoices must conform to City standards and include, at a minimum, the following information:

- Name and address of Contractor;
- Name and address of the City department being billed;
- Date of the invoice and the period covered;
- Reference to this Contract number;
- Scope of services performed by Contractor;
- Description of the services performed and the amount due for the services;
- Name(s) of all Contractor's personnel performing the services for the City department, the number of hours worked for each person, and the hourly rate for each person;
- Payment terms, total due, and due date;
- Certification by a duly authorized officer;

- Remittance address (if different from Contractor's address);
- Contractor's City of Los Angeles Business Tax Registration Certificate Number; and,
- Contractor's State of California Sales and Use Tax Permit Number.

All invoices shall be submitted on Contractor's letterhead, contain Contractor's official logo, or contain other unique and identifying information such as the name and address of Contractor. Invoices shall be submitted within 30 days of performance of services. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by the City Project Manager.

Invoices and supporting documentation shall be prepared at the sole expense and responsibility of Contractor. The City will not compensate Contractor for any costs incurred for invoice preparation. The City may request, in writing, changes to the content and format of the invoice and supporting documentation at any time. The City reserves the right to request additional supporting documentation to substantiate costs at any time.

Failure to adhere to these policies may result in nonpayment or non-approval of demands, pursuant to Charter Section 262(a), which requires the Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

### **3.0 SCOPE OF WORK**

Contractor agrees to provide the City with financial services covering a broad range of auditing tasks, including but not limited to reviewing the franchise and PEG fees paid by cable/video TV service providers that operate in the City under State-issued franchises. The Contractor shall perform various financial auditing services that include at least the following tasks:

- Conduct financial reviews to verify that the gross revenues reported by cable/video TV service providers, and the amount of franchise and PEG fees paid by providers, are in accordance with the requirements of: applicable accounting standards, relevant financial provisions of State franchise agreements, DIVCA (California Utilities Code Section 5800, et seq.), Los Angeles Administrative Code Section 13.64, and interpretations of these provisions under federal law, including Federal Communications Commission opinions;
- Attend periodic meetings with ITA staff;
- Attend a franchise fee review commencement meeting with the assigned cable/video TV service providers;

- Perform analysis of cable/video TV service providers' methodology of franchise and PEG fee calculation;
- Request all relevant financial information and documents from cable/video TV service providers and streamline the process for receipt of such documents, including the provision of confidentiality agreements with the assigned cable/video TV service provider when necessary;
- Analyze all financial information and documents received from cable/video TV service providers;
- Analyze a sample of franchise and PEG fee payment transactions to determine: a) if franchise and PEG fee payments to the City are based on gross revenue calculations that include amounts collected from subscribers as franchise and PEG fees; and b) if franchise and PEG fee rates are being applied correctly;
- Review the franchise fee pass-through rates and recommend any adjustments and corrections;
- Compare the franchise and PEG fees calculated under the method described above against the actual franchise and PEG fees remitted to the City;
- Calculate and report a dollar amount of any franchise and PEG fee underpayment based on review findings;
- Calculate interest on any underpaid franchise and PEG fees;
- Perform a franchise and PEG fee review exit conference with the assigned cable/video TV service provider;
- Prepare and submit a final report of franchise and PEG fee review findings including recommendations to ITA staff;
- When requested by ITA staff, provide supporting detailed opinions regarding franchise and PEG fee review findings;
- Participate as necessary in settlement meetings with the reviewed cable/video TV service provider and ITA and other ITA designated representatives;
- Subject to an increase in budget and when requested and designated by ITA and City staff, participate in any litigation brought by the City to collect unpaid franchise and PEG fees, including as a potential trial consultant and/or witness;
- Attend closing meetings with ITA staff.

The City may also summon the Contractor's services to review the revenues of video-on-demand and over-the-top streaming service providers (under DIVCA), at the discretion of the City's project manager.

Financial reviews are to be conducted in two-year blocks, and a report will be due within six months from the date ITA authorizes the work, unless otherwise stated by the City's project manager.

#### **4.0 CONTRACT AUDITS**

Contractor agrees that the City or its delegates will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor agrees to provide the City or its delegate, at no cost, with any relevant information requested and shall permit the City or its delegate access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. Contractor further agrees to maintain such records for a period of three (3) years after final payment under the contract.

Records, in their original form (including, but not limited to, customer files and fiscal documents) pertaining to matters covered by this Contract shall at all times, be retained within the County of Los Angeles unless authorization to remove them is granted in writing by the City.

#### **5.0 PARTIES TO THE CONTRACT AND REPRESENTATIVES**

The following representative individuals and addresses shall serve as the place to which notices and other correspondence between the parties shall be sent.

##### **5.1. Parties to the Contract**

The parties to this Contract are:

1. City: The City of Los Angeles, a municipal corporation, having its principal office at 200 North Spring Street, Los Angeles, California 90012.
2. Contractor: Ashpaugh & Sculco, CPAs, PLC, a limited liability company, having its principal office at 300 North New York Avenue, Winter Park, Florida 32790.

##### **5.2. Contractor's Representative**

Contractor hereby appoints the following person to represent Contractor with respect to all matters pertaining to this Contract. Said representative shall be responsible for submitting all the respective notices, reports, invoices, and other documents or information as required by this Contract.

Name: Carolyn Sculco  
Title: Vice President & Member  
Address: 300 North New York Avenue  
Winter Park, FL 32790  
Telephone: (407) 645-2020 Ext. 2  
E-Mail: csculco@ascpas.com

### **5.3. City's Representative**

The City hereby appoints the following person, or her designated representative, to represent the City in all matters pertaining to this Contract.

Name: Tita Zara  
Title: Assistant General Manager  
Address: 200 North Main Street, Room 1400  
Los Angeles, CA 90012  
Telephone: (213) 978-3346  
E-mail: tita.zara@lacity.org

### **5.4. City's Project Manager**

The City hereby appoints the following person to act as the project manager.

Name: Manuel Giron  
Title: Telecommunications Regulatory Officer I  
Address: 200 N. Main St., CHE 1400  
Los Angeles, CA 90012  
Telephone: (213) 820-7656  
E-mail: manuel.giron@lacity.org

### **5.5. Communications**

Formal notices, demands, and communications from Contractor shall be given to the City's Representative with copies to the City's Project Manager.

Formal notices, demands, and communications required hereunder by either party shall be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of the date of mailing.

If the name of the person designated to receive the notices, demands, or communications or the address of such person is changed, written notice shall be given, in accordance with this Section, within ten (10) working days of said change.

## **6.0 NAME CHANGE**

In the event that Contractor undergoes either an ownership change and the new Owner is able to comply with all Contract terms and conditions, or a name change, the General Manager of ITA may, at his discretion, execute an amendment to effect the assumption and/or change the Contractor name.

## **7.0 DISCLOSURE OF BORDER WALL CONTRACTING ORDINANCE**

Contractor shall comply with Los Angeles Administrative Code Section 10.50 et seq., (Disclosure of Border Wall Contracting). City may terminate this Contract at any time if City determines that contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and border Wall Contracts, as defined in LAAC Section 10.50.1.

## **8.0 CONTRACTOR PERFORMANCE EVALUATION**

At the end of this contract, 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 contract. 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 contract. A Contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City evaluation and allowed 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 personal services contracts.

## **9.0 CONTRACT MODIFICATIONS, CHANGES, OR AMENDMENTS**

This Contract plus specific documents cited herein constitutes the entire Contract between the City and Contractor and may be amended by further written agreement.

## **10.0 CITY'S OBLIGATION FOR FUTURE FISCAL YEARS**

Notwithstanding anything to the contrary, (i) City's obligations hereunder are payable only from funds specifically appropriated by the City Council; and (ii) City shall not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of City's future fiscal years unless and until the City Council appropriates funds for this Contract in City's budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of the last day of the last fiscal year for which funds were appropriated. City will make a good faith effort to notify Contractor in writing of any such non-appropriation of funds at the earliest possible date.

## **11.0 ELECTRONIC SIGNATURES**

This Contract may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same

agreement. The parties further agree that facsimile signatures or signatures scanned into PDF format (or signatures in another electronic format designated by City) and sent by e-mail shall be deemed original signatures.

## **12.0 RATIFICATION CLAUSE**

Due to the need for the Contractor's services to be provided continuously on an ongoing basis, the Contractor may have provided services prior to the execution of this Contract. To the extent that said services were performed in accordance with the terms and conditions of this Contract, those services are hereby ratified.

## **13.0 APPENDICES**

The following appendices are incorporated into and made a part of this Contract.

Appendix A: Standard Provisions for City Personal Services Contracts (Rev. 9/22)[v.1]

Appendix B: California Public Utilities Code (5860), Definition of Gross Revenues

Appendix C: City of Los Angeles Ordinance No. 178108

Appendix D: Financial Audit Methodology

In the event of an inconsistency between any of the provisions of this Contract and/or any appendix attached hereto, the inconsistency shall be resolved by giving precedence in the following order:

1. The provisions of this Contract
2. Appendix A
3. Appendix B
4. Appendix C
5. Appendix D

**IN WITNESS THEREOF**, the parties hereto have caused this instrument to be signed by their respective duly authorized officers:

APPROVED AS TO FORM:

CITY OF LOS ANGELES:

Hydee Feldstein Soto  
City Attorney

By: \_\_\_\_\_  
Joshua M. Templet  
Deputy City Attorney III

By: \_\_\_\_\_  
Tita Zara  
Assistant General Manager  
Information Technology Agency

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

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

ATTEST: Holly Wolcott  
City Clerk

CONTRACTOR

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

By: \_\_\_\_\_  
Carolyn Sculco  
Vice President & Member  
Ashpaugh & Sculco, CPAs, PLC

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

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



## **APPENDIX A**

Standard Provisions for City Contracts (Rev. 9/22) [v.1]

# STANDARD PROVISIONS FOR CITY CONTRACTS

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## STANDARD PROVISIONS FOR CITY CONTRACTS

### PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

### PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

### PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

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

#### **PSC-4. Integrated Contract**

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

#### **PSC-5. Amendment**

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

#### **PSC-6. Excusable Delays**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

#### **PSC-7. Waiver**

A waiver of a default of any part, term or provision of this Contract 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.

## **PSC-8. Suspension**

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

## **PSC-9. Termination**

### **A. Termination for Convenience**

**CITY** may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

### **B. Termination for Breach of Contract**

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If 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, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
  - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
  - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
  - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
  - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.



- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
  6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
  7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
  8. The rights and remedies of **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 Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

**PSC-10. Independent Contractor**

**CONTRACTOR** is an independent contractor and not an agent or employee of **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 **CITY**.

**PSC-11. Contractor's Personnel**

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

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

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

#### **PSC-12. Assignment and Delegation**

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

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

#### **PSC-13. Permits**

**CONTRACTOR** and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

#### **PSC-14. Claims for Labor and Materials**

**CONTRACTOR** shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract 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 **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

#### **PSC-15. Current Los Angeles City Business Tax Registration Certificate Required**

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

#### **PSC-16. Retention of Records, Audit and Reports**

**CONTRACTOR** shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

#### **PSC-17. Bonds**

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

#### **PSC-18. 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** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits 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 **CITY**, including but not limited to, costs of experts and consultants), damages 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 of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **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 Contract. This provision will survive expiration or termination of this Contract.

#### **PSC-19. Intellectual Property Indemnification**

**CONTRACTOR**, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits 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 **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature 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: (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, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **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 Contract. This provision will survive expiration or termination of this Contract.

#### **PSC-20. Intellectual Property Warranty**

**CONTRACTOR** represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

#### **PSC-21. Ownership and License**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, 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 originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

**CONTRACTOR** agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for 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 **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

**PSC-22. Data Protection**

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

**PSC-23. Insurance**

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

**PSC-24. Best Terms**

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

**PSC-25. Warranty and Responsibility of Contractor**

**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.

**PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **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 **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-27. Child Support Assignment Orders**

**CONTRACTOR** shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-28. Living Wage Ordinance**

**CONTRACTOR** shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-29. Service Contractor Worker Retention Ordinance**

**CONTRACTOR** shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-30. Access and Accommodations**

**CONTRACTOR** represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

**CONTRACTOR** understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-31. Contractor Responsibility Ordinance**

**CONTRACTOR** shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

**PSC-32. Business Inclusion Program**

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

**PSC-33. Slavery Disclosure Ordinance**

**CONTRACTOR** shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-34. First Source Hiring Ordinance**

**CONTRACTOR** shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-35. Local Business Preference Ordinance**

**CONTRACTOR** shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-36. Iran Contracting Act**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

**PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections**

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)



shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract # \_\_\_\_\_ Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at [ethics.lacity.org](http://ethics.lacity.org) or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

**PSC-38.** Contractors’ Use of Criminal History for Consideration of Employment Applications

**CONTRACTOR** shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

**PSC-39.** Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

**PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards**

**CONTRACTOR** shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

**PSC-41. Compliance with California Public Resources Code Section 5164**

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

**PSC-42. Possessory Interests Tax**

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

### **PSC-43. Confidentiality**

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

### **PSC-44. COVID-19**

Employees of Contractor and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, “Contractor Personnel”), while performing services under this Agreement and prior to interacting in person with City employees, contractors, volunteers, or members of the public (collectively, “In-Person Services”) must be fully vaccinated against the novel coronavirus 2019 (“COVID-19”). “Fully vaccinated” means that 14 or more days have passed since Contractor Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, Contractor shall obtain proof that such Contractor Personnel have been fully vaccinated. Contractor shall retain such proof for the document retention period set forth in this Agreement. Contractor shall grant medical or religious exemptions (“Exemptions”) to Contractor Personnel as required by law. If Contractor wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, Contractor shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by Contractor. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, Contractor shall immediately notify City if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

### **PSC-45. Contractor Data Reporting**

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement (“RAMP”) or via another method specified by City: Contractor’s and any Subcontractor’s annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner (“Contractor/Subcontractor Information”). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by City.

## EXHIBIT 1

### INSURANCE CONTRACTUAL REQUIREMENTS

**CONTACT** For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at [www.lacity.org/cao/risk](http://www.lacity.org/cao/risk). The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

### CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

**7. California Licensee.** All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

**8. Aggregate Limits/Impairment.** If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

**9. Commencement of Work.** For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

## Required Insurance and Minimum Limits

Name: Ashpaugh & Sculco, CPAs, PLC

Date: 01/04/2023

Agreement/Reference: Cable/TV Franchise & PEG Fee Auditing

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

**Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)**

WC Statutory

EL \$1,000,000

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

**General Liability**

\$1,000,000

Products/Completed Operations

Sexual Misconduct

Fire Legal Liability

**Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)

**Professional Liability** (Errors and Omissions)

\$1,000,000

Discovery Period 12 Months After Completion of Work or Date of Termination

**Property Insurance** (to cover replacement cost of building - as determined by insurance company)

All Risk Coverage

Boiler and Machinery

Flood

Builder's Risk

Earthquake

**Pollution Liability**

**Surety Bonds - Performance and Payment (Labor and Materials) Bonds**

100% of the contract price

**Crime Insurance**

**Other:** 1) Professional Liability Insurance is required for any Contractor or Sub-Contractor that requires a Licensed Professional to perform their duties as part of this agreement.

2) In the absence of imposed Auto Liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

## **APPENDIX B**

### DEFINITION OF GROSS REVENUES AS STATED IN CALIFORNIA PUBLIC UTILITIES CODE § 5860 (CPUC § 5860): THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006 (DIVCA)

#### **PUBLIC UTILITIES CODE - PUC**

#### **DIVISION 2.5. THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006 [5800 - 5970]** (Division 2.5 added by Stats. 2006, Ch. 700, Sec. 3.)

#### **5860.**

**(d)** For purposes of this section, the term “gross revenues” means all revenue actually received by the holder of a state franchise, as determined in accordance with generally accepted accounting principles, that is derived from the operation of the holder’s network to provide cable or video service within the jurisdiction of the local entity, including all of the following:

**(1)** All charges billed to subscribers for any and all cable service or video service provided by the holder of a state franchise, including all revenue related to programming provided to the subscriber, equipment rentals, late fees, and insufficient fund fees.

**(2)** Franchise fees imposed on the holder of a state franchise by this section that are passed through to, and paid by, the subscribers.

**(3)** Compensation received by the holder of a state franchise that is derived from the operation of the holder’s network to provide cable service or video service with respect to commissions that are paid to the holder of a state franchise as compensation for promotion or exhibition of any products or services on the holder’s network, such as a “home shopping” or similar channel, subject to paragraph (4) of subdivision (e).

**(4)** A pro rata portion of all revenue derived by the holder of a state franchise or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the holder's network to provide video service within the jurisdiction of the local entity, subject to paragraph (1) of subdivision (e). The allocation shall be based on the number of subscribers in the local entity divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

**(e)** For purposes of this section, “the term “gross” revenue” set forth in subdivision (d) does not include any of the following:

**(1)** Amounts not actually received, even if billed, such as bad debt; refunds, rebates, or discounts to subscribers or other third parties; or revenue imputed from the provision of

cable service or video services for free or at reduced rates to any person as required or allowed by law, including, but not limited to, the provision of these services to public institutions, public schools, governmental agencies, or employees except that forgone revenue chosen not to be received in exchange for trades, barters, services, or other items of value shall be included in gross revenue.

**(2)** Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the holder of a state franchise to provide cable services or video services. However, revenue received by an affiliate of the holder from the affiliate's provision of video service or video service shall be included in gross revenue as follows:

**(A)** To the extent that treating the revenue as revenue of the affiliate, instead of revenue of the holder, would have the effect of evading the payment of fees that would otherwise be paid to the local entity.

**(B)** The revenue is not otherwise subject to fees to be paid to the local entity.

**(3)** Revenue derived from services classified as noncable services or nonvideo services under federal law, including, but not limited to, revenue derived from telecommunications services and information services, other than cable services or video services, and any other revenues attributed by the holder of a state franchise to noncable services or nonvideo services in accordance with Federal Communications Commission rules, regulations, standards, or orders.

**(4)** Revenue paid by subscribers to "home shopping" or similar networks directly from the sale of merchandise through any home shopping channel offered as part of the cable services or video services. However, commissions or other compensation paid to the holder of a state franchise by "home shopping" or similar networks for the promotion or exhibition of products or services shall be included in gross revenue.

**(5)** Revenue from the sale of cable services or video services for resale in which the reseller is required to collect a fee similar to the franchise fee from the reseller's subscribers.

**(6)** Amounts billed to, and collected from, subscribers to recover any tax, fee, or surcharge imposed by any governmental entity on the holder of a state franchise, including, but not limited to, sales and use taxes, gross receipts taxes, excise taxes, utility users taxes, public service taxes, communication taxes, and any other fee not imposed by this section.

**(7)** Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive cable services or video services from the seller of those assets or surplus equipment.



**(8)** Revenue from directory or Internet advertising revenue, including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing.

**(9)** Revenue received as reimbursement by programmers of specific, identifiable marketing costs incurred by the holder of a state franchise for the introduction of new programming.

**(10)** Security deposits received from subscribers, excluding security deposits applied to the outstanding balance of a subscriber's account and thereby taken into revenue.

**APPENDIX C**

CITY OF LOS ANGELES ORDINANCE NO. 178108

ORDINANCE NO. 178108

An ordinance amending the Los Angeles Administrative Code to add provisions regarding new video service fees, penalties and other related matters.

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 3 is added to Chapter 2 of Division 13 of the Los Angeles Administrative Code to read:

**Article 3. Video Franchise Fees, Customer Service and Other Video-Related Matters**

Sec. 13.64. Regulation of State Video Franchises and City Video Franchises

Under State law to be effective January 1, 2007, the California Public Utilities Commission (PUC) will have the authority to grant state video franchises. The City of Los Angeles will acquire certain rights and responsibilities with respect to state video franchise holders. These include the receipt of a franchise fee and a fee for Public, Educational and Government (PEG) purposes, both based on a percentage of the gross revenues of state franchise holders, as well as the establishment and enforcement of penalties for violations of customer service rules. The City will retain authority, without change, over all City video franchisees until such time as they no longer hold a City franchise, or are no longer operating under a current or expired City franchise. The City may continue to grant, modify, renew, extend or terminate City video franchises for video service until January 1, 2008. After January 1, 2008, the City may modify, renew, extend or terminate existing City video franchises, whether current or expired. For purposes of this article, the terms "City video franchise" and "City video franchisee" shall have the same meaning as the terms "City cable franchise" and "City cable franchisee" as they are used in this Division 13.

Sec. 13.64.1. State Video Franchise Fees

(a) For any state video franchise holder operating within the boundaries of the City of Los Angeles, there shall be a fee paid to the City equal to five percent of the gross revenue of that state video franchise holder.

(b) For any state video franchise holder operating within the boundaries of the City of Los Angeles, there shall be an additional fee paid to the City equal to one percent of the gross revenue of that state video franchise holder, which fee shall be used by the City for PEG purposes consistent with state and federal law.

(c) Gross revenue, for the purposes of (a) and (b) above, shall have the definition set forth in California Public Utilities Code §5860.

#### Sec. 13.64.2. Audit Authority

Not more than once annually, the City's Information Technology Agency (ITA) may examine and perform an audit of the business records of a holder of a state video franchise to ensure compliance with Section 13.64.1.

#### Sec. 13.64.3. Customer Service Penalties Under State Video Franchises

(a) The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

(b) ITA shall monitor the compliance of state video franchise holders with respect to state and federal customer service and protection standards. ITA will provide the state video franchise holder written notice of any material breaches of applicable customer and service standards, and will allow the state video franchise holder 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following penalties to be imposed by ITA:

(1) For the first occurrence of a violation, a fine of \$500.00 shall be imposed for each day the violation remains in effect, not to exceed \$1500.00 for each violation.

(2) For a second violation of the same nature within 12 months, a fine of \$1000.00 shall be imposed for each day the violation remains in effect, not to exceed \$3000.00 for each violation.

(3) For a third or further violation of the same nature within 12 months, a fine of \$2500.00 shall be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.

(c) A state video franchise holder may appeal a penalty assessed by ITA to the Board of Information Technology Commissioners (BITC) within 60 days. After relevant speakers are heard, and any necessary staff reports are submitted, BITC will vote to either uphold or vacate the penalty. BITC's decision on the imposition of a penalty shall be final.

#### Sec. 13.64.4. City Response to State Video Franchise Applications

(a) Applicants for state video franchises within the boundaries of the City of Los Angeles must concurrently provide complete copies to the City of any application or amendments to applications filed with the PUC. One complete copy must be provided to the City Clerk, and one complete copy to the General Manager of ITA.

(b) ITA will provide any appropriate comments to the PUC regarding an application or an amendment to an application for a state video franchise.

**Sec. 13.64.5. Extension of Existing City Video Franchises**

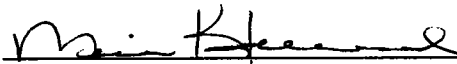
Any entity providing video service under an expired City video franchise on January 1, 2007, shall hereby have the terms of its City video franchise extended on the same terms and conditions until January 2, 2008. The extension of a City video franchise does not preclude the City from further modifications, renewals, extensions or termination of that City video franchise.

Sec. 2. The operative date of this ordinance shall be December 31, 2006.

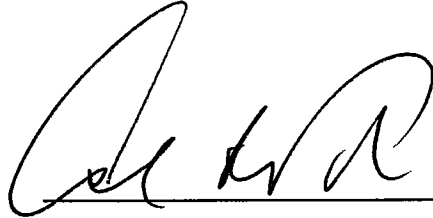
Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of NOV 29 2006.

FRANK T. MARTINEZ, City Clerk

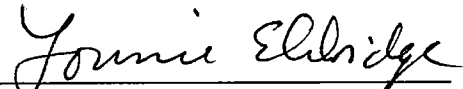
By  Deputy

Approved NOV 29 2006

 Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By   
LONNIE ELDRIDGE  
Deputy City Attorney

File No. CF 06-2818

Date: 11/16/06

**SECTION 1d - FINANCIAL AUDIT METHODOLOGY**

Ashpaugh & Sculco, CPAs, PLC (“A&S”) agrees to perform the Section III Scope of Services procedures outlined on pages 6 and 7 of the RFP. We have attached our Scope of Work as Exhibit 2.

Our financial auditing methodology is a comprehensive analysis of the determination of gross revenues to ensure compliance with DIVCA. We reconcile the monthly subscriber revenues to the third-party billing data or in-house records to determine which revenues were not reported by the cable/video television service providers to the City. We review every category of revenues, not just video revenues. We recalculate the monthly non-subscriber revenues and reconcile them to the general ledger.

To illustrate our understanding of the scope of services and depth of review that we perform, we have listed some of the issues that we have identified in recent reviews of cable/video television service providers throughout the country:

1. Incorrect allocation of non-subscriber revenues
2. Lost revenues during the conversion of third-party billing software
3. New service revenues not reported to the city/county
4. Accounting issues related to the implementation of Financial Accounting Standard Board (“FASB”) pronouncements ASC 605 and 606
5. Incorrect allocation of administrative fees, late fees and NSF fees
6. Understanding and following the language in DIVCA and applying recent accounting standards, when applicable
7. Lost revenues during change/transfer in cable/video providers

We are confident that our audit process allows us to delve into the financial data at a detailed level that can identify findings more thoroughly than our competitors. As an example of our work, we have attached a recent report for our review of Cox as Exhibit 3.