

RETENTION MODIFICATION AGREEMENT

This Retention Modification Agreement ("Agreement") is dated _____ ("Effective Date"), and is between BULK HANDLING SYSTEMS ("BHS") and COUNTY SANITATION DISTRICT NO. 2 of LOS ANGELES COUNTY (the "District"). The District and BHS are collectively identified as the "Parties.

On September 13, 2017 the District awarded Contract No. 5057 (the "Contract") for the equipment design and procurement of the Puente Hills Materials Recovery Facility – Recycling Equipment Phase II (the "Project") to BHS in the amount of \$15,781,421 (fifteen million, seven-hundred eighty-one thousand, four-hundred and twenty-one dollars).

To date, BHS has completed all work ("Completed Work") on the Contract located at 2808 Workman Mill Road, except for those items identified in Table 1. The District has occupied and commenced using the improvements included in the Completed Work. The District is presently holding \$804,115.64 in retention on the Contract.

In order that the amount of the retention held by the District for the Project more accurately reflect the scope of work yet to be completed on the Project, the Parties agree as follows:

1. TERMS OF SETTLEMENT

No later than 14 (fourteen) days after the completion of the conditions set forth in Paragraph 4 of this Agreement, the District shall release to BHS a total of \$603,086.73 from the retention presently held for the Project.

2. RELEASE

Effective upon the release of retention described in Paragraph 1 by the District to BHS, and except as to the remaining retention, the Parties hereto, on behalf of themselves and except as otherwise expressly provided in this Agreement, hereby forever release, discharge and acquit each other and their respective principals, insurance companies, bonding companies, sureties, agents, directors, officers, shareholders, employees, attorneys, and other representatives from any and all claims, costs and obligations of every kind, known and unknown, matured and unmatured, now existing or arising in the future, of any kind or nature whatsoever, including but not limited to, any and all claims, demands, debts, actions, actions for abuse or process, actions for malicious prosecution, causes of action, liabilities, costs and obligations, arising out of or any way relating to the Completed Work. This release does not extend to or qualify in any manner: (1) any obligations of BHS to the District with respect to warranties regarding the Completed Work or any defects in the Completed Work pursuant to the Contract; or (2) any claims arising from the uncompleted work included in Table 1.

3. INTENTION OF THE PARTIES

Except as otherwise provided in this Agreement, it is the intention of the Parties that this Agreement shall be effective as a full and final accord and satisfactory release of each and every matter specifically or generally referenced in Paragraph 2, above. In furtherance of this intention, the Parties acknowledge that they are familiar with Section 1542 of the Civil Code of the State of California (“Section 1542”), which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties waive and relinquish any rights and benefits that they may have under Section 1542. The Parties acknowledge that they may in the future discover facts in addition to or different from those that they now know or believe to be true with respect to the matters identified in Paragraph 2, but it is the Parties’ intention to fully, finally and forever settle and release any and all matters, disputes and differences known or unknown, suspected or unsuspected, which do now exist, may exist, may have previously existed in regard to the matters identified in Paragraph 2. In furtherance of this intention, the release in this Agreement will be and will remain in effect as full and complete general releases notwithstanding the discovery or existence of any such additional or different facts.

The Parties warrant and represent to one another that the effect and importance of the provisions of Section 1542 have been fully explained to them by their attorneys.

4. BHS’S CONDITIONS FOR RETENTION RELEASE

No later than five (5) days after the Effective Date, BHS shall provide the following, in proper form:

- a. A duly authorized acceptance, in writing, of the terms of this Agreement executed by the performance and payment bond surety for the Project, and
- b. BHS’s written representation that no stop notice claims, payment bond claims, or any pending claims from subcontractors, suppliers or materialmen exist with respect to the Completed Work.

5. BHS’S INDEMNITY AND DEFENSE OF THE DISTRICT

BHS shall indemnify, defend, and hold harmless the District from any and all stop notice claims filed with respect to the Completed Work following the Effective Date that relate to the work performed by BHS, its subcontractors, suppliers or materialmen on the Completed Work.

6. OWNERSHIP OF CLAIMS

The Parties warrant and represent that they are the only persons or entities that have any interest in any of the matters released in the Agreement, and that none of such claims, caused of action, cost or demands, or any part thereof, have been assigned, granted, or transferred in any way to any other person.

7. ENTIRE ACTION

This Agreement contains the entire understanding and agreement between the Parties with respect to the matters referred to in this Agreement. No other representations, covenants, undertaking or other prior or contemporaneous agreements, oral or written, respecting such matters that are not specifically incorporated in this Agreement will be deemed in any way to exist or bind the Parties to this Agreement. This is an integrated Agreement.

8. WARRANT OF AUTHORITY

Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.

9. BINDING ON SUCCESSORS

This Agreement will apply to, be binding upon, and inure to the benefit of the administrators, executors, legal representatives, assignees, successors, agents, and assigns of the Parties.

10. CONSTRUCTION

Each party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Agreement.

11. MODIFICATION

This Agreement will not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.

12. FURTHER DOCUMENTS

The Parties will execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

13. ADVICE OF COUNSEL

The Parties acknowledge that they have been represented by counsel of their own choice in the negotiations leading up to the execution of this Agreement and that they have read this Agreement and have had it fully explained to them by their counsel.

14. FREE AND VOLUNTARY AGREEMENT OF PARTIES


Each party acknowledges and warrants that such party's execution of this Agreement is free and voluntary

15. GOVERNING LAW

This Agreement is entered into and will be construed and interpreted in accordance with the laws of the State of California.

The Parties are signing this Agreement as of the date stated in the introductory clause.

BULK HANDLING SYSTEMS

By: 
Eric Herbert, President

**COUNTY SANITATION DISTRICT
NO. 2 OF LOS ANGELES COUNTY**

By: _____
Chairperson

Attest:

By: _____
Secretary

Approved as to Form:

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
District Counsel

Table 1 – Excluded Items

Description

Underwriters Laboratories (UL) Certification Report
Electrical Permit Prints
Structural Permit Prints
Heat Load Calculations for NSS01 and PSS01 Panels
Electrical Components Operation and Maintenance Manual (OM-27)
Pre-Sort Cabin Structural Calculations
Control Room Structural Calculations
Final Comprehensive Hard Copy and Digital O&M Manual