

0150-12427-0000

TRANSMITTAL

| | | |
|------------------------|-------------------------|------------------|
| TO The City Council | DATE 09/08/2023 | COUNCIL FILE NO. |
| FROM The Mayor | COUNCIL DISTRICT All | |

**AUTHORIZATION TO EXECUTE A SEVEN-YEAR CONTRACT WITH BP PULSE FLEET
NORTH AMERICA, INC. TO INSTALL ELECTRIC BUS CHARGERS AND PROVIDE FIVE
YEARS OF SOFTWARE AND CHARGER MAINTENANCE**

Transmitted for your consideration. The Council has 60 days from the date of the receipt to act; otherwise, the agreement will be deemed approved pursuant to Charter Section 606. See the City Administrative Officer report attached.



MAYOR
(Chris Thompson for)

MWS:ADN:06240007

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: 08-24-23 | C.D. No. Citywide | CAO File No.: 0150-12427-0000 |
| Contracting Department/Bureau: Department of Transportation | | Contact: Lindsey Estes (213) 928-9772 | |
| Reference: Letter from the Department of Transportation, dated May 30 2023; referred for report by the Mayor on June 5, 2023. | | | |
| Purpose of Contract: To install 22 electric 150kW bus chargers and provide five years of software and charger maintenance at the Downtown Yard, located at 454 East Commercial Street, Los Angeles, California 90012. | | | |
| Type of Contract: (X) New contract () Amendment, Contract No. [C-XXXXXX] | | Contract Term Dates: October 1, 2023 through September 30, 2030 (84-Months) | |
| Contract/Amendment Amount: \$12,112,307 | | | |
| Proposed amount \$ 12,112,307 + Prior award(s) \$ N/A = Total \$ 12,112,307 | | | |
| Source of funds: Proposition A Local Transit Assistance Fund and Caltrans State of Good Repair Funds | | | |
| Name of Contractor: BP Pulse Fleet North America, Inc. | | | |
| Address: 335 East Middlefield Road Mountain View, California 94043 | | | |
| | Yes | No | N/A |
| 1. Council has approved the purpose | | X | |
| 2. Appropriated funds are available | X | | |
| 3. Charter Section 1022 findings completed | X | | |
| 4. Proposals have been requested | X | | |
| 5. Risk Management review completed | X | | |
| 6. Standard Provisions for City Contracts included | X | | |
| 7. Workforce that resides in the City: 0% | | | |
| 8. Business Inclusion Program | | X | |
| 9. Equal Benefits & First Source Hiring Ordinances | X | | |
| 10. Contractor Responsibility Ordinance | X | | |
| 11. Disclosure Ordinances | X | | |
| 12. Bidder Certification CEC Form 50 | X | | |
| 13. Prohibited Contributors (Bidders) CEC Form 55 | X | | |
| 14. California Iran Contracting Act of 2010 | X | | |

RECOMMENDATION

That the Mayor and City Council authorize the General Manager of the Department of Transportation (LADOT) to execute a contract with BP Pulse Fleet North America, Inc. through the Amended and Restated Master Charging Equipment Services Agreement (the Anaheim Agreement) to install twenty-two (22) electric 150kW bus chargers and provide five years of software and charger maintenance at the Downtown Yard, located at 454 East Commercial Street, Los Angeles, California 90012, for a term of seven years, subject to City Attorney review and approval as to form, and total compensation to not exceed \$12,112,307 for the entire term of the contract.

SUMMARY

On November 9, 2017, the City Council directed LADOT to take numerous actions to ensure a transition to a 100 percent zero-emission transit bus fleet by 2030 or earlier (C.F. 17-0739). Subsequently, on February 10, 2020, the Mayor issued Executive Directive No. 25, directing LADOT to achieve a 100 percent zero-emission bus fleet in time for the 2028 Olympic and Paralympic Games.

| | | | | | |
|-----|---------|-----------------|---------------------------------|--|--|
| | | | | | |
| ADN | Analyst | 0150-12427-0000 | for City Administrative Officer | | |

In 2019, LADOT entered into an agreement for the purchase of 130 electric buses with chargers included (C.F. 18-0233) through the Georgia State Department of Administrative Services master contract. In 2023, LADOT will receive partial delivery of the 130 electric buses which are expected to serve the DASH and Commuter Express routes.

In 2020, the Anaheim Transportation Network developed a request for proposals seeking a charging operator to install and provide electric charger management services for Anaheim's electric bus fleet. On August 28, 2020, Amply Power Inc. (now BP Pulse Fleet North America, Inc.) was awarded the contract and the Anaheim Agreement was executed on September 30, 2021. Subsection 12.18 of the Anaheim Agreement, allows for services for similar charger installation and maintenance services by Amply Power, Inc. (now BP Pulse Fleet North America, Inc.) to be made available to any transit agency within the State of California.

Los Angeles City Charter Section 371(e)(8) allows for utilization of purchasing and service contracts in cooperative arrangement with other governmental agencies and any implementing agreements. LADOT desires to use the services of BP Pulse Fleet North America, Inc. to install the electric chargers with software at LADOT's Downtown Bus Yard to ensure operation of the DASH and Commuter Express bus routes.

On July 28, 2022, the Anaheim Transportation Network provided Los Angeles City written authorization to design, engineer, procure, maintain and install electric charging infrastructure, and operate software through their Fleet Charge Management Services Agreement and the Amended and Restated Master Charging Equipment Services Agreement.

Under the proposed agreement, BP Pulse shall:

- Be responsible for managing the deployment of the Additional Charging Equipment including design, engineering, procurement, installation, construction; configuration of the CMS Software; and Testing and Commissioning of the Additional Charging Equipment and CMS Software at the Downtown Yard;
- Develop a construction schedule with start and end dates for all steps of construction and installation, subject to the approval of the City;
- Provide the construction schedule to the City after the procurement of all necessary materials for construction and installation of the Additional Charging Equipment and before construction begins;
- Notify the City at least 14 calendar days prior to the construction and installation at the Downtown Yard;
- Submit to the City a monthly progress report with supporting documentation including, but not limited to any permits, design plans, receipts, and any other official documentation required by the Project. The contractor shall submit a monthly progress report within five business days after the end of the calendar month;
- Test and Commission all Charging Equipment to ensure all items procured in the Scope of Work are ready twenty-four hours a day, seven days a week (24/7) to support the charging needs of the Downtown Yard operations;
- Begin Testing and Commissioning within 16 months of the City issuing the Notice to Proceed (NTP). The Contractor shall complete Testing and Commissioning within 18 months of the City issuing an NTP.

This Office has confirmed that the recommended contractor has submitted the required documentation in compliance with City contracting policies. The City Standard Provisions are included as part of the contract, and therefore, the City financial obligation is limited to the extent of appropriations approved by the Council and Mayor. In compliance with Los Angeles Administrative Code Section 10.5, Council approval is required as the contract term exceeds three years.

FISCAL IMPACT STATEMENT

Funding for this contract will come from the Proposition A Local Transit Assistance Fund Facility Upgrades for Electrification account and the Caltrans State of Good Repair Program funds. Funding for subsequent years of the agreement is subject to Mayor and Council approval, the availability of funds, and will be appropriated through the City annual budget development process. The City financial obligation is limited to the extent of appropriations approved by the Council and Mayor. The recommendation in this report complies with the City Financial Policies in that budgeted funds are available for this purpose. There is no impact to the General Fund.


FINANCIAL POLICIES STATEMENT

The action recommended in this report complies with the City Financial Policies in that the City's financial obligation is limited to available cash balances in the current budget year.

CITY OF LOS ANGELES
INTER-DEPARTMENTAL MEMORANDUM

Date: May 30, 2023

To: The Honorable Mayor Karen Bass
c/o City Clerk, Room 395, City Hall
Attention: Heleen Ramirez, Legislative Coordinator

From: Connie Llanos, Interim General Manager 
Department of Transportation

Subject: **REQUEST FOR AUTHORIZATION TO INSTALL ELECTRIC BUS CHARGERS AT
LADOT COMMERCIAL STREET BUS YARD**

SUMMARY

The Los Angeles Department of Transportation (LADOT) requests authority to execute a contract with BP Pulse Fleet North America, Inc. to install twenty-two (22) new 150kW direct current (DC) electric vehicle (EV) bus chargers at the Commercial Street Bus Maintenance Facility (the Downtown Yard). The chargers will have charge management system (CMS) software installed to manage bus charging schedules and the Downtown Yard's power load. The chargers will power new electric DASH buses for routes that serve the downtown area of Los Angeles as well as Commuter Express routes.

RECOMMENDATIONS

That the City Council, with the concurrence by the Mayor:

AUTHORIZE the General Manager of LADOT to execute a seven-year contract with BP Pulse Fleet North America, Inc. through the Amended and Restated Master Charging Equipment Services Agreement (the Anaheim Agreement) to install twenty-two (22) electric 150kW bus chargers and provide five (5) years of software and charger maintenance at the Downtown Yard, located at 454 East Commercial Street, Los Angeles, California 90012, in an amount of **\$12,112,307**, including taxes, fees and contingency, subject to the approval of the City Attorney as to form and legality.

BACKGROUND

On November 9, 2017, the City Council directed LADOT to take numerous actions to ensure a transition to a 100 percent zero-emission transit bus fleet by 2030 or earlier (C.F. 17-0739). On February 10, 2020, the Mayor issued Executive Directive No. 25, directing LADOT to achieve a 100 percent zero-emission bus fleet in time for the 2028 Olympic and Paralympic Games. In 2019, LADOT entered into an agreement for the purchase of 130 electric buses with chargers included (C.F. 18-0233) through the Georgia State Department of Administrative Services master

contract to meet these goals. These buses and chargers will serve the DASH and Commuter Express routes. In 2020, the Anaheim Transportation Network developed a request for proposals seeking a charging operator to install and provide electric charger management services for Anaheim's electric bus fleet. This was awarded to Amply Power Inc. (now BP Pulse Fleet North America, Inc.) and the Anaheim Agreement was executed on September 30, 2021.

DISCUSSION

The Anaheim Agreement states in *§12.18 Additional Transit Authorities; Piggybacking*, that similar charger installation and maintenance services by Amply Power, Inc. (now BP Pulse Fleet North America, Inc.) are made available to any transit agencies within the State of California.

In 2023, LADOT will receive partial delivery of the 130 electric buses and twenty-two (22) electric 150kW chargers scheduled for installation and operation at the Downtown Yard. LADOT desires to use the services of BP Pulse Fleet North America, Inc. to install the electric chargers with software at LADOT's Downtown Bus Yard to ensure continued operation of the DASH and Commuter Express bus routes.

The Los Angeles City Charter Section 371 allows for contracts for a cooperative arrangement with other governmental agencies to utilize purchasing and services contracts of those agencies and any implementing agreements. The authorized participant method of the Anaheim Agreement is a cost-effective way for LADOT to procure electric charger installation services as the City can avail itself of economies-of-scale cost savings related to large volume procurements with other transit agencies.

LADOT requests authority to execute a contract with BP Pulse Fleet North America, Inc. through the Anaheim Agreement to install the infrastructure, chargers and the charge management software needed to charge the aforementioned buses at the LADOT Downtown Yard. The total cost of these services is not to exceed **\$12,112,307**.

GRANT FUNDING

This project is supported by grant funds in the amount of \$6,407,767 including \$496,301 in Caltrans State of Good Repair Annual 17/18; \$563,130 Caltrans State of Good Repair Annual 17/18; \$3,215,977 in Federal Transit Administration 5339 funds; and \$2,132,359 in Federal Transit Administration 5307 funds. LADOT continues to seek additional grant funds to support this project.

FISCAL IMPACT

There is no General Fund Impact. Funding for this project was included in the City's adopted budget for Proposition A Local Transit Assistance (PALTA) Fund No. 385. Front funding and local match funding are through FY 2019, Account No. 94RA20 - Facility Upgrades for Electrification for \$5,970,000, and FY 2020, Account No. 94SA20 - Facility Upgrades for Electrification for \$6,142,307.

Cost Sheet

| Equipment | | | | | | | |
|---|-----------------|--|-----|-------------|----------------|-------------------------------|--------------|
| Section# | Part# | Description | Qty | Unit Price | Unit Type | Tax | Total (US\$) |
| 5.5.2 | EVSE-ABB-DC-150 | ABB BAA 150 kW Power Cabinet + (2) BAA Depot Box Dispensers | 22 | \$146,591 | Equipment | T | \$3,225,002 |
| 5.5.3 | EVSE-ABB-SP | ABB Spare Parts Package | 1 | \$71,535 | Equipment | T | \$71,535 |
| 5.5.4 | BPP-ASC | bp pulse Advanced Site Controller (ASC) - resilient option included | 2 | \$28,000 | Equipment | T | \$56,000 |
| 5.5.4 | BPP-NC | bp pulse Network Controller (NC) | 2 | \$14,000 | Equipment | T | \$28,000 |
| 5.5.5 | SWGR-5000-480 | Switchgear 5000A (3P 480V) | 1 | \$362,884 | Equipment | T | \$362,884 |
| | | | | | | SUB TOTAL: | |
| | | | | | | (T) SALES TAX: | 9.50% |
| | | | | | | EQUIPMENT TOTAL: | |
| | | | | | | \$3,743,421 | |
| | | | | | | \$355,625 | |
| | | | | | | \$4,099,046 | |
| *Sales tax will be applied at sale where applicable | | | | | | | |
| | | | | | | | |
| Deployment Services | | | | | | | |
| Section# | Part# | Description | Qty | Unit Price | Unit Type | Tax | Total (US\$) |
| 5.3 | BPP-ENG | Design and Engineering Services | 1 | \$135,000 | Services | NT | \$135,000 |
| 5.4 | BPP-PER | Permitting Services | 1 | \$22,000 | Services | NT | \$22,000 |
| 5.6 | BPP-INST | Install Services | 1 | \$3,388,939 | Services | NT | \$3,388,939 |
| 5.7 | BPP-TC | ABB Testing and Commissioning on all chargers | 35 | \$2,025 | Services | NT | \$70,875 |
| 5.1 | BPP-PM | bp pulse Project Management | 1 | \$315,161 | Services | NT | \$315,161 |
| 5.6 | BPP-CONF-v | omega Configuration - Vehicle | 70 | \$350 | Services | NT | \$24,500 |
| 5.6 | BPP-CONF-c | omega Configuration - Charger Port | 70 | \$350 | Services | NT | \$24,500 |
| Attach A | BPP-P&P | BPP - Performance & Payment Bond | 1 | \$254,906 | Services | NT | \$254,906 |
| | | | | | | SUBTOTAL: | |
| | | | | | | (T) SALES TAX: | 9.50% |
| | | | | | | DEPLOYMENT TOTAL: | |
| | | | | | | \$4,235,881 | |
| | | | | | | \$4,235,881 | |
| | | | | | | \$4,235,881 | |
| EQUIPMENT TOTAL AND DEPLOYMENT TOTAL: | | | | | | | |
| | | | | | | \$8,334,927 | |
| 10.2 | BPP-CON | 20% Contingency on Equipment and Deployment, including tax | 20% | \$8,334,927 | Contingency | T | \$1,666,985 |
| | | | | | | (T) SALES TAX: | * included |
| | | | | | | CONTINGENCY TOTAL: | |
| | | | | | | \$1,666,985 | |
| *Sales tax will be applied at sale where applicable | | | | | | | |
| | | | | | | | |
| License Fees | | | | | | | |
| Section# | Part# | Description | Qty | Unit Price | Unit Type | Tax | Total (US\$) |
| 11.3.1 | OMEGA-HD-1 | Omega 5-Year License (Heavy Duty) for EVSE at Downtown Yard | 70 | \$10,900 | 5-Year License | NT | \$763,000 |
| 11.3.3 | BPP-HFM-1 | Elevate 5-Year Maintenance Service and SLA - for EVSE at Downtown Yard | 70 | \$18,562 | 5-Year License | NT | \$1,299,340 |
| 11.3.2 | EVSE-ABB-DC-CC | ABB 5-Year Charger Connect on all chargers | 35 | \$1,373 | 5-Year License | NT | \$48,055 |
| | | | | | | SUBTOTAL: | |
| | | | | | | (T) SALES TAX: | 9.50% |
| | | | | | | LICENSES TOTAL: | |
| | | | | | | \$2,110,395 | |
| | | | | | | \$2,110,395 | |
| ** License fees assume no utility energy costs included nor energy/carbon programs - unless explicitly stated | | | | | | | |
| | | | | | | NOT TO EXCEED CONTRACT VALUE: | |
| | | | | | | \$12,112,307 | |

AGREEMENT

BETWEEN

THE CITY OF LOS ANGELES

AND

BP PULSE FLEET NORTH AMERICA INC.

FOR THE

DOWNTOWN YARD INSTALLATION OF ELECTRIC BUS CHARGERS

FOR THE LADOT DASH AND COMMUTER EXPRESS PROGRAM

AGREEMENT NO. _____
BETWEEN
THE CITY OF LOS ANGELES
AND
BP PULSE FLEET NORTH AMERICA INC.
FOR THE DOWNTOWN YARD INSTALLATION OF ELECTRIC BUS CHARGERS
FOR THE LADOT DASH AND COMMUTER EXPRESS PROGRAM

THIS AGREEMENT (the “Agreement” or “Contract”) is made and entered into by and between the City of Los Angeles (hereinafter referred as the “CITY”), a municipal corporation, acting by and through the Department of Transportation (hereinafter referred to as “LADOT”), and BP Pulse Fleet North America Inc. (hereinafter referred as the “CONTRACTOR”), a Delaware corporation, collectively referred to as “Parties” and individually as “Party,” is entered into with reference to the following:

WITNESSETH

WHEREAS, LADOT desires to install twenty-two (22) new 150kW direct current (DC) Bus Chargers and install Charge Management System (CMS) Software to new and existing Chargers at the Downtown Bus Maintenance Facility (“Downtown Yard Project”) located at 454 East Commercial Street, Los Angeles, California 90012, also known as the “Downtown Yard” for the operation of the Commuter Express and DASH services; and

WHEREAS, on November 9, 2017, the City Council directed LADOT to take numerous actions to ensure a transition to a one hundred percent (100%) zero-emission bus fleet by 2030 or earlier (C.F. 17-0739); and

WHEREAS, on March 16, 2020, the Anaheim Transportation Network (ATN) issued a Request for Proposals (RFP), RFP Number: 2020-024, to identify a qualified Energy Partner who can provide both Energy supply (solar + energy storage) as well as Charge Management Services to support the charging and operations of Anaheim Transit Network’s growing Battery Electric Bus (BEB) fleet; and

WHEREAS, the CONTRACTOR submitted proposals in response to the Anaheim Transportation Network’s RFP; and on August 28, 2020, the Anaheim Transportation Network executed an agreement with the CONTRACTOR (the “Fleet Charge Management Services Agreement”) for installing Charging Equipment and configuring and operating the CMS Software and performing certain operation and maintenance services for the Charging Equipment; and

WHEREAS, the Anaheim Transportation Network Fleet Charge Management Services Agreement allows for piggybacking with other transit authorities, public agencies, and school districts within the State of California for the CONTRACTOR’s Charge Management Services utilizing terms; and

WHEREAS, the Los Angeles City Charter Section 371(e)(8) allows for contracts for a cooperative arrangement with other governmental agencies for the utilization of purchasing and services contracts of those agencies and any implementing agreements; and

WHEREAS, on July 28, 2022, the Anaheim Transportation Network provided the CITY written authorization to design, engineer, procure, maintain and install electric charging infrastructure, and

operate software through their Fleet Charge Management Services Agreement and the Amended and Restated Master Charging Equipment Services Agreement; and

WHEREAS, the CONTRACTOR has the management, technical and software expertise, and financial viability necessary to function as the Charge Management Service provider; and

NOW, THEREFORE, in consideration of the mutual terms and conditions contained herein, and in consideration of the covenants and promises hereinafter set forth, the Parties hereby agree as follows:

1. DEFINITIONS

- 1.1** “**ABB**” means the brand of all Chargers at the Downtown Yard
- 1.2** “**ABB Spare Parts Package**” means a package of twenty-two (22) sets of spare parts provided by ABB so that CONTRACTOR can maintain the Chargers
- 1.3** “**Additional Charging Equipment**” means all Charging Equipment, excluding any Chargers and ancillary equipment already installed at the Downtown Yard as of the Effective Date
- 1.4** “**Balance of System Equipment**” means components to allow the electrical current to pass through circuits, including but not limited to, conductors, conduits, combiner boxes, protection devices, disconnects, grounding conductors and monitoring devices
- 1.5** “**Battery**” means an LADOT-owned electric Bus battery
- 1.6** “**Benchmarking**” means any test or function, or series of tests or functions, intended or designed to compare the performance of any product or service or component thereof with another
- 1.7** “**Bus**” means any LADOT-owned electric bus that serves Commuter Express or DASH routes and is primarily serviced and charged at the Downtown Yard
- 1.8** “**CD30s**” means electrical and structural plans for the Downtown Yard Project that are thirty percent (30%) complete
- 1.9** “**CD90s**” means electrical and structural plans for the Downtown Yard Project that are ninety percent (90%) complete and submitted to CITY by CONTRACTOR for CITY review
- 1.10** “**CD100s**” means electrical and structural plans for the Downtown Yard Project that are one hundred percent (100%) complete and stamped by a Professional Engineer (PE) and submitted by CONTRACTOR for permitting
- 1.11** “**Charger**” means an ABB DC 150kW power cabinet, with two (2) Depot Box Dispensers, and two (2) Charging Port. Each Charger is designed to charge two (2) Buses. Thirteen (13) Chargers are already located at the Downtown Yard and twenty-two (22) Chargers shall be procured by CONTRACTOR.

- 1.12 “Charging Equipment”** means all of Chargers, CMS Equipment, Switchgear and Balance of System Equipment
- 1.13 “Charging Ports”** means the connection between the Charger and the Bus. There are two (2) Charging Ports for each Charger.
- 1.14 “City Data”** means any and all data provided to CONTRACTOR by or on behalf of CITY, and all data collected by CONTRACTOR on behalf of CITY as a result of CONTRACTOR’s performance of the contracted services described in this Agreement, except for the data described in Section 6.2 [BP Pulse Charging Data]. The Parties agree City Data includes, without limitation, any and all output, copies, reproductions, improvements, modifications, adaptations, derivations, aggregations, or translations thereof, even if such data was obtained by, transferred to, or reproduced, improved, modified, adapted, derived, or aggregated by CONTRACTOR prior to the Effective Date of this Agreement.
- 1.15 “CMS Equipment”** means Charge Management System Equipment: Site Controller and gateways
- 1.16 “CMS Error Resolution Commitment”** means CONTRACTOR’s response to the outages and similar issues related to the Charging Equipment with details outlined in the Service Level Agreement
- 1.17 “CMS Software”** means Charge Management System Software commercially known as “omega” provided as software-as-a-service, by CONTRACTOR that manages charging operations of Bus charging such as order of charging, timing of charging, utility power optimization and communication between buses and chargers
- 1.18 “Commercial Operation Date”** means the date that all work in Section 5.6 Construction and Installation is completed, and the CITY can use the Charging Equipment for the purpose intended in this Agreement
- 1.19 “Commissioning”** means the process by which the CONTRACTOR verifies that all systems work between the Charging Equipment and the Buses
- 1.20 “Depot Box Dispenser”** means a part of the Charger that is mounted on a pedestal and is directly connected to a Bus for charging - there are two (2) Depot Box Dispensers for each Charger, and each Depot Box Dispenser is plugged into a Bus for sequential charging
- 1.21 “Downtown Yard”** means the LADOT-owned Bus maintenance facility located at 454 East Commercial Street, Los Angeles, California, 90012
- 1.22 “Effective Date”** means the date the Notice to Proceed (NTP) is sent to CONTRACTOR by CITY and makes this Agreement valid
- 1.23 “Event”** means a malfunction or incident that affects the intended use of the Charging Equipment

- 1.24 “EVSE Telemetry Data”** means the following data collected automatically by the CONTRACTOR from the Chargers every thirty (30) seconds: amount of power consumed, amount of energy consumed, amount of current being used, amount of voltage being used, and any electrical faults that are occurring
- 1.25 “Force Majeure Event”** means any event described in PSC-6. Excusable Delays in Attachment B – Standard Provisions for City Contracts (Rev. 9/22) [v.1], attached hereto and incorporated herein, including but not limited to, 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
- 1.26 “Meter”** means an LADWP utility meter that tracks monthly electricity usage of the Chargers, separate from other electricity usage at the Downtown Yard
- 1.27 “Person”** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity
- 1.28 “Scope of Work”** means CONTRACTOR’s scope of work described in this Agreement and its attachments.
- 1.29 “Site Controller”** means a type of on-site hardware that ensures in real time that the Downtown Yard will not overload the grid with electrical power.
- 1.30 “Switchgear”** means a 5000 amp, 3-phase, 480 volt piece of electrical equipment composed of switches, fuses and circuit breakers
- 1.31 “Testing”** means the one-time trial in which the CONTRACTOR verifies the quality and workmanship of the installation of the Chargers and CMS Equipment.
- 1.32 “Users”** means anyone at the Downtown Yard that is contracted by LADOT to provide operations and maintenance of the Buses and is designated by CITY to charge Buses

2. PARTIES TO THE AGREEMENT, REPRESENTATIVES, AND NOTICES

2.1 Parties to the Agreement. The Parties to this Agreement are:

- 2.1.1** CITY – The City of Los Angeles, a municipal corporation, acting by and through LADOT, having its principal offices at 200 North Spring Street, Los Angeles, California 90012.
- 2.1.2** CONTRACTOR – BP Pulse Fleet North America Inc., a Delaware corporation, having its principal office at 335 East Middlefield Road, Mountain View, California 94043.

2.2 Representatives of the Parties. The representatives of the Parties who are authorized to administer this Agreement and to whom formal notices, demands, and communications shall be given are as follows:

2.2.1 CITY's representative is unless otherwise stated in this Agreement:

Connie Llanos, Interim General Manager
Los Angeles Department of Transportation
100 South Main Street, 10th Floor
Los Angeles, California, 90012
connie.llanos@lacity.org

With Copies to:

Jay Kim, Assistant General Manager
Los Angeles Department of Transportation
100 South Main Street, 10th Floor
Los Angeles, California, 90012
jay.kim@lacity.org

Lauren Ballard, Supervising Transportation Planner I
Los Angeles Department of Transportation
100 South Main Street, 10th Floor
Los Angeles, California, 90012
lauren.ballard@lacity.org

2.2.2 CONTRACTOR's representative is unless otherwise stated in this Agreement:

Vic Shao
President
BP Pulse Fleet North America Inc.
335 East Middlefield Road
Mountain View, California 94043
vshao@bppulsefleet.com

With Copies to:

Greg Fields
VP of North America Sales
BP Pulse Fleet North America Inc.
335 East Middlefield Road
Mountain View, California 94043
gfields@bppulsefleet.com

and

Simon Lonsdale
Head of Sales and Strategy

BP Pulse Fleet North America Inc.
335 East Middlefield Road
Mountain View, California 94043
simon@bppulsefleet.com

- 2.3 Notices.** Formal notices, demands and communications to be given hereunder by either Party shall be made in writing (hardcopy or email) and may be affected 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, or sent by email to at least two (2) email addresses as follows:

If to CITY:

LADOT General Manager
Los Angeles Department of Transportation
100 South Main Street, 10th Floor
Los Angeles, California, 90012;
lauren.ballard@lacity.org
and/or jay.kim@lacity.org

If to CONTRACTOR:

BP Pulse Fleet North America Inc.
335 East Middlefield Road
Mountain View, California, 94043;
gfields@bppulsefleet.com
and/or simon@bppulsefleet.com

- 2.3.1. If the name of the person designated to receive the notices, demands, or communications or the address of such person is changed, written notice must be given, in accordance with this section, within five (5) working days of said change.

3. TERM OF THIS AGREEMENT

The Term of this Agreement will commence upon the date of execution of this Agreement and will terminate seven (7) years thereafter unless otherwise terminated in accordance with the termination provisions herein.

4. TERMINATION

- 4.1 Termination.** The Parties agree to be bound by the termination provisions set forth in Attachment B – Standard Provisions for City Contracts (Rev. 9/22) [v.1], PSC-9 [Termination.], attached hereto and incorporated herein.

- 4.2 Funding Contingency.** The CITY obligations under this Agreement are contingent upon the CITY's ability to obtain the funds from the funding agencies and the availability of CITY funds in this and subsequent fiscal year budgets to finance the cost of this

Agreement. In the event the CITY is not able to secure funds from the funding agencies and/or through CITY funds, the CONTRACTOR agrees to release the CITY from further obligation or liability under this Agreement, as provided in Attachment B – Standard Provisions for City Contracts (Rev. 9/22) [v.1], attached hereto and incorporated herein.

5. CONTRACTOR'S SCOPE OF WORK

5.1 Project Management. The CONTRACTOR shall manage the deployment of the Additional Charging Equipment including design, engineering, procurement, installation, construction; configuration of the CMS Software; and Testing and Commissioning of the Additional Charging Equipment and CMS Software at the Downtown Yard.

5.1.1 Project Schedule. The CONTRACTOR shall comply with the Project Schedule as specified in Attachment E – Project Schedule, attached hereto and incorporated herein. Any changes to the Project Schedule shall be made in writing by the CONTRACTOR and are subject to approval by the CITY.

5.1.2 Construction Schedule. The CONTRACTOR shall develop a construction schedule with start and end dates for all steps of construction and installation, subject to the approval of the CITY. The CONTRACTOR shall provide the construction schedule to the CITY after the procurement of all necessary materials for construction and installation of the Additional Charging Equipment and before construction begins.

5.1.3 Installation Notification. The CONTRACTOR shall notify the CITY of commencing construction and installation at least fourteen (14) calendar days prior to the construction and installation described in Section 5.6 at the Downtown Yard.

5.2 Reporting. The CONTRACTOR shall submit to the CITY a monthly progress report with supporting documentation including, but not limited to any permits, design plans, receipts, and any other official documentation required by the Project. The CONTRACTOR shall submit a monthly progress report within five (5) business days after the end of the calendar month.

5.3 Design and Engineering. The CONTRACTOR shall develop and submit to the CITY all required electrical and structural plans, including CD30s, CD90s, CD100s and as-built drawings for Phase I and Phase II Engineering set forth below for review and approval by the CITY. The CONTRACTOR shall provide CD30s, CD90s and CD100s within two (2), three (3), and four (4) months, respectively, of the CITY issuing an NTP. The CONTRACTOR shall provide as-builts within sixteen (16) months of the CITY issuing an NTP.

5.3.1 Phase I Engineering. The CONTRACTOR shall design and engineer plans to add CMS Software and CMS Equipment to thirteen (13) existing Chargers previously installed at the Downtown Yard.

- 5.3.2 Phase II Engineering.** The CONTRACTOR shall design and engineer plans to add twenty-two (22) Chargers at the Downtown Yard, each Charger with CMS Software and associated CMS Equipment.
- 5.3.3 New Electrical Service.** The CONTRACTOR shall design and engineer plans to include one (1) Switchgear for the Downtown Yard. The CONTRACTOR shall communicate with LADWP if necessary to complete plans that may require electrical upgrades for completion of the Scope of Work.
- 5.4 Permitting.** All necessary permits shall be coordinated and obtained by the CONTRACTOR through local permitting agencies including, but not limited to, the City of Los Angeles Department of Building and Safety (LADBS), the Los Angeles Fire Department (LAFD), and the Los Angeles Department of Water and Power (LADWP). The CONTRACTOR shall submit all applications and procure all necessary permits for the installation of the twenty-two (22) Chargers, Switchgear and any necessary electrical service upgrades to the Downtown Yard. The CONTRACTOR shall provide the CITY copies of all required permits required for this Agreement for review and approval. No installation work shall commence without prior approval from the CITY. The CONTRACTOR shall obtain all required permits within two hundred seventy (270) calendar days of CITY issuing an NTP.
- 5.5 Infrastructure Procurement.** The CONTRACTOR shall provide proof of purchase of all items listed below to the CITY within forty-eight (48) hours of purchases. The CONTRACTOR shall order materials within sixty (60) calendar days of CITY issuing an NTP.
- 5.5.1 Balance-of-System Materials.** The CONTRACTOR shall procure all Balance of System Components required for a functioning Bus charging system, including but not limited to electrical wiring, data and communication wiring, conduits, disconnects and breakers, pull boxes, subpanels, and equipment pads.
- 5.5.2 Chargers.** The CONTRACTOR shall procure twenty-two (22) ABB 150 kW power cabinets, each with two (2) Depot Box Dispensers.
- 5.5.3 Spare Parts.** The CONTRACTOR shall procure one (1) ABB Spare Parts Package.
- 5.5.4 Site Controller.** The CONTRACTOR shall procure one (1) Site Controller and any other materials necessary to install the CMS Equipment.
- 5.5.5 Switchgear.** The CONTRACTOR shall procure one (1) 5000A, 3-phase, 480V Switchgear.
- 5.5.6 Certification.** Any required certification necessary to transport, install, and/or place Charging Equipment into service shall be the CONTRACTOR's sole responsibility. The CONTRACTOR shall ensure a copy of any required certification by law accompanies the delivery of any and all equipment or items. The CONTRACTOR shall provide an Underwriter's Laboratory Listing/Approval for all electrical items provided to the CITY upon delivery.

5.5.7 Safety Requirements. The CONTRACTOR shall ensure that all items the CONTRACTOR delivers or provides to the CITY shall conform to the safety orders/codes of the California Division of Industrial Safety, CAL-OSHA, and OSHA, where applicable. The CONTRACTOR agrees to comply with the provisions of the California Occupational Safety and Health Act of 1973 ("CAL-OSHA"), or its latest revision, and the standards and regulations issued thereunder ("the "Act"). The CONTRACTOR further certifies that all items furnished under this Agreement shall conform to and comply with said standards and regulations. **The CONTRACTOR further agrees to indemnify and hold harmless the City of Los Angeles for all damages assessed against the CITY as a result of the CONTRACTOR's failure to comply with the Act and the standards and regulations issued thereunder and for the failure of the Additional Charging Equipment furnished under this Agreement to comply. The Parties agree the indemnification requirements in this Section 5.5.7 shall not be exclusive and are in addition to any other rights or remedies of the CITY provided by law or under this Agreement. This provision shall survive the expiration or termination of this Agreement.**

5.6 Construction and Installation. The CONTRACTOR shall install all Additional Charging Equipment and provide and configure CMS Software as listed in Attachment D – Cost Sheet, attached hereto and incorporated herein. Charger installation shall occur at the Downtown Yard located at 454 East Commercial Street, Los Angeles, California 90012 and the CONTRACTOR shall perform all supporting construction required according to the specification listed below (Sections 5.6.1, 5.6.2, 5.6.3 and 5.6.4) The CONTRACTOR shall complete all installation and construction within sixteen (16) months of CITY issuing an NTP.

5.6.1 Phase I CMS Equipment and Software. The CONTRACTOR shall install one (1) Site Controller and any associated CMS Equipment on all thirteen (13) previously installed Chargers at the Downtown Yard and shall provide and configure the CMS Software to operate with each of the previously installed Chargers. The CONTRACTOR shall configure LADOT telematics to the CMS Software for each of the twenty-six (26) Charging Ports.

5.6.2 Phase II Additional Charging Equipment and CMS Software. The CONTRACTOR shall install twenty-two (22) Chargers at the Downtown Yard, each at a designated parking stall; stripe parking stalls per Bus dimensions as necessary; stripe the parking lot for traffic flow as necessary; install and connect wiring and conduits for twenty-two (22) Chargers; install one (1) Switchgear; connect twenty-two (22) Chargers to the Site Controller referenced in Section 5.6.1 along with associated CMS Equipment; provide and configure CMS Software on twenty-two (22) Chargers; install equipment pads to anchor twenty-two (22) Chargers and forty-four (44) Depot Box Dispensers; install protective concrete and bollards as necessary; install signage for operator and; stripe the parking lot for stalls and/or traffic flow. The CONTRACTOR shall configure LADOT telematics to the CMS Software for forty-four (44) new Charging Ports.

5.6.3 Alternative Fuel Infrastructure Tax Credit. The CONTRACTOR shall meet all requirements specified in Section 13404 of the Inflation Reduction Act (IRA) to qualify the Downtown Yard for the Alternative Fuel Infrastructure Tax Credit.

5.6.4 Site Controller. The CONTRACTOR shall install one (1) Site Controller at the Downtown Yard which transmits all EVSE Telemetry Data from the thirty-five (35) Chargers to the CONTRACTOR's OMEGA cloud-based CMS Software. The Site Controller must meet ANSI C12.20, IEC 61557-12 and UL 61010 Meter and Sensor standards. The CONTRACTOR shall ensure EVSE Telemetry Data is collected and made available to the CITY in accordance with the specifications in Section 5.6.4 a) through Section 5.6.4 c).

- a) The CONTRACTOR shall ensure the EVSE Telemetry Data is compliant with the Low Carbon Fuel Standard (LCFS) Reporting Tool and Credit Bank and Transfer System ("LRT-CBTS") and is sufficient for registration of LCFS credits.
- b) The CONTRACTOR shall make available to the CITY 15-minute interval EVSE Telemetry Data for the term of this Agreement and shall ensure that the EVSE Telemetry Data is downloadable by the CITY from the CONTRACTOR's OMEGA cloud-based CMS Software at any time and for any date range in this Agreement.
- c) The CONTRACTOR, at its sole cost and expense, shall provide and maintain cellular data connection or other data connection necessary for the Site Controller to continuously collect EVSE Telemetry Data. The CONTRACTOR shall not use the CITY's internet connection without express written consent from the CITY. In the event the CONTRACTOR uses the CITY's internet connection, the CITY shall not be responsible for any loss of ability to transmit any data.

5.7 Testing and Commissioning. The CONTRACTOR shall Test and Commission all Charging Equipment to ensure all items procured in the Scope of Work are ready for twenty-four hours a day, seven days a week (24/7) to support the charging needs of the Downtown Yard operations. The CONTRACTOR shall receive permission to operate by LADBS, LAFD, LADWP and any necessary authorities having jurisdiction prior to testing. The CONTRACTOR shall begin Testing and Commissioning within sixteen (16) months of the CITY issuing the NTP. The CONTRACTOR shall complete Testing and Commissioning within eighteen (18) months of the CITY issuing an NTP.

5.8 Notification of Acceptance. The CITY shall have thirty (30) business days to evaluate, review and assess the Charging Equipment after the CONTRACTOR completes the Testing and Commissioning of the aforementioned ("Review Period"). At or before the conclusion of the Review Period, the CITY shall submit a written, dated notification to CONTRACTOR of the CITY's acceptance or rejection of the work delivered by the CONTRACTOR, based on standards stipulated herein, and if work is rejected, the CITY shall list the cause of rejection and required correction(s). The CONTRACTOR shall complete all required corrections within thirty (30) business days. If more than thirty

(30) business days is required to complete the required corrections, the CONTRACTOR shall submit a timeline for the required correction(s) to the CITY within thirty (30) business days after the CITY's written notification of rejection which details the non-conformities with respect to the stipulated standards and the required corrections.

5.9 CMS Software. The CONTRACTOR shall provide CMS Software to the CITY on an annual, renewable basis, pursuant to the licensing terms described in Section 13 below. The CONTRACTOR shall ensure the CMS Software is compatible and integrated with LADOT's Downtown Yard operating environment, including Buses and Chargers, fleet telematics and other related operating platforms in place as of the Effective Date. The CONTRACTOR shall complete CMS Software configuration and integration within sixteen (16) months of the CITY issuing an NTP.

5.9.1 Licensing. The CONTRACTOR shall provide the CITY seventy (70) CMS Software licenses, one (1) for each Charging Port for a period of five (5) years, starting at the Commercial Operation Date of the Downtown Yard.

5.9.2 Access to the Software. The CONTRACTOR shall assign CITY-designated Users unique usernames and passwords, which shall control and allow access to the CMS Software and Chargers and shall be kept confidential by the CITY and Users. The CITY and the designated Users shall not distribute or divulge these assigned usernames and passwords to anyone. Each username and password shall be for the personal use of a single selected CITY employee or User only. The CONTRACTOR shall change the passwords within one (1) business day upon written notification by the CITY. The CITY shall notify the CONTRACTOR to deactivate access to the CMS Software and Chargers for those Users whose employment with the CITY or any of the CITY's subcontractors shall terminate or who otherwise no longer should have access to the CMS Software and Chargers. Upon deactivation of a User account pursuant to this section, the CITY may select a new User and notify the CONTRACTOR of the replacement User.

5.9.3 Software as a Service. The CONTRACTOR shall maintain a CONTRACTOR-hosted cloud-based Software as a Service (SaaS) accessible from a standard web browser, including but not limited to, all currently supported versions of Microsoft Internet Explorer, Google Chrome, Mozilla Firefox and Apple Safari.

5.9.4 Staff Training. The CONTRACTOR shall provide a one (1) time, four (4) hour on-site training at the Downtown Yard to CITY and Users who will access and use the CMS Software and Chargers. The training shall consist of training for CITY's fleet and facilities staff with ABB Field Technicians and Product Experts, BP Pulse Maintenance Technicians, and BP Pulse Charge Management Program Managers. The training shall also consist of visual and physical testing (all electrical equipment and buses) as well as classroom training (warranties and response times) and online demonstration of the customer dashboard. The Contractor shall provide a training guide for future CITY and Users and shall complete training at least ten (10) business days prior to the start of the Testing and Commissioning of all Charging Equipment pursuant to Section 5.7 [Testing and Commissioning.].

5.9.5 Manuals. The CONTRACTOR shall provide the CITY with five (5) hardcopies and one (1) electronic copy of all manuals, including service manuals, owner manuals and parts manuals for the Additional Charging Equipment and CMS Software at least ten (10) business days prior to the start of Testing and Commissioning of all Charging Equipment pursuant to Section 5.7 [Testing and Commissioning.].

5.10 Compliance with Federal Requirements. CONTRACTOR shall comply with all Federal Transit Authority (FTA) requirements and other clauses for FTA funded programs, including but not limited to the requirements specified in Attachment A – Federal Transit Administration Clauses, which is attached hereto and incorporated herein.

6. OWNERSHIP AND LICENSING OF COLLECTED DATA

CONTRACTOR may be required to collect charging data as part of the contracted services described in this Agreement. Data may be collected by the Charging Equipment, as defined in Section 1.12 [Charging Equipment defined] above. To the extent CONTRACTOR is required to collect charging data, the Parties agree to be bound by the following data ownership and licensing terms:

6.1 City Data

6.1.1 License. Subject to the confidentiality obligations and other terms of this Agreement, CITY, acting by and through LADOT, grants CONTRACTOR a non-transferable (except as expressly contemplated by Section 27.4 [No Assignment.]), non-exclusive, terminable at will, license to collect, use, process and analyze, and host the following data, all of which the Parties agree constitutes City Data as defined by Section 1.6 [“City Data” defined.] above:

Telematics and Bus Operations Data

- Basic Site Info: Address, Geofence Coordinates, Site Contacts (OMEGA Access, Site Access)
- Vehicle Telematics: Telematics Credentials
- Vehicle Asset Metadata (One time on initial setup): VIN, Make, Model, Year, Color, License Plate #, Battery Capacity, Range
- Operational Schedule for Vehicles (One time on initial setup): Daily Charging Window Schedule, Vehicle Readiness Time - Not required if we have Fleet Planning System integration.
- EVSE Asset Metadata (One time on initial setup): EVSE Make, EVSE Model, Firmware Version, Serial Number, Geocoordinates, Free Vend Abilities
- Fleet Planning System (1 hour): Integration to route planning systems (CAD/AVL), Look-ahead schedule for all vehicles, Vehicle ID's, Routes, Bus Route Stop Geolocations, Route Stop Addresses, Route Stop Times

- Vehicle Telematics (1 minute): Geolocation Data, SOC (State of Charge) Data, Customer Vehicle Identifier, VIN (Optional)

6.1.2 Additional Use Restrictions. CONTRACTOR shall not exploit or commercialize City Data, including, but not limited to the data described in Section 6.1.1 [License.] above. Except as authorized in this Section 6.1 and Section 7 [CONFIDENTIALITY] of this Agreement, CONTRACTOR shall not disclose, sell, assign, or otherwise provide any part of City Data to any third-party.

6.1.3 Ownership of City Data. The Parties agree that CONTRACTOR has no ownership of and, except as expressly provided in Section 6.1.1 [License.] of this Agreement, acquires no rights in City Data. As between the Parties, CITY retains all right of ownership, title, and interest in and to City Data, including all intellectual property rights therein.

6.1.4 Data Return and Destruction. At the expiration or early termination of this Agreement and as instructed by CITY, CONTRACTOR shall (at its sole cost) return, delete, or destroy City Data then in its possession or under its control including, without limitation, originals, and copies of such City Data in accordance with Section 7.1.1 [Protection of City's Confidential Information.]. The following types of information are excluded from this requirement: (i) City Data that becomes a part of the public domain, including through court filings; and (ii) City Data that CONTRACTOR is required to maintain, by law, regulations, or by the terms of this Agreement, but only for the time period required.

6.1.5 Data Disclaimer. All data provided by or on behalf of CITY pursuant to this Agreement are provided "as is." CITY makes no representation or warranty, express or implied, regarding the data's accuracy, completeness or use. There are no express or implied warranties of merchantability or fitness for a particular purpose, or that the use of the data will not infringe any patent, copyright, trademark, or other proprietary rights. Without limiting the generality of the foregoing, CITY does not represent or warrant that the data or access to it will be uninterrupted or error free.

6.2 BP Pulse Charging Data

6.2.1 License to BP Pulse Charging Data. Subject to the confidentiality and other terms of this Agreement, CONTRACTOR, grants CITY an irrevocable, non-transferable (except as expressly contemplated by Section 27.4 [No Assignment.]), non-exclusive, license to collect, use, process, analyze, sublicense, publish, and host the following data collected in connection with this Agreement collected in connection with this Agreement (herein referred to as "BP Pulse Charging Data"), above:

- EVSE Telemetry Data as defined in Section 1.25 above.
- Panel Telemetry Data (30 seconds): Power, Energy, Current, Voltage

- Charging Strategy Manifest: Prioritization Method, Monetary savings source (TOU Management, Demand Reduction)
- Panel Metadata: Total Power Rating, Provisioned Power for EVSE Charging, Transformer/Breaker Load Limits
- Depot View Hierarchy: Bird's Eye View Map of Charger Installation, Charger to Panel/Transformer Mapping, Network Layout Hierarchy, Router Configuration, Electrical Configuration

6.2.2 Ownership of BP Pulse Charging Data. The Parties agree that CITY has no ownership of and, except as expressly provided in Section 6.2.1 [License.] of this Agreement, acquires no rights in BP Pulse Charging Data. As between the Parties, CONTRACTOR retains all right of ownership, title, and interest in and to City BP Pulse Charging Data, including all intellectual property rights therein.

7. CONFIDENTIALITY

7.1 City's Confidential Information. For purposes of this Section 7.1, "Confidential Information" means any nonpublic information whether disclosed orally or in written or digital media, received by CONTRACTOR that is either marked as "Confidential" or "Proprietary" or which CONTRACTOR knows or should have known is confidential or proprietary information. City Data shall be treated as Confidential Information by CONTRACTOR under this Agreement, even if such data is not marked "Confidential" or "Proprietary" or was obtained by or transferred to CONTRACTOR prior to the Effective Date of this Agreement.

7.1.1 Protection of City's Confidential Information. Except as expressly authorized herein, CONTRACTOR shall (a) hold in confidence and not disclose any Confidential Information to third parties and (b) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement or performing the contracted services covered by this Agreement. CONTRACTOR shall limit access to Confidential Information to CONTRACTOR personnel (1) who have a need to know such information for the purpose of CONTRACTOR performing its obligations or exercising its rights under this Agreement or performing contracted services; (2) who have confidentiality obligations no less restrictive than those set forth herein; and (3) who have been informed of the confidential nature of such information. In addition, CONTRACTOR shall protect Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At LADOT's request or upon termination or expiration of this Agreement, CONTRACTOR shall return to CITY any deliverables not provided to CITY and CONTRACTOR will destroy (or permanently erase in the case of electronic files) all copies of Confidential Information, and CONTRACTOR will, upon request, certify to CITY its compliance with this sentence.

7.1.2 Exceptions. The confidentiality obligations set forth in Section 7.1.2 shall not apply to any Confidential Information that (a) is at the time of disclosure or becomes generally available to the public through no fault of CONTRACTOR; (b) is lawfully provided to CONTRACTOR by a third party free of any confidentiality duties or obligations; (c) was already known to CONTRACTOR at the time of disclosure free of any confidentiality duties or obligations; or (d) CONTRACTOR can demonstrate was independently developed by personnel of CONTRACTOR without reference to the Confidential Information. In addition, CONTRACTOR may disclose Confidential Information to the extent that such disclosure is necessary for CONTRACTOR to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) CONTRACTOR promptly notifies CITY in writing of such required disclosure, cooperates with CITY if CITY seeks an appropriate protective order, and CONTRACTOR discloses no more information that is legally required.

7.2 Contractor's Confidential Information. For purposes of this Section 7.2, "Confidential Information" means any nonpublic information received by CITY that is either marked as "Confidential" or "Proprietary" at the time of disclosure, or, if provided orally, through verbal identification as confidential at the time of disclosure that, under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. "Confidential Information" under this Section 7.2 is further limited to information that is a "trade secret," as defined in subdivision (d) of Section 3426.1 of the California Civil Code, or paragraph (9) of subdivision (a) of Section 499c of the California Penal Code, including but not limited to CONTRACTOR's (a) business plans, methods, and practices; (b) personnel, customers, and suppliers; (c) inventions, processes, methods, products, patent applications, and other proprietary rights; or (d) specifications, drawings, sketches, models, samples, tools, computer programs, technical information, or (e) other related information, which is maintained by CONTRACTOR as confidential.

7.2.1 Protection of Contractor's Confidential Information. Except as expressly authorized herein, CITY shall hold in confidence and not disclose any Confidential Information to third parties and not use Confidential Information for any purpose other than fulfilling its obligations under this Agreement or realizing the benefits of the contracted services delivered thereunder. CITY shall limit access to Confidential Information to employees and contractors (1) who have a need to know such information for a purpose authorized under this Agreement; (2) who have confidentiality obligations no less restrictive than those set forth herein; and (3) who have been informed of the confidential nature of such information. In addition, CITY will protect Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At CONTRACTOR's request, CITY will, to the extent permitted by the State of California's records retention laws, destroy (or permanently erase in the case of electronic files) all copies of Confidential Information, and CITY will, upon request, certify to CONTRACTOR its compliance with this sentence.

7.2.2 Exceptions. The confidentiality obligations set forth in Section 7.2.2 shall not apply to any Confidential Information that (a) is at the time of disclosure or becomes generally available to the public through no fault of CITY; (b) is lawfully provided to CITY by a third party free of any confidentiality duties or obligations; (c) was already known to CITY at the time of disclosure free of any confidentiality duties or obligations; or (d) CITY can demonstrate was independently developed by personnel of CITY without reference to the Confidential Information. In addition, CITY may disclose Confidential Information to the extent that such disclosure is necessary for CITY to enforce its rights against CONTRACTOR under this Agreement or as required by law, including the California Public Records Act (CPRA), or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) CITY promptly notifies CONTRACTOR in writing of such required disclosure and CITY discloses no more information than is legally required.

7.2.3 Contractor's Duty to Indemnify City for Non-Disclosure. CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless CITY and any of CITY's boards, officers, agents, and employees from and against all suits, claims, and causes of action brought against CITY for CITY's refusal to disclose Confidential Information to any person making a request pursuant to the CPRA if such action is requested by CONTRACTOR. CONTRACTOR's obligations herein include, but are not limited to, all reasonable attorney's fees (both in house and outside counsel), reasonable costs of litigation incurred by CITY or its attorneys (including all reasonable actual, costs incurred by CITY, not merely those costs recoverable by a prevailing party, and specifically including reasonable costs of experts and consultants) as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against CITY, through and including any appellate proceedings. CONTRACTOR's obligations to CITY under this indemnification provision shall be due and payable on a monthly, on-going basis within thirty (30) calendar days after each submission to CONTRACTOR of CITY invoices for all fees and costs incurred by CITY, as well as all damages or liability of any nature. CONTRACTOR shall receive prompt written notice from CITY within five (5) business days of receipt of any (1) communication to CITY challenging CITY's refusal to disclose Confidential Information, and (2) any complaint or petition to the court challenging CITY's refusal to disclose Confidential Information. Further should CONTRACTOR choose to intervene in any court action relating to the CITY's refusal to disclose CONTRACTOR's information, CITY shall not oppose CONTRACTOR's motion to intervene. CONTRACTOR shall have no obligations to CITY under this provision in any circumstance where CONTRACTOR provides written confirmation to CITY that 1) all of the requested records at issue are not Confidential Information and 2) CITY may release said records to the requester. **The rights and remedies of the CITY provided in this Section 7.2.3, shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision shall survive expiration or termination of this Agreement.**

- 7.3 Compliance with Privacy Laws.** To the extent it may apply, CONTRACTOR is responsible for ensuring that CONTRACTOR's performance of its obligations and exercise of its rights under this Agreement complies with all applicable local, state, and federal privacy laws and regulations, as amended from time to time. If this Agreement or any practices which could be, or are, employed in performance of this Agreement become inconsistent with or fail to satisfy the requirements of any of these privacy laws and regulations, CITY and CONTRACTOR shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and CONTRACTOR shall complete and deliver any documents necessary to show such compliance.

8. CITY CHARGING EQUIPMENT USE

- 8.1 Operations.** The CITY shall be responsible for charging its Buses with the Charging Equipment. All use of the Charging Equipment by the CITY and its Users shall comply with this Agreement.
- 8.2 Malfunctioning Equipment.** If the CITY knows of or becomes aware of any malfunctioning Charging Equipment, the CITY shall notify the CONTRACTOR within twenty-four (24) hours of such event. The CITY shall not directly or indirectly service, repair, modify or adjust the Charging Equipment without prior written consent of the CONTRACTOR, except for engaging the manual override mode to the extent permitted in Attachment C – Charging Equipment Maintenance and Service Level Agreement.
- 8.3 Manual Use of Chargers.** The CONTRACTOR shall not prevent the CITY's use of Charging Equipment in manual mode for any reason, including because of any dispute between the Parties.

9. DOWNTOWN YARD ACCESS

The CONTRACTOR shall access the Downtown Yard solely for the services listed in Section 5 and Attachment C – Charging Equipment Maintenance and Service Level Agreement, attached hereto and incorporated herein. All persons entering and/or leaving the Downtown Yard shall possess and show a valid identification card or document (as described below) to gain access. Valid identification cards or documents shall be tamper-resistant and, at a minimum, include the holder's name and a recent photograph of the holder. Any of the following shall constitute a valid form of identification: Employer-issued employee identification cards, an identification card issued by a government agency, State-issued drivers' license with photo, or Passports.

10. COMPENSATION

- 10.1** For and in consideration of the services to be provided by the CONTRACTOR under this Agreement, the CITY agrees to pay the CONTRACTOR Eight Million Three Hundred and Thirty Four Thousand Nine Hundred and Twenty Seven Dollars and no cents (\$8,334,927.00) for Equipment and Install and Deployment Services as set forth in the services listed in Attachment D – Cost Sheet, attached hereto and incorporated herein.

The CITY agrees to pay for five (5) years of Annual License Fees for a total of Two Million One Hundred and Ten Thousand Three Hundred and Ninety Five Dollars and no cents

(\$2,110,395.00) referenced in Attachment D – Cost Sheet, attached hereto and incorporated herein. The CONTRACTOR's services are being performed as an independent contractor and not as an agent or employee of the CITY; therefore, the CONTRACTOR is not entitled to any vacation, sick leave, workers' compensation, pension or any other CITY benefits.

10.2 The CITY is adding a twenty percent (20%) contingency allowance to the Equipment and Install and Deployment Services, totaling One Million Six Hundred and Sixty Six Thousand Nine Hundred and Eighty Five Dollars and no cents (\$1,666,985.00) and shall be used in the event the CITY identifies additional items the CITY wants to add, change, or modify that were not included in the original specification and pricing in Attachment D – Cost Sheet, attached hereto and incorporated herein and described in this Agreement. The contingency allowance is for the benefit of the CITY and shall only be used upon written approval by the CITY.

10.3 The total not-to-exceed amount of this Agreement is Twelve Million One Hundred and Twelve Thousand Three Hundred and Seven Dollars and no cents (\$12,112,307.00).

11. METHOD OF PAYMENT

For services provided under this Agreement, the CONTRACTOR shall be paid by the CITY in accordance with Section 11.1, and other conditions and provisions of this Section including Attachment D – Cost Sheet, attached hereto and incorporated herein. The CITY shall have thirty (30) business days to review and accept or reject CONTRACTOR's invoices (hereinafter referred to as the "Initial Review"). The Parties agree that the CITY's Initial Review period shall not begin until CONTRACTOR complies with all the invoice requirements pursuant to Section 11. The CITY shall issue payment to CONTRACTOR within thirty (30) business days of the CITY's acceptance of CONTRACTOR's invoices.

Invoices must be task specific, organized by the type of task, and must include the complete work product and cost for the task. Invoices for payment of services shall document all charges and fees collected and shall be supported by appropriate supporting documents. The CITY may require, and the CONTRACTOR shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under this Agreement. All invoices are subject to audit. The CONTRACTOR must include the following information on each invoice:

- a) Name and address of company or firm
- b) Date of invoice
- c) Invoice number
- d) Agreement number
- e) Date and description of each service provided
- f) Percent of work complete
- g) Contract total dollar amount
- h) Contract dollar amount remaining
- i) Total amount payable

The CONTRACTOR shall submit invoices to:

Lauren Ballard, STP I
Los Angeles Department of Transportation
100 South Main Street, 10th Floor
Los Angeles, California 90012
lauren.ballard@lacity.org

- 11.1 City's Right to Reject Contractor's Invoices.** During the Initial Review period, the CITY may reject CONTRACTOR's invoices (1) for CONTRACTOR's failure to comply with Section 11 of this Agreement, and/or (2) if the CITY contests the accuracy of CONTRACTOR's invoices. The CITY's rejection of CONTRACTOR's invoices shall be done in writing during the Initial Review period, and shall include the reasons for the CITY's rejection. In the event the CITY rejects CONTRACTOR's invoices pursuant to this Section 11.1, the Parties agree the Initial Review period shall be suspended until CONTRACTOR complies with Section 11 of this Agreement and/or the Parties resolve the alleged inaccuracies in CONTRACTOR's invoices. The Parties further agree that the process described in Section 11 [METHOD OF PAYMENT] above shall restart upon CITY's receipt of CONTRACTOR's amended invoices.
- 11.2 Lump Sum Method.** The compensation for services provided under this Agreement are based on the Lump Sum Method. Lump Sum Method is a method of compensation whereby the CONTRACTOR is compensated for percent completion of designated tasks. All of the CONTRACTOR'S costs including employee salaries, overhead, other direct costs, subcontract expenses, taxes, and profit are included in the Lump Sum Amount.
- 11.3 CMS Software Licenses, ABB Charger Connect Fees and Maintenance Payments.**
- 11.3.1 The CITY shall pay the CONTRACTOR annually for five (5) years, starting at Commercial Operation Date, One Hundred Fifty-Two Thousand and Six Hundred dollars and no/100 Cents (**\$152,600**) each year for seventy (70) CMS Software licenses.
- 11.3.2 The CITY shall pay the CONTRACTOR annually for five (5) years, starting at Commercial Operation Date, Nine Thousand and Six Hundred Eleven dollars and no/100 Cents (**\$9,611**) each year for thirty-five (35) ABB Charger Connect fees.
- 11.3.3 The CITY shall pay the CONTRACTOR annually for five (5) years, starting at Commercial Operation Date, Two Hundred Fifty-Nine Thousand and Eight Hundred Sixty-Eight- dollars and no/100 Cents (**\$259,868**) each year for maintenance services on the seventy (70) charging ports, provided by the CONTRACTOR listed in Section 5 and Attachment C – Charging Equipment Maintenance and Service Level Agreement.
- 11.4 Taxes.** CITY shall pay the CONTRACTOR for the approved product and in the amount specified herein in Attachment D – Cost Sheet. **This amount shall include payment for all services performed, including all related taxes.** Payments shall be due and payable upon the completion of the CITY's review and approval of the deliverables as outlined in this Agreement.

- 11.5 Subcontractor Expenses.** Subcontractor expenses shall be the actual amount paid by the CONTRACTOR for their services to the CITY.
- 11.6 No Down Payment.** The Parties agree that the CITY shall not pay the CONTRACTOR a down payment, and the CONTRACTOR shall proceed with the CONTRACTOR's Scope of Work without any expectation of a down payment.
- 11.7 Right to Withhold Payments.** The CITY reserves the right to withhold payments to the CONTRACTOR, upon written notice to the CONTRACTOR prior to the payment due date, if the CONTRACTOR fails to comply with any material or service provisions of this Agreement relating to such payment.

12. INTELLECTUAL PROPERTY – CMS SOFTWARE

- 12.1 Acknowledgement of Ownership.** Except as expressly specified elsewhere by this Agreement, all intellectual property rights, including (i) the CMS Software; and (ii) any intellectual property created by the CONTRACTOR for this Agreement relating to software, copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, reports, work product and other materials that are delivered to CITY under this Agreement or prepared by or on behalf of the CONTRACTOR in the course of providing the Scope of Work or CMS Software (collectively, the "Deliverables") shall be owned by the CONTRACTOR.
- 12.2 CMS Software License Grant.** Subject to and conditioned on the CITY's compliance with all other terms and conditions of this Agreement, the CONTRACTOR hereby grants to the CITY a non-exclusive, non-sublicensable, and non-transferable license to use the Intellectual Property Rights in the Deliverables, as defined above in Section 13.1 [Acknowledgement of Ownership.], solely for the purposes of this Agreement, during the Term of this Agreement.
- 12.3 License Restrictions.** All CMS Software account details, passwords, keys, and like information are granted to the CITY solely for the CITY's own use (and its Users), and the CITY shall keep all such items secure and confidential. The CITY shall use reasonable efforts to prevent any damage to persons, property or equipment, or additional fees resulting from any unauthorized access to or use of the CMS Software. The CITY shall notify the CONTRACTOR immediately upon becoming aware of any such unauthorized use.

The CITY shall not, and shall not permit any other Person to:

- a) copy any Intellectual Property Rights in the Deliverables;
- b) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of any Intellectual Property Rights in the Deliverables;

- c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Intellectual Property Rights in the Deliverables to any third party;
- d) reverse engineer, disassemble, decompile, decode, or adapt the Intellectual Property Rights in the Deliverables, or otherwise attempt to derive or gain access to the source code of any related software, in whole or in part;
- e) bypass or breach any security device or protection used for or contained in any Intellectual Property Rights in the Deliverables;
- f) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms, warranties, disclaimers, or proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of Intellectual Property Rights in the Deliverables;
- g) use the Intellectual Property Rights in the Deliverables in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property rights or other right of any Person, or that violates any applicable law;
- h) use any Intellectual Property Rights in the Deliverables for purposes of: (i) Benchmarking; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to CONTRACTOR's detriment or commercial disadvantage;
- i) use any Intellectual Property Rights in the Deliverables in or in connection with the design, construction, maintenance, operation, or use of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of any Intellectual Property Rights in the Deliverables could lead to personal injury or severe physical or property damage; or
- j) use the Intellectual Property Rights in the Deliverables in any manner or for any purpose or application not expressly permitted by this Agreement.

13. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

13.1 The CONTRACTOR represents and warrants to the CITY as of the Effective Date as follows:

- a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- b) it has or will have all corporate authorizations necessary for it to legally perform its obligations under this Agreement;

- c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like to which it is subject, and this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms except as the enforcement thereof may be limited by general principles of equity or bankruptcy, insolvency or similar laws affecting creditors' rights and the enforcement of rights generally;
- d) there are not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and
- e) it is not subject to any contract or duty that would be breached by the CONTRACTOR's entering into or performing its obligations under this Agreement.

13.2 CONTRACTOR's Software Representations & Warranties. In addition to the representations and warranties above, CONTRACTOR represents and warrants the following:

13.2.1 Warranty of Function. CONTRACTOR represents and warrants that, during the Term of this Agreement, all software CONTRACTOR is required to provide to CITY, including but not limited to the CMS software will perform materially as described in this Agreement.

13.2.2 Correction of Errors. In the event that the CITY notifies CONTRACTOR of any errors or failure within the CMS software or any other CONTRACTOR provided software, CONTRACTOR shall, during its normal business hours and at no additional cost to the CITY, use reasonable efforts to correct any such errors and educate the CITY on the best practices of using the CMS software or any other CONTRACTOR provided software to prevent any future errors and/or failures

13.2.3 Disabling Code. No software or services to which CITY is provided access and use hereunder contains any undisclosed disabling code (defined as computer code designed to interfere with the normal operation of the software or the CITY's hardware or software) or any program routine, device or other undisclosed feature, including but not limited to, a time bomb, virus, drip-dead device, malicious logic, worm, Trojan horse, or trap door which is designed to delete, disable, deactivate, interfere with or otherwise harm the software or the CITY's hardware or software.

13.2.4 Virus/Malicious Software. To the extent CONTRACTOR is required to provide software or Software as a Service (SaaS), including but not limited to the CMS software to CITY pursuant to this Agreement, CONTRACTOR represents and warrants it has used its best efforts to scan for viruses within CONTRACTOR's

software, networks and information systems, and no malicious system will be supplied under this Agreement.

13.2.5 Warranty of Originality. CONTRACTOR represents and warrants that all software CONTRACTOR is required to provide to CITY pursuant to this Agreement, including but not limited to the CMS software, is CONTRACTOR's own original work or the work of its licensors, without incorporation of software, text, images, or other assets created by third-parties, except to the extent that the CITY consents to such incorporation in writing.

13.2.6 Professional Services Quality Warranties. CONTRACTOR represents and warrants that all professional services provided by CONTRACTOR will be performed in a professional and workmanlike manner. CONTRACTOR shall ensure that all its staff members providing assistance to the CITY pursuant to this Agreement have been properly trained on how to perform the part of the services within their duties.

13.2.7 Intellectual Property Warranty. CONTRACTOR warrants to the CITY that all software CONTRACTOR is required to provide to CITY, including but not limited to the CMS software, does not infringe, misappropriate or violate the intellectual property rights of any third-party. **CONTRACTOR shall indemnify, defend and hold the CITY harmless from and against any and all claims, losses, liabilities, costs and expenses attributable to any allegation of intellectual property infringement arising from the CMS Software under this Agreement (unless such allegation arises from the combination or use of the Software with any extraneous software, data, or materials).** If any CONTRACTOR provided software becomes or, in CONTRACTOR's opinion, is likely to become the subject of any claim or action that infringes, misappropriates or violates the intellectual property rights of another person, then CONTRACTOR, at its expense and option, may: (i) procure the right for the CITY to continue using the software, (ii) modify the software to render it no longer subject to any such claim or action, or (iii) replace the software or any portion thereof with equally suitable, functionally equivalent, non-infringing software. **The rights and remedies of the CITY provided in this Section 14.2.7 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision shall survive expiration or termination of this Agreement.**

14. CITY'S REPRESENTATIONS.

The CITY represents to the CONTRACTOR as of the Effective Date as follows:

- a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- b) it has all corporate authorizations necessary for it to legally perform its obligations under this Agreement;

- c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms except as the enforcement thereof may be limited by general principles of equity or bankruptcy, insolvency or similar laws affecting creditors' rights and the enforcement of rights generally;
- d) it owns or leases the Downtown Yard and has the right to permit the CONTRACTOR to access the Downtown Yard, install and maintain the Charging Equipment at the Downtown Yard, and otherwise perform its obligations under this Agreement;
- e) there are not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement; and
- f) it is not subject to any contract or duty that would be breached by the CONTRACTOR's entering into or performing its obligations under this Agreement.

15. INDEMNIFICATION

15.1 Indemnification. Except for the active negligence or willful misconduct of the CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, the CONTRACTOR 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 the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, death or injury to any person, including the 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 the CONTRACTOR, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. **The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision shall survive expiration or termination of this Agreement.**

15.2 Intellectual Property Indemnification. The 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 the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the CONTRACTOR's 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 the CONTRACTOR, or its Subcontractors, in performing the work under this Agreement; or (2) as a result of the CITY's actual or intended use of any Work Product (as defined in PSC-21 – Ownership and License) furnished by the CONTRACTOR, or its Subcontractors, as expressly permitted under this Agreement. **The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. This provision shall survive expiration or termination of this Agreement.**

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED TEN MILLION DOLLARS (\$10,000,000.00).

16. INDEPENDENT CONTRACTOR

- 16.1 Tax Withholding.** In rendering service hereunder, the CONTRACTOR shall be and remain an independent contractor. It is expressly understood and acknowledged by the Parties hereto that any amounts payable hereunder shall be paid in gross amount, without reduction for any federal or state withholding or other payroll taxes, or any other governmental taxes or charges. The CONTRACTOR shall be responsible for assuming and remitting any applicable federal or state withholding taxes, estimated tax payments, social security payments, unemployment compensation payments, or any other fees or expenses whatsoever.
- 16.2 Non-Legal Representation of the CITY.** The CONTRACTOR shall refrain from any action that would create or tend to create obligations, expressed or implied, on behalf of the CITY. It is understood that the CONTRACTOR is not, and shall not be, the legal representative or agent of the CITY. The CONTRACTOR is not authorized to make any promise, warranty, or representation on behalf of the CITY, except as expressly provided for in this Agreement or as otherwise agreed to in writing between the Parties.
- 16.3 CITY Liability to Subcontractors.** The CITY shall have no liability to any subcontractor(s) for payment for service under this Agreement or other work performed for the CONTRACTOR, and any subcontract entered into by the CONTRACTOR pursuant to the conduct of service under this Agreement. It is duly noted that the responsibility for payment for technical services or any other work performed shall be the sole responsibility of the CONTRACTOR.
- 16.4 Property Ownership.** All tangible property purchased directly by the CITY or through the CONTRACTOR for this Agreement shall become the property of the CITY and shall be returned to the CITY upon the termination of this Agreement, except as provided otherwise.

16.5 Personnel Wages and Benefits. The CONTRACTOR is solely responsible for paying all of the CONTRACTOR's employee wages and benefits. Without any additional expense to the CITY, the CONTRACTOR shall comply with the requirements of liability, workers' compensation, employment insurance, and social security. The CONTRACTOR shall hold the CITY harmless from any liability, damages, claims, costs, and expenses of any nature arising from alleged violations of this Section 17.5.

17. AUDIT, RECORDS, INSPECTION, AND ACCESS

During the Term of this Agreement, the CONTRACTOR shall keep full and accurate records and accounts of all activities in connection with this Agreement including without limitation reasonable substantiation of all expenses incurred based upon actual costs. The CONTRACTOR shall comply with the Retention of Records, Audits and Reports of Attachment B – Standard Provisions for City Contracts (Rev. 9/22) [v.1], attached hereto and incorporated herein. In addition, the CONTRACTOR shall comply with the additional provisions for Audits and Inspections as described in the following subsections:

17.1 Inspections. The CONTRACTOR agrees that the CITY or any of its duly authorized representatives shall, for the purpose of audit and examination, be permitted to inspect all work, records, contracts, subcontracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data and records with regard to the Downtown Yard Project, and to audit the books, records, accounts with regard to the Project.

17.2 Auditing. It is agreed that examination of books, records, logs, timesheets and payroll records, reports, and accounts of the CONTRACTOR shall be made in accordance with generally accepted auditing standards applicable in the circumstances and that as such, said examinations shall not require a detailed audit of all transactions. Testing and sampling methods may be used in verifying invoices and related reports submitted by the CONTRACTOR. Deficiencies ascertained by the use of such testing and sampling methods by applying the "percentage of error" obtained from such testing and sampling to the entire period under examination shall be binding on the CONTRACTOR and to that end shall be admissible in court to prove any amounts due to the CITY from the CONTRACTOR. This shall not prevent the CONTRACTOR from producing all actual records and figures in court to rebut the sampling method. The CITY shall then conduct an audit of all records for the audit period. In the event any deficiency in the amount of five percent (5%) or greater of the compensation payable to the CITY hereunder is ascertained, the CONTRACTOR agrees to pay the CITY for the entire cost of the audit as well as any other deficiencies, payments, and performance penalties due under this or any other provision of this Agreement within thirty (30) calendar days of the receipt of the CITY's billing.

17.3 Availability for Examination. At any time during normal business hours and as often as the CITY may deem necessary, the CONTRACTOR shall make available for examination to the CITY or any of its duly authorized representatives all necessary records with regard to the service provisions, start-up, and capital purchase costs. The CITY or any of its duly authorized representatives shall have the authority to audit, examine and make excerpts or transcripts from records, including all contracts, subcontracts, invoices,

materials, payrolls, records of personnel, conditions of employment, and other statistical data relating to all matters covered by this Agreement.

- 17.4 Auditors.** The CITY reserves the right to dispatch auditors of its choosing to any site where any phase of the Project is being conducted, controlled, or advanced in any way, however tangible or intangible. Such sites might include the home office, any branch office, or other locations of the CONTRACTOR, if such sites or the activities performed thereon have any relationship to the program covered by this Agreement. The CONTRACTOR shall provide the auditors adequate and appropriate workspace in order to conduct audits and shall allow the auditors to interview any employees of the CONTRACTOR. It is the responsibility of the CONTRACTOR to ensure the cooperation of all employees with any procedure pertaining to the audit.
- 17.5 Records.** All Project records prepared by the CONTRACTOR shall be owned by the CITY and be made available to the CITY at no additional charge. The CITY may elect to authorize representatives of other Project funding partners to inspect, audit, and analyze the records of the CONTRACTOR in operating this service, preparing the bid for this service, or the operation of any similar service. The CONTRACTOR shall retain and reserve all aforementioned documents and records, at no cost to the CITY for a period of three (3) years, in a local office location in Southern California, following an audit of Project cost, and grant secure all necessary access thereto.
- 17.6 Physical Inspections.** The CITY shall have the authority to make physical inspections and to require such physical safeguarding devices as locks, alarms, safes, fire extinguisher, sprinkler system, etc., to safeguard property and/or equipment authorized by this Agreement.
- 17.7 Audit Findings.** When a fiscal or special audit determines that the CONTRACTOR has received payments from the CITY which are questionable under the criteria set forth herein, the CONTRACTOR shall be notified and given the opportunity to justify questioned items prior to the CITY's final audit report. If such audit finds that the CITY's dollar liability for such service is less than payments made by the CITY to the CONTRACTOR, the CONTRACTOR agrees that the difference shall be either:

(i) Repaid forthwith by the CONTRACTOR or the CITY be a cash payment, or

(ii) At LADOT's General Manager's option, deduct against any future payments hereunder to the CONTRACTOR.

If such an audit finds that the CITY's dollar liability for service is more than payments hereunder to the CONTRACTOR, then the difference shall be paid to the CONTRACTOR by the CITY, provided that in no event shall the CITY's maximum obligations, as set forth in this contract, be exceeded. The CITY shall determine any amount to be paid to the CONTRACTOR during the period of the audit. The CITY has the authority to withhold funds pending a final determination by the CITY of any questionable expenditure.

18. CONDITIONS PRECEDENT TO EXECUTION OF THIS AGREEMENT

- 18.1 Required Facilities Before Service.** The CONTRACTOR shall, prior to the commencement of service, have all facilities required for all necessary functions in place for the manufacturing, administration, and support of service.
- 18.2 Insurance Requirements.** The CONTRACTOR shall comply at all times with all of the insurance requirements set forth in Attachment B – Standard Provisions for City Contracts (Rev. 9/22) [v.1], attached hereto and incorporated herein. The CONTRACTOR shall fully pay for the required insurance, and evidence of such payment shall be provided to the CITY upon CITY's request in advance of the CONTRACTOR and the CITY signing this Agreement. Moreover, the CONTRACTOR's insurance certificates shall include an Additional Insured Endorsement naming the CITY an additional insured, completed by the CONTRACTOR's insurance company or its designee.
- 18.3 Worker's Compensation.** The CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 et seq., of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the code, and that it will comply with such provisions at all such times as they may apply during the performance of the work under this Agreement.
- 18.4 Business Tax Registration Certificate (BTRC).** The CONTRACTOR shall provide evidence of a valid City of Los Angeles Business Tax Registration Certificate (BTRC) prior to Agreement execution. During the Term of this Agreement the BTRC must remain in force.

19. DISPUTES

Disputes regarding the interpretation or application of any provision shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Parties. The CITY shall make every effort to limit the negotiating period for a time not to exceed thirty (30) calendar days. Failure to come to a negotiated settlement shall allow the aggrieved Party to seek recourse in the courts of law.

20. NON-EXCLUSIVE AGREEMENT

The CITY and the CONTRACTOR understand and agree this is a non-exclusive agreement to provide services to LADOT and that the LADOT reserves the right to enter into an agreement with other contractors/consultants to provide similar services during the Term of this Agreement.

21. STANDARD PROVISIONS OF CITY CONTRACTS

By entering into this Agreement with the CITY, the CONTRACTOR agrees to abide by the provisions set forth in Attachment B – Standard Provisions for City Contracts (Rev. 9/22) [v.1], attached hereto and incorporated herein, except as follows:

PSC-9 [Termination], is hereby deleted in its entirety and replaced by the following:

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. The time period to cure the default to the sole satisfaction of the CITY shall not be less than thirty (30) calendar days.
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 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-20 [Intellectual Property Warranty], is hereby deleted in its entirety and replaced by the following:

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that, to its knowledge, 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], is hereby deleted in its entirety and replaced by the following:

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.

Notwithstanding anything to the contrary herein, as between the Parties, CONTRACTOR shall retain all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights in any and all tools, routines, programs, designs, technology, ideas, know-how, processes, formulas, techniques, improvements, inventions and works of authorship, and any derivative works thereof, which are created, developed, owned or licensed by CONTRACTOR outside the scope of this Contract.

PSC-24 [Best Terms], is hereby deleted in its entirety and replaced by the following:

PSC-24. Best Terms

As of the date of the Contract, the prices and terms offered by CONTRACTOR to CITY are the best terms, prices, and discounts that are offered to any of the CONTRACTOR'S customers for the same goods and service, in the same quantities, duration, and volumes, provided under this Contract.

22. DISCLOSURE OF BORDER WALL CONTRACTING ORDINANCE

The CONTRACTOR shall comply with Los Angeles Administrative Code §10.50 *et seq.*, 'Disclosure of Border Wall Contracting.' The CITY may terminate this Agreement at any time if the CITY determines that the CONTRACTOR failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in Los Angeles Administrative Code §10.50.1.

The CONTRACTOR shall complete and upload a Disclosure Ordinance Affidavit on www.rampla.org.

23. MUNICIPAL LOBBYING ORDINANCE

The CONTRACTOR shall comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if the CONTRACTOR qualifies as a lobbying entity under Los Angeles Municipal Code §48.02. Agreements submitted without a completed CEC Form 50 by contractors that qualify as a lobbying entity under Los Angeles Municipal Code §48.02 may be subject to penalties, termination of this Agreement, and debarment.

24. COVID-19 VACCINATION ORDINANCE

Employees of the 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") shall be fully vaccinated against the novel coronavirus 2019 ("COVID-19"). "Fully vaccinated" means that fourteen (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, the CONTRACTOR shall obtain proof that such CONTRACTOR Personnel have been fully vaccinated. The CONTRACTOR shall retain such proof for the document retention period set forth in this Agreement. The CONTRACTOR shall grant medical or religious exemptions ("Exemptions") to CONTRACTOR Personnel as required by law. If the CONTRACTOR wishes to assign CONTRACTOR Personnel with Exemptions to perform In Person Services, the CONTRACTOR shall require such CONTRACTOR Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by the 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, the CONTRACTOR shall immediately notify the 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.

25. CONTRACTOR PERFORMANCE EVALUATION ORDINANCE

At the end of this Agreement, the CITY shall conduct an evaluation of the CONTRACTOR's performance. The CITY may also conduct evaluations of the CONTRACTOR's performance during the term of this Agreement. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations shall 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 shall be provided with a copy of the final CITY evaluation and allowed fourteen (14) calendar days to respond. The CITY shall 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.

26. CITY OBLIGATIONS

CITY shall provide CONTRACTOR with such resources, information, access, and assistance as CONTRACTOR may reasonably request in connection with the performance of its obligations under this Agreement. CITY acknowledges and agrees that CONTRACTOR's ability to successfully provide the services in a timely manner is contingent upon its receipt from CITY of the information, resources, access, and assistance requested. CONTRACTOR shall have no liability for deficiencies in the services resulting from the acts or omissions of the CITY, or its agents or

employees.

27. GENERAL PROVISIONS

- 27.1 Governing Law and Venue.** This Agreement and any action related thereto shall be governed and interpreted by and under the laws of the State of California, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Each Party hereby expressly consents to the exclusive personal jurisdiction and venue in the state and federal courts of Los Angeles County, California for any lawsuit filed there against it by the other Party arising from or related to this Agreement.
- 27.2 Export.** The CONTRACTOR agrees not to export, report, or transfer, directly or indirectly, any City Data, or any products utilizing such City Data, in violation of United States export laws or regulations. Without limiting the foregoing, the CONTRACTOR agrees that (a) it is not, and is not acting on behalf of, any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States or other applicable government body has prohibited export transactions (e.g., Iran, North Korea, etc.); (b) is not, and is not acting on behalf of, any person or entity listed on a relevant list of persons to whom export is prohibited (e.g., the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, the U.S. Commerce Department Denied Persons List or Entity List, etc.); and (c) it shall not use any CITY Data for, and shall not permit any CITY Data to be used for, any purpose prohibited by applicable law.
- 27.3 Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision(s) will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
- 27.4 Subcontracting.** CONTRACTOR is permitted to use subcontractors to perform its obligations under this Agreement. CONTRACTOR will be responsible for all work performed by subcontractors to the same extent as if such work was performed by CONTRACTOR.
- 27.5 No Assignment.** Neither Party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other Party, and any attempted such assignment, subcontract, delegation, or transfer in violation of the foregoing shall be null and void.
- 27.6 No Third-Party Beneficiaries.** Nothing herein is intended to create a third-party beneficiary in any subcontractor. The CITY has no obligation to any subcontractor. No privity is created with any subcontractor by this Agreement. Even if the CONTRACTOR uses subcontractors, the CONTRACTOR remains responsible for complete and satisfactory performance of the terms of this Agreement.

- 27.7 Amendments.** This Agreement may be amended by mutual agreement of the Parties. No amendment or modification to this Agreement or its Attachments shall be effective unless in writing and signed by an authorized signatory of each Party.
- 27.8 No Waiver.** Any waiver or failure to enforce any provision of this Agreement or its Attachments on one occasion shall not be deemed a waiver of any other provision or of such provision on any other occasion.
- 27.9 Counterparts and Electronic Signatures.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one (1) instrument. The Parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by CITY) and sent by email shall be deemed original signatures.
- 27.10 Entire Agreement.** This Agreement and any exhibits, Attachments or documents incorporated herein by inclusion or by reference, constitutes the final, complete, and entire Agreement between the CITY and the CONTRACTOR, and supersedes and merges all prior discussions between the Parties. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, shall be effective unless in writing and signed by an authorized signatory of each Party pursuant to Section 27.7 Amendments.
- 27.11 Order of Precedence.** In the event of a conflict or inconsistency between the bodies of this Agreement and its exhibits, schedules, and Attachments, the order of priority is as follows:
1. Attachment A – Federal Transit Administration Clauses
 2. This Agreement between the City of Los Angeles and BP Pulse Fleet North America Inc. and its Amendments
 3. Attachment B – Standard Provisions for City Contracts (Rev. 9/22) [v.1]
 4. Attachment C – Charging Equipment Maintenance and Service Level Agreement
 5. Attachment D – Cost Sheet
 6. Attachment E – Project Schedule
 7. Attachment F – ABB Charger Warranty
 8. Attachment G – ABB HVC 150C User Manual

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

THE CITY OF LOS ANGELES

By: _____

Connie Llanos
Interim General Manager
Department of Transportation

Date: _____

APPROVED AS TO FORM:

HYDEE FELDSTEIN SOTO, City Attorney

By: _____

Jonathan Groat
Deputy City Attorney

Date: _____

ATTEST:

HOLLY L. WOLCOTT, City Clerk

By: _____

Date: _____

City Agreement Number: _____

Council File Number: _____

BP PULSE FLEET NORTH AMERICA INC.

By*: _____

Title: _____

Date: _____

By**: _____

Title: _____

Date: _____

NOTE: If Contractor is a Corporation or LLC, two signatures are required.

If Contractor is a Corporation:

* The signature of President, Chairman of the Board, or Vice President is required here; and

** an additional signature of Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer is also required for the Corporation.

If Contractor is a Limited Liability Company:

Unless otherwise provided, the signature of two authorized managers is required.

Cal. Corp. Code Sections 313 & 17703.01