



ANTONIO R. VILLARAIGOSA
Mayor

Commission
THOMAS S. SAYLES, *President*
ERIC HOLOMAN, *Vice-President*
CHRISTINA E. NOONAN
JONATHAN PARFREY
BARBARA E. MOSCHOS, *Secretary*

RONALD O. NICHOLS
General Manager

June 22, 2011

The Honorable City Council
City of Los Angeles
Room 395, City Hall
Los Angeles, California 90012

Honorable Members:

Subject: Agreement No. 47005-1 with Opex Corporation

Pursuant to Charter Section 373, enclosed for approval by your Honorable Body is Resolution No. 011-314, adopted by the Board of Water and Power Commissioners (Board) on June 21, 2011, approved as to form and legality by the City Attorney, which authorizes execution of Agreement No. 47005-1 with Opex Corporation to provide hardware and software maintenance, support services, and licensing fees. Total amount not to exceed \$554,372 for a term of five years. As directed by the Board, transmitted to you are supporting documents.

If there are any questions regarding this item, please contact Ms. Winifred Yancy, Director of Local Government and Community Relations, at (213) 367-0025.

Sincerely,

Barbara E. Moschos
Board Secretary

BEM:oja

Enclosures: LADWP Resolution
Board Letter
CAO Report
Agreement No. 47005-1

Water and Power Conservation ... a way of life

111 North Hope Street, Los Angeles, California 90012-2607 Mailing address: Box 51111, Los Angeles 90051-5700
Telephone: (213) 367-4211 Cable address: DEWAPOLA



c/enc: Mayor Antonio Villaraigosa
Councilmember Jan C. Perry, Chair, Energy and the Environment Committee
Gerry F. Miller, Chief Legislative Analyst
Miguel A. Santana, City Administrative Officer
Rafael Prieto, Legislative Analyst, CLA
William R. Koenig, Chief Administrative Analyst
Winifred Yancy

WHEREAS, the City of Los Angeles Department of Water and Power (LADWP) proposes to enter into Agreement No. 47005-1 with Opex Corporation (Opex) for maintenance services for a term of five (5) years, starting September 13, 2011, and ending September 12, 2016, and a maximum not-to-exceed amount of \$554,372; and

WHEREAS, the services to be provided by Opex will allow LADWP to continue operating its remittance processing equipment; and

WHEREAS, LADWP released on November 18, 2010, Solicitation Letter No. SL318-11 to Opex for equipment maintenance services necessary for keeping LADWP's remittance processing equipment in good working condition; and

WHEREAS, LADWP finds that the use of competitive bidding would be undesirable and impractical because Opex equipment utilizes proprietary software and is the sole authorized source for sales, parts, maintenance, support, and service on its equipment; and

WHEREAS, Opex has reviewed the services to be provided by Opex in the Agreement, and represents that it has the qualities, expertise, skills, and abilities to perform such work.

NOW, THEREFORE, BE IT RESOLVED that Agreement No. 47005-1, approved as to form and legality by the City Attorney, and filed with the Secretary of the Board, between the LADWP and Opex, be and the same is hereby approved.

BE IT FURTHER RESOLVED that pursuant to Charter Section 1022, the services covered by this Agreement are for proprietary software and expert services that can be provided more feasibly by an independent contractor than by City of Los Angeles employees.

BE IT FURTHER RESOLVED that the Chief Accounting Employee of the LADWP, upon proper certification, is authorized and directed to draw demands on both the Water Revenue Fund and the Power Revenue Fund in payment of the obligations arising under this Agreement.

BE IT FURTHER RESOLVED that the President or the Vice President of the Board, or the General Manager, or such person as the General Manager shall designate in writing, and the Secretary, Assistant Secretary, or the Acting Secretary of the board be and they are hereby authorized, empowered, and directed to execute the Agreement for and on behalf of LADWP, and upon approval by the Los Angeles City Council pursuant to City Charter Section 373.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of a resolution adopted by the Board of Water and Power Commissioners of the City of Los Angeles at its meeting held

JUN 21 2011

City of Los Angeles Department of Water and Power
Secretary

Barbara E. Thomas
Secretary

JUN 21 2011

[Signature]
City Attorney

LOS ANGELES DEPARTMENT OF WATER AND POWER (LADWP) BOARD APPROVAL LETTER

TO: BOARD OF WATER AND POWER COMMISSIONERS	DATE: May 31, 2011
<div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;">  GARY WONG Interim Chief Administrative Officer </div> <div style="text-align: center;">  RONALD O. NICHOLS General Manager </div> </div>	SUBJECT: <p align="center"> Agreement No. 47005-1 between the Los Angeles Department of Water and Power and Opex Corporation to provide Maintenance Services </p> <p align="center"> <i>Contract With:</i> <i>Opex Corporation</i> <i>Moorestown, New Jersey</i> </p>
<hr/> <hr/>	FOR COMMISSION OFFICE USE: RESOLUTION NO. _____
CITY COUNCIL APPROVAL REQUIRED: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	IF YES, BY WHICH CITY CHARTER SECTION: 373

Please check appropriate box or remove if non-applicable.

- New Contract (not replacing existing contract)
- Replacement Contract
- Amendment to Existing Contract

PURPOSE

The attached Resolution recommends to the Los Angeles City Council approval of Agreement No. 47005-1 (Agreement) between the LADWP and Opex Corporation (Opex) to provide hardware and software maintenance, support services, and licensing fees for an Opex System 150 High Speed Automatic Mail Extractor, Opex Image Export Module (IEM), four Opex Model 60 Rapid Extraction Desks, and an Omation Model 2100 Envelope Opener.

COST AND DURATION

This Agreement is for a term of five (5) years, starting September 13, 2011, and ending September 12, 2016, and a maximum not-to-exceed amount of \$554,372.

BACKGROUND

The purpose of this Agreement is to maintain and keep all of LADWP's Opex remittance processing equipment in good operating condition. The Remittance Processing Center (RPC) is responsible for processing all LADWP customer payments received via mail.

The RPC processes an average of 20,000 envelopes containing customer payments per day. The daily revenue can reach or exceed \$10,000,000. Various equipment manufactured by Opex are used to open, extract, and image LADWP customer payments. The Opex equipment utilizes proprietary service diagnostic software. Opex has not released this software to third parties; therefore, no third party is authorized by Opex to provide sales, parts, maintenance, support, and service on its equipment.

The City Administrative Officer Report dated May 18, 2011 is attached.

METHOD OF SELECTION

Competitive Cooperative Purchase Sole Source Single Source

M/W/OBE SUBCONTRACTING PARTICIPATION

The Agreement is for proprietary services and does not lend itself to subcontracting opportunities. Opex is a small business. In the event Opex requires new suppliers for parts used to service their products, Opex has committed to performing a good faith effort to select third party suppliers that are classified either as women owned business enterprise and/or minority owned business enterprise.

ENVIRONMENTAL DETERMINATION

In accordance with the California Environmental Quality Act (CEQA) it has been determined that awarding a contract for hardware and software maintenance support is exempt pursuant to the General Exemption described in CEQA Guidelines Sections 105061(b)(3). General Exemption applies in situations where it can be seen that there is no possibility that the activity in question may have significant effect on the environment.

RECOMMENDATION

It is recommended that your Honorable Board adopt the attached Resolution authorizing execution of this Agreement between the LADWP and Opex to provide maintenance services.

WQ:cw

Attachments

e-c/att: Ronald O. Nichols

Richard M. Brown

Aram Benyamin

James B. McDaniel

Gary Wong

Lorraine A. Paskett

Ann M. Santilli

Anselmo G. Collins

John X. Chen

Miki Yonamine

Ethelinda Reyes

Wilson Quon

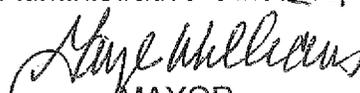
0150-09545-0000

TRANSMITTAL

TO Ronald O. Nichols, General Manager Department of Water and Power	DATE MAY 23 2011	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT	

AGREEMENT NO. 47005 BETWEEN THE DEPARTMENT OF WATER AND POWER AND OPEX CORPORATION TO PROVIDE MAINTENANCE SERVICES FOR REMITTANCE PROCESSING EQUIPMENT

Approved and transmitted for further processing including Council consideration.
See the City Administrative Officer report attached.


MAYOR

MAS:RPR:10110129t

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: May 18, 2011

CAO File No. 0150-09545-0000

Council File No.

Council Districts: Citywide

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Transmittal from the Department of Water and Power dated February 25, 2011; referred by the Mayor for report on March 9, 2011

Subject: **AGREEMENT NO. 47005 BETWEEN THE DEPARTMENT OF WATER AND POWER AND OPEX CORPORATION TO PROVIDE MAINTENANCE SERVICES FOR REMITTANCE PROCESSING EQUIPMENT**

SUMMARY

The Department of Water and Power (DWP; Department) requests approval of the proposed Resolution that authorizes the execution of a sole-source Agreement No. 47005 between the DWP and Opex Corporation (Opex) to continue to provide maintenance services for remittance processing equipment. This contract is a sole-source contract since the remittance processing equipment is manufactured by Opex and utilizes proprietary software which is only available from Opex. The proposed term is five years expiring on September 12, 2016, with a total expenditure amount not to exceed \$554,372. A termination provision is included in the Agreement that states DWP can terminate the contract for convenience with written notice. In accordance with Charter Section 373, Council approval is required because the term exceeds three years. The City Attorney has approved the proposed resolution and Agreement as to form and legality.

The Department of Water and Power (DWP) receives 20,000 to 30,000 envelopes containing ratepayer payments daily at the Remittance Processing Center (RPC). The Remittance Processing System (RPS) system, which includes equipment and software from several contractors including Opex, is critical to the DWP to ensure ratepayer payments are forwarded to the bank and posted on the same day they are received. DWP states that the daily revenue collected at the RPC can reach or exceed approximately \$10 million per day.

On November 18, 2010, DWP released Solicitation Letter No. SL318-11 to Opex to essentially continue the current agreement for maintenance services. Opex subsequently responded with terms and conditions that have been accepted by the Department. Approval of this Agreement will allow Opex to continue providing maintenance services in support of the Department's remittance processing equipment. DWP does not have the specific expertise necessary to support and maintain the proprietary equipment and software and requires the expert services of Opex for continued

maintenance. Opex is the sole-service provider of the remittance processing equipment.

An original five-year contract with Opex commenced in December 1999 with an expenditure limit of approximately \$600,000. Several subsequent amendments have extended the effective term approximately 12 years expiring September 12, 2011, and increased the total expenditure limit to approximately \$1,400,000. DWP states that Opex has performed in an acceptable manner on all previous Agreements.

The above mentioned aspects of the proposed resolution, agreement, and this report, are based upon revised information received from the Department subsequent to the initial request submittal.

CONTRACTING COMPLIANCE

The City Attorney has approved the proposed resolution and Agreement as to form and legality. The Agreement is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the General Exemptions described in Section 15061(b)(3) of the Los Angeles City CEQA Guidelines. In accordance with Charter Section 1022, it has been determined the work specified in the Agreement can be performed more economically and feasibly by Independent Contractors than by City employees. Pursuant to Charter Section 373, Council consideration of this Agreement is required because the term exceeds three years.

RECOMMENDATION

That the Mayor:

1. Approve the proposed Resolution which authorizes the execution of Agreement No. 47005 between the Department of Water and Power and Opex Corporation to provide the Department maintenance services for remittance processing equipment; and,
2. Return the proposed resolution to the Department for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

Approval of this request will result in an expenditure amount not to exceed approximately \$554,372 from the Power Revenue Fund and the Water Revenue Fund; however, there is no impact on the City's General Fund. Since the Department of Water and Power is bound only by the City Debt Management Policies, the City Financial Policies are not applicable.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 373, "Long Term Contracts Approved by Council," and the Los Angeles Administrative Code Section 10.5, "Limitation and Power to Make Contracts," unless the Council takes action disapproving a contract that is longer than three years within 60 days after submission to Council, the contract shall be deemed approved.

MAS:RPR:10110129

**AGREEMENT
FOR
INFORMATION TECHNOLOGY PRODUCTS
&
SERVICES**

Dated _____
Agreement No.: 47005-1

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**AGREEMENT
FOR
INFORMATION TECHNOLOGY PRODUCTS & SERVICES**

THIS AGREEMENT FOR INFORMATION TECHNOLOGY PRODUCTS & SERVICES ("Agreement"), is entered into this ___ day of _____, 20__ by and between the LOS ANGELES DEPARTMENT OF WATER AND POWER (the "LADWP"), acting by and through the BOARD OF WATER AND POWER COMMISSIONERS (Board), and Opex Corporation, a New Jersey corporation with a principal place of business at 305 Commerce Drive, Moorestown, New Jersey 08057 ("Contractor").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms used in this Agreement shall have the following meanings:

- a) **"Authorized Subcontractor"** shall mean a subcontractor or service provider of Contractor who has been approved by the LADWP beforehand and in writing to carry out any part of Contractor's obligations under this Agreement.
- b) **"Background Technology"** shall have the meaning assigned to it in Subsection 17(b) ("Background Technology and Inventions"). No Background Technology is required by this Agreement.
- c) **"Board"** shall mean Board of Water and Power Commissioners.
- d) **"Change Order"** shall have the meaning assigned to it in SECTION 3 ("CHANGE ORDER PROCESS").
- e) **"Confidential Information"** shall have the meaning assigned to it in Subsection 18(a) ("Protection").
- f) **"Contract Administrator"** shall mean the LADWP's representative who has been identified as such from time to time by the LADWP, and who shall have authority to act for the LADWP under this Agreement.
- g) **"Contractor's Quality Assurance Program"** shall mean that program, if any, described as such in EXHIBIT D ("CONTRACTOR'S QUALITY ASSURANCE PROGRAM"). No Contractor's Quality Assurance is required by this Agreement.
- h) **"Deliverables"** shall mean collectively all items provided or to be provided by Contractor hereunder, including without limitation all Hardware, Software and Services.
- i) **"LADWP Work Product"** shall have the meaning assigned to it in Subsection 17(a) ("Disclosure of Work Product"). No Work Product is required by this Agreement.
- j) **"Developed Software"** shall mean Software, in both Object Code and Source Code formats, which is not Existing Software, and which is identified as such in a Statement of Work. No Developed Software is required by this Agreement.
- k) **"Disclosing Party"** shall have the meaning assigned to it in Subsection 18(a) ("Protection").
- l) **"Documentation"** shall mean all information reasonably necessary or desirable,

or as described in a Statement of Work, to be provided to Contractor by the LADWP which describes the form, features or operation of the Deliverables and which is contained in a tangible medium, such as written format, tape, magnetic or other media, and including without limitation all Updates of Documentation and Documentation which the LADWP may require at any time.

m) **“Effective Date”** shall mean the first date upon which all of the following shall have occurred: (a) this Agreement has been signed by the LADWP by the person authorized by the LADWP to sign on its behalf and also signed by the Contractor’s authorized representative; (b) this Agreement has been approved by the City’s Council or by the Board, or by the City’s or the Board’s officer or employee authorized to give such approval; and (c) the Office of the City Attorney has indicated in writing its approval of this Agreement as to form and legality.

n) **“Error”** shall mean any material failure of any Deliverable to conform with its Specifications.

o) **“Escrow Agent”** shall have the meaning assigned to it in **Subsection 18(e) (“Escrow”). No Escrow Agent is required by this Agreement.**

p) **“Escrow Agreement”** shall mean a written agreement in substantially the form and format as described in **EXHIBIT C (“ESCROW AGREEMENT”). No Escrow Agreement is required by this Agreement.**

q) **“Escrow Materials”** shall have the meaning assigned to it in **Subsection 18(e) (“Escrow”). No Escrow Materials are required by this Agreement.**

r) **“Existing Software”** shall mean that Software, in Object Code format (but subject to **Subsection 18(e) (“Escrow”)**), which

exists as of the Effective Date, and which is identified as such in a Statement of Work, and including Documentation and Updates.

s) **“Fees”** shall mean those amounts to be paid to Contractor hereunder, and which are described as such in the Statement of Work.

t) **“Force Majeure”** shall have the meaning assigned to it in **SECTION 11 (“FORCE MAJEURE”).**

u) **“Hardware”** shall mean any and all hardware, machines, devices, computers, or similar equipment described as such in a Statement of Work, including without limitation all associated supplies, materials and spare parts.

v) **“Hardware Maintenance”** shall have the meaning assigned to it in **Subsection 20(a) (“Hardware Maintenance”).**

w) **“Indemnified Parties”** shall have the meaning assigned to it in **SECTION 19 (“INTELLECTUAL PROPERTY AND DELIVERABLES INDEMNITY”).**

x) **“Invention”** shall mean any and all trade secrets, inventions, mask works, ideas, processes, formulae, Source Codes, Object Codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques existing as of the Effective Date or coming into existence thereafter.

y) **“Invoice”** shall have the meaning assigned to it in **Subsection 12 (c) (“Invoices”).**

z) **“Job Cost Report”** shall mean detailed, written or electronic records of the Contractor which describe fully Contractor’s costs in its performance under this Agreement, and including all periodic and cumulative amounts to date of revenue, costs, gross profit and billing information against bid projected

costs, and sub-accounts for the different types of all cost categories.

aa) **“Maintenance”** shall mean: (i) Hardware Maintenance; and (ii) Software Maintenance.

bb) **“Object Code”** shall mean computer software programs, not readily perceivable by humans, and which are suitable for machine execution without the intervening steps of interpretation or compilation.

cc) **“Prior Work Product”** shall have the meaning assigned to it in **Subsection 17(a)** (**“Disclosure of Work Product”**). **No Prior Work Product is required by this Agreement.**

dd) **“Project Plan”** shall mean that portion of the SOW specifying the Deliverables and the Schedule (including without limitation all start and end dates for all Tasks).

ee) **“Proprietary Rights”** shall have the meaning assigned to it in **Subsection 17(c)** (**“Assignment and License”**). **No Proprietary Rights are required by this Agreement.**

ff) **“Receiving Party”** shall have the meaning assigned to it in **Subsection 18(a)** (**“Protection”**).

gg) **“Response”** shall mean Contractor’s written response to the RFP in **EXHIBIT F** (**“RESPONSE”**).

hh) **“RFP”** shall mean the LADWP’s “Request for Proposal”, number, or “Request for Bid”, number.

ii) **“Schedule”** shall mean the schedule of Deliverables, dates and Fees described as such in a Statement of Work.

jj) **“Services”** shall mean collectively, the Tasks described in each Statement of Work.

kk) **“Shrink-Wrap Agreement”** shall mean any form of license or other agreement included with any Deliverables hereunder, and including without limitation any embedded “click-wrap” license agreement, or any license agreement which is presented under shrink-wrap or other plastic coverings the removal of which may be deemed to effect agreement with the terms of such license agreement.

ll) **“Software”** shall mean collectively: (i) Existing Software; and (ii) Developed Software, and in all cases including all Documentation. However, Software shall specifically exclude proprietary software diagnostics used by Contractor to provide Services.

mm) **“Software Maintenance”** shall have the meaning assigned to it in **Subsection 20(b)** (**“Software Maintenance”**).

nn) **“Source Code”** shall mean computer software programs not in machine readable format and which is not suitable for machine execution without the intervening steps of interpretation or compilation.

oo) **“Specifications”** shall mean collectively all operational, functional or other specifications with respect to any Deliverables, including without limitation all Documentation and those specifications described as such in the Statement of Work and the Response.

pp) **“Statement of Work”** shall mean the description of the work to be carried out by Contractor, the Deliverables to be provided by Contractor, the Schedule to be met by Contractor, and the Fees to be paid, and contained in the format described in **EXHIBIT A** (**“STATEMENT OF WORK”**).

qq) **“Task Assignment”** shall mean a written description of work activity provided by the LADWP describing work to be carried

out by Contractor, and consisting of at least one (1) Task and an associated Fee.

rr) **“Tasks”** shall mean the smallest units of work activity described under each Statement of Work.

ss) **“Update”** shall mean any modification of or addition to the Software or Documentation, including without limitation all new releases, versions, sub-versions, corrections, “patches” and maintenance releases, which Contractor may prepare, obtain, or have prepared at any time.

tt) **“Viruses”** shall have the meaning assigned to it in **Subsection 21(d) (“Viruses”)**.

uu) **“Work Product”** shall have the meaning assigned to it in **SECTION 17 (“RIGHTS IN WORK PRODUCT AND LICENSES”)**. **No Work Product is required by this Agreement.**

2. DELIVERABLES.

a) **Services.** Contractor shall perform Services, strictly in accordance with Statement of Work, **Exhibit A.**

b) **Hardware.** Contractor shall prepare and deliver to the LADWP all Hardware, strictly in accordance with each Statement of Work, all Hardware.

c) **Software.**

i) **Existing Software.** Contractor shall provide Existing Software according to the Statement of Work, but in no event later than the delivery of any Developed Software with which such Existing Software is to be integrated pursuant to such Statement of Work.

ii) **Developed Software.** Contractor shall prepare and deliver to the

LADWP all Developed Software, strictly in accordance with each Schedule. **No Developed Software is required by this Agreement.**

d) **Documentation.** Contractor shall prepare and deliver to the LADWP all Documentation, strictly in accordance with each Schedule.

e) **Authorized Subcontractors.** With prior approval of the LADWP, the Contractor may enter into contracts and agreements with Authorized Subcontractors for the performance of portions of this Agreement. The Contractor shall at all times be responsible for the acts, errors or omissions of its Authorized Subcontractors and persons directly or indirectly employed by them. Nothing in this Agreement shall constitute any contractual relationship between any others and the LADWP or any obligation on the part of the LADWP to pay, or to be responsible for the payment of, any sums to any Authorized Subcontractors or any other third party. No such Authorized Subcontractor shall be a third party beneficiary of this Agreement. Upon written request from the Contract Administrator, the Contractor shall promptly supply the LADWP with all subcontractor agreements.

f) **Site Visits by Contractor.** All visits by Contractor to the LADWP’s facilities must have prior approval by the Contract Administrator. Visiting Contractor representatives must carry LADWP-issued identification badges, and conform to such security, safety and other requirements as the LADWP may from time to time impose.

g) **Permits.** The Contractor and its Authorized Subcontractors, officers, agents and employees shall obtain and maintain all permits and licenses necessary for the Contractor’s performance hereunder and shall pay any third-party fees required therefor.

3. CHANGE ORDER PROCESS.

a) **Process.** Unless expressly agreed to otherwise in a Statement of Work, the Specifications, the Schedule and the Fees are as described in such Statement of Work, and shall not be changed without the prior, written consent of the LADWP. Provided, however, that in the event that the LADWP wishes to change the Specifications or the Schedule, then the LADWP shall so notify the Contractor in writing, describing the changes to be made. The Contractor shall respond to such notification promptly in writing (and in no event later than ten (10) days thereafter) describing any increase in Fees which the Contractor seeks with respect to such changes. If thereafter agreed to by the parties, the parties shall record their agreement with respect to such changes, and increase in Fees (if any) in a written change order ("Change Order"), to be signed by the parties, and which will amend this Agreement. Invoices for Fees pursuant to Change Orders will be identified and issued separately from other Invoices.

b) **No Obligation.** EXCEPT AS PROVIDED IN THIS SECTION 3 ("CHANGE ORDER PROCESS"), OR WITHIN ANY EXHIBIT ATTACHED HERETO, THE LADWP SHALL HAVE NO OBLIGATION TO PAY, AND SHALL NOT PAY, ANY INCREASE IN FEES REGARDLESS OF ANY ADDITIONAL WORK CARRIED OUT UNDER THIS AGREEMENT BEYOND THAT WHICH IS EXPRESSLY DESCRIBED IN EACH STATEMENT OF WORK.

4. PACKING AND SHIPMENT.

a) **Packing.** Contractor agrees to pack all Deliverables to be shipped hereunder in suitable containers for protection in shipment and storage, and in accordance with applicable Specifications. Each container of a multiple container shipment shall be identified so as to:

(i) conspicuously show the number of the container and the total number of containers in the shipment; and

(ii) conspicuously show the number of the container in which the packing sheet has been enclosed; and

(iii) conspicuously show such other information as the LADWP may from time to time require.

b) **Packing Sheets.** All shipments of Deliverables by Contractor or its Authorized Subcontractors must include written packing sheets identifying: the Agreement number, the purchase order, item number; quantity and unit of measure; part number and description of the Deliverables shipped; and appropriate evidence of inspection, if required by the LADWP. Only Deliverables under this Agreement shall be listed on any particular packing sheet, and items under any other contracts between the LADWP and Contractor shall not be included thereon.

5. DELIVERY. Contractor shall strictly adhere to the Schedule specified in this Agreement. Time shall be of the essence of Contractor's performance under this Agreement. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities of Deliverables specified herein are the only quantities required. If Contractor delivers in excess of the quantities of Deliverables specified herein, the LADWP shall not be required to make any payment for the excess Deliverables, and may at the LADWP's discretion dispose of such excess Deliverables, return such excess Deliverables to Contractor at Contractor's expense and risk, or make such excess Deliverables available for pick-up by Contractor.

6. SUBSTITUTIONS AND QUALITY.

a) **Substitutions.** Substitution of any other goods or services for Deliverables called for in any Statement of Work may not be tendered without the prior, written consent of the Contract Administrator. Contractor shall not use any specification in lieu of the Specifications contained in each Statement of Work without the prior, written consent of the LADWP.

b) **Quality.** The Contractor's work shall reflect competent professional knowledge, judgment, and accepted industry practice. Subject to **SECTION 13 ("TERM AND TERMINATION")**, the Contractor shall promptly correct, or remedy any work, errors, or omissions, at its sole expense, which do not conform to the provisions of this Agreement.

c) **Drawing Quality.** Drawings provided for in any Statement of Work shall belong solely to the LADWP, and shall conform to the best standards of the drafting profession. Information in all such drawings shall be organized in a logical, systematic manner, shall be legible and clear, and shall fully conform with such Statement of Work. **No Drawing Quality is required by this Agreement.**

d) **Professional Licensure and Certification.** If so provided in the RFP, drawings shall be signed and sealed by professional engineers and architects with appropriate legal registration. To the extent that professional certification is required given the scope of work, said certification shall be provided with Response. **No Professional Licensure and Certification is required by this Agreement.**

7. DELIVERY, INSPECTION, ACCEPTANCE AND REJECTION.

a) **Delivery.** Contractor shall deliver all Deliverables according to the Schedule to

such addresses as may be from time to time specified by the LADWP.

b) **Inspection.** The LADWP shall have a reasonable period, in no event less than thirty (30) days, commencing with the date of delivery of each shipment of Deliverables to inspect and test such Deliverables to ensure that such Deliverables fully conform to this Agreement, fully conform to their Specifications, fully conform to their Documentation, and fully comply with all representations and statements made by Contractor with respect thereto (including, without limitation, any corresponding Response). Contractor shall fully cooperate and assist the LADWP in the course of such inspection and delivery at no cost to the LADWP. In the event of any failure of such Deliverables to so fully comply with any of the foregoing (each such condition to be considered an "Error"), the LADWP may, at its discretion and upon notice, reject any or all such Deliverables. In such case, Contractor shall within forty-eight (48) hours of such notice remove all such Deliverables from the LADWP's premises (at Contractor's sole expense), and replace such Deliverables with conforming Deliverables promptly (and in no event later than five (5) business days thereafter). **No Inspection is required by this Agreement.**

c) **Acceptance and Rejection.** Upon the completion of the inspection and testing described in **Subsection 7(b) ("Inspection")**, the LADWP shall inform Contractor of whether the corresponding Deliverables are accepted by the LADWP. Any failure of the LADWP to provide such notice within sixty (60) days of delivery shall be deemed a rejection thereof. The Contractor shall remove all rejected Deliverables promptly, and in no event later than five (5) days after such rejection. The LADWP shall be free to dispose of any Deliverables which are not so removed. Acceptance of Deliverables shall

not be construed to waive any warranty rights that the LADWP might have at law or by this Agreement. **No Acceptance and Rejection is required by this Agreement.**

d) **Quality Program.** If so provided in **EXHIBIT D ("CONTRACTOR'S QUALITY ASSURANCE PROGRAM")**, Contractor and its Authorized Subcontractors will provide and maintain such Contractor's Quality Assurance Program throughout the Term of this Agreement. Contractor will keep records evidencing related quality inspections and their result, and will make such records available to the LADWP upon request throughout the Term and for three (3) years thereafter. Contractor shall permit the LADWP to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's Quality Assurance Program or other similar business practices related to performance of this Agreement. **No Quality Program is required by this Agreement.**

e) **Facilities.** Contractor and its Authorized Subcontractors shall provide all reasonable facilities for the safety and convenience of the LADWP's inspectors at no additional cost to the LADWP. Contractor shall furnish to the LADWP and its agents all information and data as may be reasonably required to perform their inspection.

8. **SAMPLES.** Contractor shall promptly provide to the LADWP upon reasonable request from time to time, and without cost, samples of Deliverables for inspection and testing. Such samples must be identical in all respects to the Deliverables specified in each corresponding Statement of Work. Such samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned to Contractor at Contractor's risk and expense. **No Samples are required by this Agreement.**

9. **SAFETY AND ACCIDENT PREVENTION.** The LADWP agrees to provide a suitable and safe environment at its facilities with respect to Services to be provided under this Agreement. The parties understand and agree that Contractor has not included in its charges any expense for dealing with or removing potentially hazardous substances, such as asbestos, unless otherwise expressly provided by a Statement of Work. If not so provided in such Statement of Work, the LADWP shall be responsible for handling such substances at its own cost. In performing work under this Agreement, Contractor shall conform to all specific safety requirements contained in the Agreement and as required by law or regulation. Contractor shall take any additional precautions as the LADWP may reasonably require for safety and accident prevention purposes, and shall at all times exercise reasonable and prudent judgment with respect thereto. Any violation of such requirements, laws or regulations shall be considered a material breach of this Agreement.

10. **PERSONNEL.**

a) **Information.** The LADWP shall provide reasonably necessary representatives with authority to act on the LADWP's behalf with respect to approvals, requests, and meeting scheduling.

b) **Capacity.** Contractor warrants that the size of the staff employed by the Contractor in its performance hereunder shall be reasonably adequate in number and quality at all times to perform the work required by this Agreement and to add such addition personnel as are necessary to accomplish any work required by any Change Order.

c) **Identification.** The Contractor shall furnish the LADWP from time to time upon request the names, titles, and qualifications of its key project personnel and subcontractors,

including without limitation individual resumes, and the tasks to be performed by such individuals. Upon receipt of such request, the Contractor shall respond within two (2) business days.

d) Approval. The Contract Administrator shall have the right to interview and approve all personnel of Contractor and Authorized Subcontractors. Resumes of individual personnel will be reviewed and approved by the LADWP's Contract Administrator before the individual shall be assigned work. The Contractor shall minimize changes to any Contractor personnel with respect to any Statement of Work. Any unreasonable assignment or discharge of such personnel may, at the LADWP's option, be deemed a material breach of this Agreement by Contractor. The LADWP shall have the right to request key personnel changes and to review and approve key personnel changes proposed by the Contractor. No change can be made without LADWP approval. The LADWP shall have the right to require removal of any personnel with or without cause, which removal shall be effected no later than seventy-two (72) hours, or in the case of any removal requested for security or work rule reasons, immediately.

e) Control. The Contractor's and the Authorized Subcontractors' personnel shall at all times remain under the control of the Contractor.

11. FORCE MAJEURE. If either party is unable to perform its obligations because of strikes, lockouts, labor disputes, embargos, acts of God, governmental regulations, judicial orders, enemy or hostile governmental action beyond the reasonable control of the Contractor or its Authorized Subcontractors ("Force Majeure"), then such party shall immediately notify the other party in writing, and such party's performance shall be suspended for the period equal to the period

time of such cause for suspension of performance.

12. FEES, INVOICES AND PAYMENT.

a) Fees. The LADWP shall pay the Fees described in the Statement of Work, **Exhibit A**, for Services which have been accepted by the LADWP. Any Fees called for in the Statement of Work shall not increase for at least one (1) year after the date of such Statement of Work, unless expressly agreed to otherwise by the LADWP. Unless expressly stated in the Statement of Work, all salaries, wages, or other payments (including without limitation any overtime) to any third parties, Authorized Subcontractors or employees, shall be the sole responsibility of the Contractor, and the Contractor hereby agrees to fully indemnify, defend and hold harmless the LADWP with respect thereto.

b) Invoicing. Invoicing for the Standard Maintenance Charge as specified in **Exhibit A**, will be paid annually in advance. Invoicing for any Additional Usage Charges will be paid quarterly in arrears.

c) Travel and Costs. Travel time of the Contractor's personnel shall not be charged to, or paid by, the LADWP unless specifically provided for in the Response and the Statement of Work. Any allowed travel time shall be at the LADWP's own normal rates, without allowance for premium or overtime. **No Travel and Costs is required by this Agreement.**

d) Invoices. Upon the LADWP's acceptance of each shipment of Deliverables (including without limitation acceptance of completed Services), the LADWP shall so notify Contractor, and Contractor shall issue a written invoice ("Invoice") to the LADWP with respect thereto. Each such Invoice shall meet all the invoice criteria described in **EXHIBIT G ("INVOICE CRITERIA")**, and shall

contain the contract/purchase order number, the vendor code number, the City of Los Angeles Business Tax Registration Certificate Number, and the identification of material, equipment and/or services covered by the Invoices. In all cases the amount of applicable sales tax or use tax shall be separately stated on the Invoice. All Invoices shall be accompanied by such written documentation as the LADWP may reasonably require in order to support the amount and calculation of all corresponding Fees. Invoices for Services shall be issued monthly for all Services provided during the immediately preceding month.

e) **Payment.** Such Invoices, if correct, will be certified, and paid within thirty (30) days after receipt of Invoice. Invoice payments will not be made if the Invoice is received more than six (6) months after acceptance of corresponding Deliverables. No such Invoice shall be certified for payment, or paid, unless and until it shall first conform with **Subsection 12(c) ("Invoices")** above. In the event of any dispute of any Fees under any Invoices, the LADWP agrees to make payment of all undisputed amounts as hereinabove provided.

f) **Tax Registration Certificate.** Contractor shall obtain and keep in full force and effect during the Term of this Agreement all "Business Tax Registration Certificates" required by the City of Los Angeles Business Tax Ordinance, Article 1, Chapter II, Section 21.00 and following, of the Los Angeles Municipal Code. Contractor's current Business Tax Registration Certificate Number or, for those firms that are exempt, a Vendor Registration Number, must be shown on all Invoices submitted for payment.

g) **Taxpayer Identification Number ("TIN").** Contractor hereby represents and warrants that its TIN is 22-2013892. No Fees shall be payable or paid to Contractor unless

and until such TIN is verified by the LADWP as valid.

h) **Third Party Claims.** The Contractor shall promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Agreement so as to prevent any lien or other claim under any provision of law from arising against any LADWP property (including reports, documents, and other tangible matter or Deliverables produced hereunder), against the Contractor's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

i) **Most Favored Customer.** Contractor hereby covenants and warrants that throughout the Term of this Agreement, the Fees payable hereunder shall be no higher than the prices charged by Contractor to its other customers for like goods and services. Contractor shall notify the LADWP immediately of any offer to any other customer of more favorable prices as hereinabove described, and the Fees payable by the LADWP hereunder shall thereupon be deemed reduced to an equivalent level. The LADWP shall have the right, upon reasonable notice, to review the books and records of Contractor to confirm that Contractor has complied with the requirements of this **Subsection 12(h) ("Most Favored Customer")**.

13. TERM AND TERMINATION.

a) **Term.** The term of this Agreement ("Term") shall commence upon the Effective Date and shall expire five years thereafter, unless earlier terminated as hereinafter provided.

b) **Termination without Cause.** This Agreement may be terminated by the LADWP, without cause, upon written notice. Upon receipt of such notice, subject to the

terms and conditions of **Exhibit I**, the Contractor shall immediately stop all work under this Agreement. The Contractor shall be entitled to payment of Fees for all Deliverables completed, including without limitation Services provided (in both cases where accepted by the LADWP), until the date of such notice, and also to reimbursement for reasonable and documented re-stocking charges imposed on Contractor by third party suppliers due to such termination, where such charges have been called to the LADWP's attention beforehand in writing. The Contractor shall then deliver to the LADWP, in an organized and usable form, all Deliverables "work in process" as of such date.

c) Termination for Material Breach.

Either party may terminate this Agreement upon notice, in whole or in part, for the material breach of this Agreement by the other party (including without limitation, in the case of Contractor, any such breach by Contractor's Authorized Subcontractors) which has remained uncured for a period of ten (10) days from the date of notice thereof to the breaching party. Without limiting the generality of the foregoing: (i) any late payment of Fees by the LADWP shall be deemed a material breach of this Agreement; (ii) any failure of Contractor to timely perform Services or deliver other Deliverables according to any Schedule and this Agreement, shall be deemed a material breach hereof, and in such case the LADWP shall also have the right to reject all such Deliverables (in the case of such late performance or delivery by Contractor, the LADWP may, in addition to any rights and remedies the LADWP may also have, require Contractor, at Contractor's expense, to ship any Deliverables via air freight or by other expedited routing means (at no cost to the LADWP) to avoid or minimize actual or potential delay); and (iii) any alteration, removal, shut off, or otherwise disabling of

any part of any safety mechanism(s) or safety feature by LADWP shall be deemed a material breach. Also, in the event the Agreement is terminated in accordance with this **Subsection 13(c) ("Termination for Material Breach")**, the LADWP may also take possession of all Deliverables in process and of all materials, tools, equipment, and property of the Contractor, which have been provided in connection with the work, and may complete the work by whatever method or means the LADWP may select. The cost of completing the work shall be deducted from the balance which would have been due the Contractor had the Agreement not been terminated and the work completed in accordance with the Agreement.

d) Disqualification.

In the event Contractor receives one (1) or more notices of material breach as described in **Subsection 13(c) ("Termination for Material Breach")**, whether such material breaches are cured or not, the LADWP may consider such material breaches in making any subsequent determination of responsibility with respect to future awards.

e) Remedies Not Exclusive.

Any election by the LADWP to seek any remedy under this **SECTION 13 ("TERM AND TERMINATION")**, including without limitation any right to reject Deliverables or to require expedited shipping, shall not limit any other rights or remedies which the LADWP may have with respect to any breach of this Agreement.

f) Right of Offset.

The LADWP reserves the right to offset any and all costs and damages suffered by the LADWP under this Agreement against any outstanding invoices or amounts otherwise owed to the Contractor or to make a claim against the Contractor therefor.

g) Suspension of Work. The Contract Administrator may orally direct the Contractor to suspend, and to subsequently resume performance of all or any part of the work. Such direction shall be confirmed in writing. An equitable adjustment in the work completion schedule and corresponding Fees (if fixed price) shall be negotiated and confirmed by a Change Order or a revision to a task assignment if such suspension impacts the cost of the work and/or work completion schedule. The LADWP shall pay the Fees due for the suspended work up to the effective date of suspension notice and shall resume Fee payments effective as of the work resumption date.

h) Errors and Omissions. The Contractor will be responsible for correcting or remedying any errors or omissions which occur in performance of the services under this Agreement and which are the result of the Contractor's negligence, action or omission, regardless of whether the foregoing are a material breach hereof or not. The cost of correcting or remedying any such error or omission shall be borne by the Contractor. Revising Contractor-prepared documents at the request of the LADWP to incorporate comments by the public or by agencies having jurisdiction in matters of the particular task assignment is not considered to be a remedy of errors or omissions, but is considered an integral part of document preparation which may be called for by a Task Assignment.

14. TAXES. Unless otherwise required by law, the LADWP is exempt from Federal excise taxes. The LADWP will only pay for any State or local sales or use taxes on the Services rendered or other Deliverables supplied to the LADWP pursuant to this Agreement.

15. NEWLY MANUFACTURED DELIVERABLES. All Deliverables furnished under this Agreement shall contain only

newly manufactured items. Used or reconditioned Deliverables are prohibited, unless otherwise expressly agreed to by the LADWP in a corresponding Statement of Work.

16. RECORDS AND AUDIT.

a) Records and Audits.

Incorporated by Reference. See Exhibit K

b) Progress Reports. The Contractor shall, as required by the Contract Administrator from time to time, submit reports summarizing all the Tasks under this Agreement, the work accomplished, work left to be done, work to be done in the coming months, and the estimated completion dates, including without limitation any deviations or reasonably likely deviations from the Schedule. Each such report shall be organized by Task and shall include the Task number, Task coordinator, Task title, the authorized Fee, the start date and completion date, and the total of Fees received to date by the Contractor. Such report shall also show the total Fees received by the Contractor under this Agreement.

c) Right to Review. The LADWP reserves the right to review any portion of the Services performed by the Contractor under this Agreement, and the Contractor agrees to cooperate to the fullest extent. Contractor shall furnish to the LADWP such reports, statistical data, and other information pertaining to the Contractor's Services as shall be reasonably required by the LADWP. The right of the LADWP to conduct such review shall not relieve the Contractor of any obligation set forth herein.

17. RIGHTS IN WORK PRODUCT AND LICENSES.

a) **Disclosure of Work Product.** For purposes of this Agreement, "Work Product" shall mean any Invention whether or not patentable, and all related know-how, designs, mask works, trademarks, formulae, processes, manufacturing techniques, trade secrets, ideas, artwork, Developed Software (including without limitation any website or other works). Contractor shall disclose promptly in writing to the LADWP, or any person designated by the LADWP, all Work Product which is solely or jointly conceived, made, reduced to practice, or learned by Contractor in the course of any work performed hereunder ("LADWP Work Product"). Contractor hereby represents and warrants that any Work Product relating to the LADWP's business or any Project which Contractor has made, conceived, learned or reduced to practice prior to the Effective Date of this Agreement ("Prior Work Product") has been disclosed in writing to the LADWP and attached to this Agreement as **EXHIBIT H ("PRIOR WORK PRODUCT")**. If disclosure of any such Prior Work Product would cause Contractor to violate any prior confidentiality agreement, Contractor shall not list such Prior Work Product, but shall instead disclose a cursory, non-confidential name for each such item, a listing of the party(ies) to whom it belongs, and the fact that full disclosure as to such Prior Work Product has not been made for that reason. Contractor agrees that any and all Inventions made, learned, derived, conceived, written, created or first reduced to practice in the performance of work under this Agreement shall be the sole and exclusive property of the LADWP. **No Disclosure of Work Product is required by this Agreement.**

b) **Background Technology and Inventions.** Contractor shall specifically describe and identify in **EXHIBIT E ("BACKGROUND TECHNOLOGY")** all existing technology which Contractor intends to use in the course of its performance hereunder

("Background Technology"). **No Background Technology and Inventions are required by this Agreement.**

c) **Assignment and License.** Except for Contractor's rights in Background Technology, Contractor hereby irrevocably assigns to the LADWP all right, title and interest worldwide in and to LADWP Work Product and all applicable intellectual property rights related to LADWP Work Product including without limitation all copyrights, mask work rights, trademarks, service marks, trade secrets, patents (including applications, continuations, continuations in part, and utility models), moral rights, and contract and licensing rights, however and wherever arising (collectively, the "Proprietary Rights"). Except as set forth below, Contractor retains no right to use the LADWP Work Product and agrees not to challenge the validity of the LADWP's ownership of the LADWP Work Product. Contractor hereby grants to the LADWP a nonexclusive, fully transferable, perpetual, paid up, royalty-free, irrevocable, worldwide license, with rights to sublicense through multiple tiers of sublicensees, to reproduce, make derivative works of, publicly perform, and publicly display in any form or medium, whether now known or later developed, digitally perform, distribute, make, have made, use, lease, offer for sale, import and sell Background Technology and any Prior Work Product incorporated or used in the LADWP Work Product for the purpose of developing and marketing LADWP products, and carrying on the LADWP's business. **No Assignment and License is required by this Agreement.**

d) **Waiver or Assignment of Rights.** If Contractor has any rights to the LADWP Work Product which cannot be assigned to the LADWP, Contractor unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against the LADWP with respect to

such rights, and agrees, at the LADWP's request and expense, to consent to and join in any action to enforce such rights. If Contractor has any right to the LADWP Work Product which cannot be assigned to the LADWP or waived by Contractor, Contractor unconditionally and irrevocably grants to the LADWP during the term of such rights, an exclusive (both as to Contractor and all third parties), fully-transferable, irrevocable, perpetual, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple tiers of sublicensees, to reproduce, make derivative works of, publicly perform, and publicly display in any form or medium, whether now known or later developed, digitally perform, distribute, make, have made, use, lease, offer for sale, import and sell goods and services under such rights. Contractor hereby waives and quitclaims to the LADWP any and all claims, of any nature whatsoever, which Contractor now has or may hereafter have for infringement of any Proprietary Rights assigned hereunder to the LADWP. **No Waiver or Assignment of Rights is required by this Agreement.**

e) Continuing Assurances and Enforcement. Contractor agrees to cooperate with the LADWP or its designee(s), both during and after the Term of this Agreement, in the procurement and maintenance of the LADWP's rights in the LADWP Work Product and to execute, when requested, any other documents deemed necessary by the LADWP to carry out the purpose of this Agreement. Without limiting the generality of the foregoing, Contractor agrees to execute upon the LADWP's request a signed assignment of copyright to the LADWP in a format reasonably required by the LADWP. To the extent the LADWP is unable to procure Contractor's cooperation in the foregoing, Contractor hereby irrevocably appoints the LADWP as its attorney in fact to take all such actions and to execute such documents. Contractor shall assist the LADWP in every

proper way to obtain, and from time to time enforce, United States and foreign Proprietary Rights relating to the LADWP Work Product in any and all countries. To that end Contractor shall execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the LADWP may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Proprietary Rights and the assignment thereof. In addition, Contractor shall execute, verify and deliver assignments of such Proprietary Rights to the LADWP or its designee. Contractor's obligation to assist the LADWP with respect to Proprietary Rights relating to such the LADWP Work Product in any and all countries shall continue beyond the expiration or termination of this Agreement, but the LADWP shall compensate Contractor at a reasonable rate after such expiration or termination for the time actually spent by Contractor at the LADWP's request on such assistance. **No Continuing Assurances and Enforcement are required by this Agreement.**

f) Future Development. This Agreement shall not preclude the Contractor from developing materials outside this Agreement that are competitive with, irrespective of their similarity to, Deliverables which are delivered to the LADWP pursuant to this Agreement. **No Future Development is required by this Agreement.**

g) Existing Software License. Contractor hereby warrants and represents that it is the owner of the Software or otherwise has the right to grant to LADWP a license and provide all related materials and services, without violating any rights of any third party.

h) Documentation License. Contingent upon continued payment of the annual licensing fees, Contractor grants to LADWP a perpetual, non-exclusive license to use the

Software for LADWP's business purposes. Ownership of, and title to, the software is retained by OPEX Corporation. No ownership right or title to the Software including copyright, patent, trademark, or trade secret rights of the software is transferred to LADWP.

18. CONFIDENTIAL INFORMATION AND SOURCE CODE ESCROW.

a) **Protection.** Each party (the Disclosing Party") may from time to time during the term of this Agreement disclose to the other party (the "Receiving Party") certain non-public information regarding the Disclosing Party's business, including technical, marketing, financial, personnel, planning and other information ("Confidential Information"). The Disclosing Party shall mark all such Confidential Information in tangible form with the legend 'confidential', 'proprietary', or with similar legend. With respect to Confidential Information disclosed orally, the Disclosing Party shall describe such Confidential Information as such in writing within thirty (30) days after the date of oral disclosure. Regardless of whether so marked, however, any non-public information regarding the Developed Software (in Source Code and Object Code formats), shall be deemed to be the Confidential Information of the LADWP.

b) **Protection of Confidential Information.** Except as expressly permitted by this Agreement, the Receiving Party shall not disclose the Confidential Information of the Disclosing Party (using the same degree of care which the Receiving Party ordinarily uses with respect to its own proprietary information, but in no event with less than reasonable care). The Receiving Party shall also not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and shall limit the disclosure of the Confidential

Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential Information of the Disclosing Party to the employees or agents of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement, and who are, with respect to the Confidential Information of the Disclosing Party, bound in writing by confidentiality terms no less restrictive than those contained herein. The Receiving Party shall provide copies of such agreements to the Disclosing Party upon request; provided, however, that such agreement copies shall themselves be deemed the Confidential Information of the Receiving Party. Notwithstanding the foregoing, after the expiration or termination of this Agreement and the return by the Receiving Party of the Confidential Information of the Disclosing Party as provided in subsection 18(d) ("Return of Confidential Information"), the Receiving Party shall be free to use internally (but not disclose) any ideas, concepts and know-how contained in such Confidential Information: (i) which relate to the business of the Receiving Party; and (ii) which have been retained mentally by employees of the Receiving Party through the course of their performance under this Agreement.

c) **State Law Requirements - Protection For Personal Information** State law (See S.B. 1386 and A.B. 1950) requires a person or entity that owns or licenses computerized data that includes personal information, of a California resident, to disclose any breach of the data base security system and to implement and maintain procedures and practices to protect personal information from unauthorized access, destruction, use, modification, or disclosure and, shall require by contract, that non-affiliated third party recipients of such personal information, implement and maintain security procedures and practices to protect

the personal information. Accordingly, vendor agrees to implement and maintain such security procedures and practices, in conformance with S.B. 1386 and A.B. 1950, with respect to any personal identification information received under this agreement, as well as notify the City of any breach in security. In addition, vendor shall not share, disclose, or in anyway transfer the personal identification information without the written approval of the LADWP.

Vendor shall be responsible for any and all liabilities, including but not limited to those stated below in this paragraph, that result from any violation of S.B. 1386 or A.B. 1950 that Vendor, its employees, agents, or subcontractors may cause pursuant to the activities performed under this contract. Accordingly, Vendor agrees to indemnify and hold harmless the City of Los Angeles, its respective agencies, LADWPs, boards, all of their commissioners, officers, employees, and authorized agents, and, at the option of the City of Los Angeles, to provide a defense, reasonably acceptable to the LADWP, against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever caused or brought by any person, including any aggrieved party, as defined in S.B. 1386, arising out of Vendor's breach of any of its duties and obligations under S.B. 1386 or A.B. 1950. The indemnification herein includes all awards, damages, interest, costs and attorneys' fees, if any. Such defense will be consistent with City Charter, Sections 271, 272 and 273.

d) Exceptions. Notwithstanding anything herein to the contrary, Confidential Information shall not be deemed to include any information which: (i) was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party as reflected in the written records of the

Receiving Party; (ii) was or has been disclosed by the Disclosing Party to a third party without obligation of confidence; (iii) was or becomes lawfully known to the general public without breach of this Agreement; (iv) is independently developed by the Receiving Party without access to, or use of, the Confidential Information; (v) is approved in writing by the Disclosing Party for disclosure by the Receiving Party; (vi) is required to be disclosed in order for the Receiving Party to enforce its rights under this Agreement; or (vii) is required to be disclosed by law or by the order of a court or similar judicial or administrative body; provided, however, that the Receiving Party shall notify the Disclosing Party of such requirement immediately and in writing, and shall cooperate reasonably with the Disclosing Party, at the Disclosing Party's expense, in the obtaining of a protective or similar order with respect thereto.

e) Return of Confidential Information. The Receiving Party shall return to the Disclosing Party, destroy or erase all Confidential Information of the Disclosing Party in tangible form upon the written request of the Disclosing Party (except for Deliverables and any other items which the LADWP is otherwise entitled to retain under this Agreement) and the Receiving Party shall certify promptly and in writing that it has done so.

f) Escrow.

(i) Deposit. No later than five (5) days after the Effective Date, Contractor and LADWP shall enter into an Escrow Agreement with such software source code escrow agent as may be reasonably required by the LADWP (the "Escrow Agent") pursuant to which Escrow Agreement Contractor shall immediately deposit with such Escrow Agent one (1) copy of all existing annotated Source Code listings, flow charts, decision tables, schematics, drawings,

specifications, documentation, design details, and other related documents which pertain to the Software and all technology necessary to understand the design, structure, and implementation of the Software and to maintain, support and build Object Code of the Software (including, but not limited to, any tools which may or not be commercially available) such that a third party programmer reasonably skilled in the language used in such materials could maintain and support the Software without further assistance or references to other materials (collectively, the "Escrow Materials"). Such Escrow Materials shall also include any Updates of such Software made available to the LADWP pursuant to SECTION 20 ("MAINTENANCE AND SUPPORT") of this Agreement, which Escrow Materials Contractor shall keep updated on no less frequent a basis than semi-annually. **No Escrow is required by this Agreement.**

(ii) License Grant.

Subject to SECTION 18 ("CONFIDENTIAL INFORMATION AND SOURCE CODE ESCROW"), Contractor hereby grants to LADWP a perpetual, irrevocable, non-exclusive, royalty-free, fully paid up, non-transferable (except as provided in Subsection 24(j) ("Assignment")) license with respect to the Escrow Materials (including without limitation all Proprietary Rights therein) to use, execute, copy and modify such Escrow Materials solely as reasonably necessary or desirable in order to exercise the LADWP's rights under this Agreement. Notwithstanding anything to the contrary herein, however, LADWP understands and agrees that it shall not exercise the license granted in this Subsection 18(e)(ii) ("License Grant") with respect to the Escrow Materials unless and until the Escrow Materials are released to LADWP pursuant to the Escrow Agreement. **No Escrow is required by this Agreement.**

19. INTELLECTUAL PROPERTY AND DELIVERABLES INDEMNITY.

a) **Statement of Indemnity.** Contractor agrees that from and after the Effective Date it shall fully indemnify, defend and hold harmless the LADWP, the Board, and its and their affiliates, officers, directors, agents, employees, customers and assigns (the "Indemnified Parties") from and against any and all claims, losses, liabilities, damages and costs (including attorneys' fees and court costs) arising from or relating to any Deliverables or arising from or relating to any claim, demand, threat, suit or proceeding by any third party regarding the Deliverables, including without limitation any claims of injury to persons or property, or of intellectual property infringement or misappropriation, by any third party. The LADWP shall notify Contractor promptly of any third party claim in connection with the foregoing, shall cooperate reasonably with Contractor in connection therewith (at Contractor's expense), in the defense or settlement of the foregoing. The LADWP shall have the right at its own expense to be represented in any action related to the foregoing by counsel of its own choice, and shall cooperate reasonably with Contractor with respect to such litigation.

b) **Control.** In Contractor's defense of the LADWP, negotiation, compromise, and settlement of any foregoing infringement or misappropriation action, the LADWP shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

c) **Bonds.** Contractor understands and agrees that it shall, upon the LADWP's request, furnish a bond to the LADWP, in an amount as may be reasonable in the LADWP's judgment, against any and all loss, damage, costs, expenses, claims and liability

for any possible infringement or misappropriation.

d) Claims and Remediation. If Contractor receives notice of a claim, demand, threat, suit or proceeding regarding alleged intellectual property infringement or misappropriation by the Deliverables, or if in Contractor's judgment such a claim is likely, Contractor may, at its sole expense, procure for LADWP ownership of, or the right to continue using, the Deliverables, modify the Deliverables so that they are no longer infringing, or replace the Deliverables with other items of the same technical specifications and the same or better functionality and performance, which shall, upon acceptance by the LADWP, be considered Deliverables.

e) Use of Funds. Contractor certifies that it has appropriate systems and controls in place to ensure that LADWP funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

20. MAINTENANCE AND SUPPORT.

a) Hardware Maintenance. Commencing with the first day after the expiration of the Hardware warranty described in SECTION 21 ("WARRANTIES"), Contractor shall immediately commence providing Hardware Maintenance which shall consist of those activities and services described as such in EXHIBIT I ("HARDWARE MAINTENANCE/DELIVERABLES").

b) Software Maintenance. Commencing with the first day after the expiration of the Software warranty described in SECTION 21 ("WARRANTIES"), Contractor shall immediately commence providing Software Maintenance which shall consist of those activities and services described as such

in EXHIBIT J ("SOFTWARE MAINTENANCE"). **No Software Maintenance is required by this Agreement.**

c) Failure to Provide Maintenance. Any failure of Contractor to timely provide Maintenance hereunder shall thereupon immediately suspend any obligation of the LADWP to pay any Fees, and may, in addition and at the LADWP's option, be considered a material breach of this Agreement for purposes of SECTION 13 ("TERM AND TERMINATION").

d) Availability. Commencing with the Effective Date, and for five (5) years after the expiration or termination of this Agreement, whichever comes first, Contractor agrees that it shall continue to offer for sale to the LADWP, at commercially reasonable prices (and subject to Subsection 12(h) ("Most Favored Customer")), all Hardware supplies, materials and spare parts. To the extent that Contractor is not willing or able to comply with the foregoing obligation (and without waiving any rights or remedies the LADWP may have with respect thereto), Contractor shall provide to the LADWP its full cooperation and all documents, diagrams or designs necessary or useful to make, have made, use, lease, offer for sale, import and sell such Hardware supplies, materials and spare parts, and hereby grants to the LADWP a royalty-free, fully paid, worldwide, non-exclusive, non-transferable immunity under all intellectual property rights owned or licensable by Contractor in order to enable the LADWP to make, have made, use, lease, offer for sale, import and sell such Hardware supplies, materials and spare parts.

21. WARRANTIES.

a) Deliverables. Contractor hereby represents and warrants that the Deliverables (including without limitation all Hardware and Software, but not including Services) shall

materially conform to their corresponding Specifications (including without limitation all Documentation) in normal use for a period of three (3) years from the date of their acceptance by the LADWP. In the event of any breach of the foregoing warranty, the LADWP shall promptly notify Contractor, and Contractor shall immediately either replace or, if commercially reasonable, repair such non-conforming Deliverables, and provide the same immediately to the LADWP. Any failure of Contractor to carry out the foregoing in a manner reasonably satisfactory to the LADWP, may, at the LADWP's option, be considered a material breach of this Agreement for purposes of SECTION 13 ("TERM AND TERMINATION"). Any such repaired or replaced Deliverables shall continue to have the balance of their warranty period as hereinabove stated; provided, however, that such warranty period shall in no event be less than ninety (90) days. **No Deliverables are required by this Agreement.**

b) Services. Contractor represents and warrants that Contractor shall perform the Services in a professional and workmanlike manner, in accordance with the best practices of Contractor's industry, and in material conformity with corresponding Specifications (including without limitation all Documentation). In the event of any breach of the foregoing warranty, the LADWP shall promptly notify Contractor, and Contractor shall immediately re-perform the non-conforming Services. Any failure of Contractor to carry out the foregoing in a manner reasonably satisfactory to the LADWP, may, at the LADWP's option, be considered a material breach of this Agreement for purposes of SECTION 13 ("TERM AND TERMINATION").

c) General. Contractor represents and warrants that: **(i)** Contractor has full power and authority to enter into this Agreement and

the person signing the Agreement on Contractor's behalf has been duly authorized and empowered to enter into this Agreement; **(ii)** the Deliverables shall not contain any materials which are unlawful, defamatory, libelous, threatening, abusive, racist, vulgar, harassing, pornographic or obscene; **(iii)** Neither the Deliverables (including without limitation the provision of Services) nor any element thereof, infringes or shall infringe or misappropriate the intellectual property rights of any third party, including without limitation any patent, copyright, trademark or trade secret rights; **(iv)** the Deliverables shall not be subject to any restrictions, including without limitation any liens, mortgages, pledges, security interests, encumbrances, or encroachments; **(v)** Contractor is not under, and shall not enter into any, obligation or obligations inconsistent with the provisions of this Agreement; and **(vi)** Contractor shall not violate any law, statute, ordinance, or regulation in the course of its performance under this Agreement.

d) Viruses. Contractor represents and warrants that it has exercised and shall exercise its most diligent efforts to ensure that no viruses, "Trojan Horses", "Worms" or other damaging, dangerous or objectionable code (collectively, "Viruses") are included with the Deliverables. If at any time a Virus may be found to exist in or have emanated from the Deliverables, or any electronic data, information or report generated thereby, Contractor agrees, at its sole expense, to exercise its most diligent efforts (including but not limited to providing appropriate replacement products, software, installation, and diagnostic testing) to remove such Virus within five (5) days of LADWP's notice.

e) Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, CONTRACTOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING

BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

22. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL THE TOTAL LIABILITY OF EITHER PARTY UNDER THIS AGREEMENT EXCEED THE HIGHER OF ONE MILLION DOLLARS (\$1,000,000) OR THE TOTAL AGREEMENT PRICE, REGARDLESS OF THE CAUSE OF ACTION, IN TORT, CONTRACT OR OTHERWISE.

23. **SURVIVAL AND ORDER OF PRECEDENCE.** In the event of any expiration or termination of this Agreement, the provisions of Section 1 (“Definitions”), Subsection 3(b) (“No Obligation”), Section 13 (“Term and Termination”), Section 16 (“Records and Audit”), Section 17 (“Rights in Work Product and Licenses”), Section 18 (“Confidential Information and Source Code Escrow”), Section 19 (“Intellectual Property and Deliverables Indemnity”), Section 21 (“Warranties”), Section 22 (“Limitation of Liability”), Section 23 (“Survival and Order of Precedence”), and Section 24 (“General”) shall survive and shall continue to bind the parties. In the event of any conflict between the terms of this Agreement and the terms of any exhibit, the terms of the exhibit shall control. In the event of any conflict between the following documents, all of which are hereby incorporated by reference into this Agreement, the order of precedence shall be as follows:

- a. Latest Change Order
- b. Task Assignment
- c. Agreement
- d. Other referenced documents
- e. Response dated December 14, 2010

24. **GENERAL.**

a) **Governing Law.** This Agreement shall be governed in all respects by the laws of the United States of America and the State of California without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

b) **Attorneys’ Fees.** In the event any proceeding or lawsuit is brought by the LADWP or Contractor in connection with this Agreement, each party shall bear its own attorneys’ fees and costs.

c) **Forum.** Each party’s performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City of Los Angeles. The State and Federal Courts located in the City of Los Angeles shall have exclusive jurisdiction over any disputes under this Agreement, and the parties hereby submit to the personal jurisdiction of such courts.

d) **Injunctive Relief.** It is understood and agreed that, notwithstanding any other provisions of this Agreement, breach of the provisions of this Agreement by Contractor will cause the LADWP irreparable damage for which recovery of money damages would be inadequate, and that the LADWP shall therefore be entitled to obtain timely injunctive relief to protect the LADWP’s rights under this Agreement in addition to any and all remedies available at law.

e) **Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or five (5) days after deposit in the mail. Any such notice or report directed to the LADWP shall be delivered to:

**LOS ANGELES DEPARTMENT OF WATER
AND POWER**

Ethelinda Reyes
Contract Administrator
111 North Hope Street, Room B5A
Los Angeles, California 90012-2694

With a Copy To:

Chief Assistant City Attorney
111 North Hope Street, Room 340
Los Angeles, California 90012-2694

Any such notice or report directed to the Contractor shall be delivered to:

Opex Corporation
305 Commerce Drive
Moorestown, New Jersey 08057-4234

Either party, by written notice, may designate different or additional person(s) or different addresses.

f) Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

g) Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

h) Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the

limits of applicable law or applicable court decisions.

i) Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement.

j) Assignment. Neither this Agreement nor any rights or obligations of Contractor hereunder may be assigned by Contractor in whole or in part without the prior written approval of the LADWP. Such approval may be withheld for any reason or no reason as this Agreement is a personal services contract and was awarded to Contractor based on the qualities of Contractor. For the purposes of this **Subsection 24(j)** ("Assignment"), a change in the persons or entities who control fifty percent (50%) or more of the equity securities or voting interest of Contractor shall be considered an assignment of Contractor's rights and obligations. The LADWP's rights and obligations, in whole or in part, under this Agreement may be assigned by the LADWP. The LADWP may exercise full transfer and assignment rights in any manner at the LADWP's discretion.

k) Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

l) Relationship of the Parties. The Contractor is acting hereunder as an independent Contractor and not as an agent or employee of the LADWP. The Contractor shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the LADWP.

m) **Entire Agreement.** This Agreement together with the Exhibits hereto completely and exclusively states the agreement of the parties regarding its subject matter. This Agreement supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. The terms of any Shrink-Wrap Agreement accompanying any Software delivered to the LADWP hereunder shall, to the extent inconsistent with the terms of this Agreement, have no effect whatsoever. This Agreement shall not be modified except by a subsequently dated written amendment or exhibit signed on behalf of the LADWP and Contractor by their duly authorized representatives. Any purported oral amendment to this Agreement shall have no effect.

AGREED TO:

Los Angeles Department of Water and Power

By: _____
RONALD O. NICHOLS
General Manager

Date: _____

And: _____
BARBARA E. MOSCHOS
Secretary

Opex Corporation

By: _____

Title: Lingue Chow, Asst. Dir. Capital

Date: 5/22/2011

AFFIRMED AS TO FORM AND LEGALITY
CARMEN A. THUTANICH, CITY ATTORNEY
MAR 31 2011
BY _____
DIRK R. BROEREMA
DEPUTY CITY ATTORNEY

**EXHIBIT A
STATEMENT OF WORK**

1. EQUIPMENT SCHEDULE

a.) LADWP's Name: Los Angeles Department of Water and Power, acting by and through the Board of Water and Power Commissioners.

b.) The Equipment covered by this Maintenance Agreement is located at the following Site: 111 North Hope Street, Room B5A, Los Angeles, CA 90012.

c.) The Equipment covered by this Maintenance Agreement includes the machines described below:

- (a) Machine Description: Image Export Module (IEM)
Serial Number: X268
- (b) Machine Description: System 150
Serial Number: D346
- (c) Machine Description: Model 60
Serial Numbers: 60008, 600086, 600087, and 600088
- (d) Machine Description: Omaton 2100
Serial Number: ZB01213

2. SERVICE PRICING

Pricing for Year 1 of the Maintenance Agreement; based on 2011 rates:
Rates based upon prepayment annually in advance, per shift, per site:

<u>Description</u>	<u>2011 Unit Price</u>	<u>Qty</u>	<u>2011 Extended Price</u>
System 150 Base Machine (S/N D356)	29,670.00	1	29,670.00
Additional Stacker	3,100.00	1	3,100.00
Image Camera	3,510.00	2	7,020.00
Reorder Module	905.00	1	905.00
Enhanced COA Licensing Fee	1,845.00	1	1,845.00
Mark Sense Licensing Fee	990.00	1	990.00
Base Machine Licensing Fee	9,045.00	1	9,045.00
IEM (S/N X268)	25,430.00	1	25,430.00
2 nd Image Camera	3,510.00	1	3,510.00
Grayscale Licensing Fee	1,825.00	1	1,825.00
IEM Licensing Fee	7,230.00	1	7,230.00
Model 60 Extraction Desk (S/N 600088, 600085, 600086, and 600087)	1,810.00	4	7,240.00

Ovation 2100 Envelopener (S/N ZB01213)	390.00	1	390.00

Total Year 1			\$98,200.00

Pricing for Years 2 through 5 of the Maintenance Agreement shall be capped as follows:

Total Year 2	\$103,110.00
Note: Pricing on Year 2 shall not exceed a total increase of more than five percent (5%) from the above quoted pricing for Year 1.	
Total Year 3	\$108,265.00
Note: Pricing on Year 3 shall not exceed a total increase of more than five percent (5%) from Year 2.	
Total Year 4	\$115,844.00
Note: Pricing on Year 4 shall not exceed a total increase of more than seven percent (7%) from Year 3.	
Total Year 5	\$123,953.00
Note: Pricing on Year 5 shall not exceed a total increase of more than seven percent (7%) from Year 4.	

Pricing for Years 1 through 5 of the Maintenance Agreement for Consumable Costs¹ shall be capped as follows:

Total Year 1	\$1,000.00
Total Year 2	\$1,000.00
Total Year 3	\$1,000.00
Total Year 4	\$1,000.00
Total Year 5	\$1,000.00
	Freight charges: Net price

Note 1: Consumable Costs include supplies and replacement parts not covered under maintenance or not listed on **Exhibit A**. All consumable costs shall be charged to the Department, and shall become the property of the Department.

TOTAL FIVE-YEAR EXPENDITURES \$554,372.00

Billing Period	<u>9/13/11-</u> <u>9/12/12</u> Year 1	<u>9/13/12-</u> <u>9/12/13</u> Year 2	<u>9/13/13-</u> <u>9/12/14</u> Year 3	<u>9/13/14-</u> <u>9/12/15</u> Year 4	<u>9/13/15-</u> <u>9/12/16</u> Year 5
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3. GENERAL TERMS

Standard Maintenance Charge. Contractor's standard maintenance charge covers Maintenance Service for Equipment used on a "Single Shift Basis," defined to mean Equipment used on an average basis of no more than thirty-five (35) hours per week, fifty-two (52) weeks per year. ("Standard Maintenance Charge") Contractor's Standard Maintenance Charge (and other charges as discussed below) will be assessed based on the number of machines at LADWP's Site. Equipment usage by LADWP in excess of that covered by the Standard Maintenance Charge will be charged in accordance with the terms described below. Equipment usage is defined in the following Paragraph(s):

- Measurement of IEM Usage. IEM usage is determined by measuring the number of envelopes processed on a quarterly basis, with "quarterly" meaning every three (3) months or thirteen (13) weeks. IEM usage is calculated in the following manner: LADWP's mail volume is measured over a three (3) month period; this provides a quarterly reading for comparison purposes ("IEM Quarterly Reading"). The number of envelopes that can be processed by the Equipment on a Single Shift Basis is determined by taking the Equipment's average feed rate of 10,000 envelopes per hour (based upon a 7" envelope and 30 second average machine jam clearing time) and multiplying this figure by thirty-five (35) hours per week; this means that on average, the Equipment could process, on a Single Shift Basis, 350,000 envelopes per week, or 4,550,000 envelopes per quarter ("IEM Equipment Processing Average"). To the extent that LADWP's IEM Quarterly Reading exceeds the IEM Equipment Processing Average, LADWP's usage will be deemed to have exceeded that covered by the Standard Maintenance Charge.
- Measurement of System 150 Usage. System 150 usage is determined by measuring the number of envelopes processed on a quarterly basis, with "quarterly" meaning every three (3) months or thirteen (13) weeks. System 150 usage is calculated in the following manner: LADWP's mail volume is measured over a three (3) month period; this provides a quarterly reading for comparison purposes ("System 150 Quarterly Reading"). The number of envelopes that can be processed by the Equipment on a Single Shift Basis is determined by taking the Equipment's average feed rate of 10,000 envelopes per hour (based upon a 7" envelope and 20 second average machine jam clearing time) and multiplying this figure by thirty-five (35) hours per week; this means that on average, the Equipment could process, on a Single Shift Basis, 350,000 envelopes per week, or 4,550,000 envelopes per quarter ("System 150 Equipment Processing Average"). To the extent that LADWP's System 150 Quarterly Reading exceeds the System 150 Equipment Processing Average, LADWP's usage will be deemed to have exceeded that covered by the Standard Maintenance Charge.
- Measurement of Model 60 and/or Omaton Usage. Equipment usage will be periodically examined by Contractor on a quarterly basis. Model 60's and/or Omaton used on an average basis of thirty-five (35) hours per week or less shall be

deemed to be used on a Single Shift Basis. In the event Contractor determines, in its reasonable discretion, that usage of Model 60's and/or Oration exceeds Single Shift Basis, Contractor will discuss its determination with LADWP prior to billing LADWP for such additional usage, with any additional usage billing based upon Contractor's published terms and rates then in effect.

Equipment Usage Charge. Actual Equipment usage shall be measure by Contractor at the end of each quarter, using the usage formulas described above. To the extent that the Equipment is used on a basis greater than Single Shift Basis, LADWP shall pay to Contractor an additional charge, and the additional charge shall be billed in a minimum of half-shift increments only. For each additional half-shift increment of usage in excess of Single Shift Basis, LADWP shall pay Contractor an additional usage charge in the amount of 25% of Contractor's Standard Maintenance Charge ("Additional Usage Charge").

4. EQUIPMENT COVERED

Equipment covered under this Agreement is defined in the Schedule Section as "Equipment Schedule." Contractor shall furnish Maintenance Service as defined in "Exhibit I" on machines listed on the schedule at LADWP's equipment site. Upon mutual agreement between the parties, and pursuant to the terms herein, equipment may be added or deleted from the Equipment Schedule from time to time. All Maintenance Service shall be provided in consideration for the payment of Contractor's maintenance charges, plus all sales and use taxes and such other governmental charges as may be imposed on the provision of goods and services hereunder. Service rates for the first year of this Agreement are detailed on "Service Pricing." This Agreement specifically excludes Contractor's Networking Solution Product and any Open Scan Product(s). Any Maintenance Service provided by Contractor to LADWP on Contractor's Networking Solution Product will be provided on a time and materials basis only, according to Contractor's published terms and rates then in effect for such service.

5. EQUIPMENT NOT PREVIOUSLY COVERED

With respect to any equipment which has not been continuously covered by a maintenance contract with Contractor since the expiration of its new machine warranty period, LADWP shall, as a condition of receiving Maintenance Service under this Agreement, make the equipment available to Contractor so that Contractor may ascertain whether the Equipment is in good operating condition and repair. In the event that Contractor in its reasonable discretion determines that the equipment is not in good operating condition and repair, PADLW agrees to allow Contractor, at LADWP's expense, to repair and restore such Equipment, at Contractor's standard rates, to good operating condition and repair.

6. ROUTINE CLEANING

The day-to-day routine cleaning and minor adjustments on the Equipment, as described in both Contractor's Equipment Operating Manuals and other supplementary material which may be furnished by Contractor to LADWP from time to time, shall be performed by operating personnel of LADWP at LADWP's Site. Contractor will notify LADWP in writing if the

LADWP fails to perform routine cleaning on the Equipment. Once LADWP receives such notice, failure to provide routine cleaning may result in termination of this Agreement.

7. ON-CALL MAINTENANCE SUPPORT

The Contractor's on-call maintenance program (OCMP) shall include all labor and replacement parts, excluding consumable items, necessary to maintain all of the equipment in good operating condition. The OCMP shall be performed at LADWP's site, and shall be divided into two parts: Preventative Maintenance Calls and Demand Calls, as detailed below.

Preventative Maintenance Calls: Contractor shall provide regular schedule of preventative maintenance (PM) calls for the System 150, IEM, Model 60, and Omaton 2100 on an annual basis and shall schedule the performance of the PM prior to the commencement of each election.

Demand Calls: LADWP shall have unlimited demand calls during the contracted service coverage period. When LADWP calls for a demand call, Contractor's service technician shall exert all reasonable efforts to arrive at the equipment site within four (4) hours for the Model 60 and the Omaton 2100, and two (2) hours for the System 150 and IEM, from the inception of the call, during Contractor's standard hours of coverage of 7:00 AM – 3:00 PM, Monday – Friday, excluding Contractor's holidays.

Upon completion of a PM call and/or demand call, Contractor shall furnish a summary of the Maintenance Service provided to LADWP. The Field Service Report shall contain the following information: (1) date and time of arrival; (2) specific identification of the Contractor's product serviced; (3) time of Maintenance Service; (4) description of the malfunction (if any); and (5) list of parts replaced. Only new standard parts or parts of equal quality shall be used in providing Maintenance Service.

EXHIBIT B
GOVERNMENT AND INSURANCE TERMS

1. Business Policies.

1.1 Los Angeles Department of Water and Power's Recycling Policy.

A. The LADWP of Water and Power supports the use of recycled-content products of all types. Recycled-content products help conserve natural resources, including water and energy, and reduce demands upon landfills.

B. The Contractor shall submit all written documents on paper with a minimum of 30 percent post-consumer recycled content. Existing company/corporate letterhead/stationery that accompanies these documents is exempt from this requirement. Documents of two or more pages in length shall be duplex-copied (double-sided pages). Neon or fluorescent paper shall not be used in any written documents submitted to the LADWP.

1.2 Affirmative Action.

A. During the performance of any contract, the Contractor shall not discriminate in its employment practices against any employee or applicant for employment because of race, religion, national origin, ancestry, sex, age or physical handicap. All subcontracts awarded under any such contract shall contain a like nondiscrimination provision. The applicable provisions of Executive Order No. 11246 of September 24, 1965; Part 60-741 of 41 CFR pertaining to handicapped workers, including 60-741.4 Affirmative Action Clause; and Sections 10.8 to 10.13 of the Los Angeles Administrative Code pertaining to nondiscrimination in employment in the performance of City contracts are incorporated herein by reference and made a part hereof as if they were fully set forth herein.

1.3 Minority and Women Business Enterprise (MBE/WBE)

A. It is the policy of the LADWP to provide Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs) and all other business enterprises an equal opportunity to participate in the performance of all LADWP contracts. The Contractor shall assist the LADWP in implementing this policy and to ensure that all available business enterprises, including MBEs and WBEs, have an equal opportunity to compete for and participate in the work of this Agreement.

B. "Minority Business Enterprise" (MBE) or "Women's Business Enterprise" (WBE), as used herein means a business enterprise that meets both of the following criteria:

I. A business that is at least 51 percent owned by one or more minority person(s) or women or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minority person(s) or women.

II. A business whose management and daily business operations are controlled by one or more minority person(s) or women.

1.4 Service Contract Worker Retention And Living Wage Policy.

A. General Provisions. This contract is subject to the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et. seq., and the Living Wage Ordinance (LWO), Section 10.37 et. seq., of the Los Angeles Administrative Code. The Ordinances require that, unless specific exemptions apply, employers who are awarded service contracts that involve expenditures in excess of \$25,000, and have a duration of at least three months; and any persons who receive City financial assistance of one million dollars or more in any 12-month period, shall comply with the following provisions of the ordinances: (Retention for a 90-day transition period, the employees who were employed for the preceding 12 months or more by the terminated Contractor or subcontractor, if any, as provided for in the SCWRO; Payment of a minimum initial wage rate to employees as defined in the LWO, of \$8.27 per hour, with health benefits of at least \$1.25 per hour, or otherwise \$9.52 per hour without benefits.

B. Termination Provisions. Under the provisions of Section 10.36.3(c) and Section 10.37.5 (c) of the Los Angeles Administrative Code, the LADWP of Water and Power, shall have the authority, under appropriate circumstances, to terminate this contract and otherwise pursue legal remedies that may be available, if the LADWP of Water and Power determines that the subject Contractor or financial assistance recipient violated the provisions of the referenced Code Section.

C. Invoice Provisions. All invoices related to SCWRO and LWO Contracts shall contain the following statement: "The Contractor fully complies with Section 10.36 et. and Section 10.37 et. seq., SCWRO and LWO, respectively, of the Los Angeles Administrative Code."

1.5 Child Support Policy. The Contractor and any Subcontractor(s) must fully comply with all applicable State and Federal employment reporting requirements for the Contractor's and any Subcontractor(s)' employees. The Contractor and any Subcontractor(s) must fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. The Contractor and any Subcontractor(s) must certify that the principal owner(s) thereof (any person who owns an interest of 10 percent or more) are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. The Contractor and any Subcontractor(s) must certify that such compliance will be maintained throughout the term of the Contract. Failure of the Contractor and/or any Subcontractor(s) to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under the Contract. Failure of the Contractor and/or any Subcontractor(s) or principal owner(s) thereof to cure the default within 90 days of notice of such default by the City shall subject the Agreement to termination.

2. Insurance Requirements.

2.1 Insurance

It is the policy of Los Angeles Department of Water and Power (LADWP) that upon the award of a contract, the selected Bidder/Bidder/Tenant must provide evidence of insurance that conforms to the insurance requirements of the bid/proposal/agreement. Insurance requirements are explained in detail in the attached language and "Contract Insurance Requirements" sheet, which specifically outlines the types and amounts of coverage required for this project/tenancy. For your information and use, "Special Endorsement Forms", "Guidance for Submitting Evidence of Insurance" and information on our insurance program for small vendors are available on our website.

When and if you are awarded a contract/agreement, acceptable evidence of required insurance, from insurers acceptable to the LADWP, will be required to be submitted within 30-days of the date of award and maintained current throughout the term of the contract. Said evidence of insurance must be on file with the Risk Management Section in order to receive payment under any contract for services rendered, and in order to commence work/tenancy under your contract.

2.2 Additional Insured Status Required

Contractor/Vendor shall procure at its own expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified on the attached Contract Insurance Requirements page. The specified insurance shall also, either by provisions in the policies, by City's own endorsement form or by other endorsement attached to such policies, include and insure City, its Department of Water and Power, its Board of Commissioners (hereinafter referred to as "Board"), and all of its officers, employees and agents, their successors and assigns, as Additional Insured (except for Professional Liability and Workers' Compensation), against the area of risk described herein as respects Contractor's/Vendor's acts or omissions in its performance of the agreement, hereunder or other related functions performed by or on behalf of Contractor/Vendor. Such insurance shall not limit or qualify the liabilities and obligations of the Contractor/Vendor assumed under the contract.

2.3 Severability of Interests and Cross Liability Required

Each specified insurance policy (other than Workers' Compensation and Employers' Liability and Property coverages) shall contain a Severability of Interest and Cross Liability clause which states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability," and a Contractual Liability Endorsement which shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."

2.4 Primary and Non-Contributory Insurance Required

All such insurance shall be Primary and Noncontributing with any other insurance held by City's Department where liability arises out of or results from the acts or omissions of Contractor/Vendor, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Contractor/Vendor. Any insurance carried by the LADWP which may be applicable shall be deemed to be excess insurance and the Contractor's/Vendor's insurance is primary for all purposes despite any conflicting provision in the Contractor's/Vendor's policies to the contrary.

2.5 Deductibles Subject to LADWP's Discretion

Deductibles and/or self-insured retentions shall be at the sole discretion of the Risk Manager of the LADWP (hereinafter referred to as "Risk Manager"). The LADWP shall have no liability for any premiums charged for such coverage(s). The inclusion of the LADWP, its Board, and all of its officers, employees and agents, and their agents and assigns, as additional insured, is not intended to, and shall not, make them, or any of them a partner or joint venture with Contractor/Vendor in its operations.

2.6 Proof of Insurance for Renewal or Extension Required

At least ten (10) days prior to the expiration date of any of the policies required on the attached Contract Requirement page, documentation showing that the insurance coverage has been renewed or extended shall be filed with the LADWP. If such coverage is canceled or reduced in coverage, Contractor/Vendor shall, within fifteen (15) days of such cancellation or reduction of coverage, file with the LADWP evidence that the required insurance has been reinstated or provided through another insurance company or companies.

2.7 Submission of Acceptable Proof of Insurance and Notice of Cancellation

Contractor shall provide proof to the LADWP's Risk Manager of all specified insurance and related requirements either by production of the actual insurance policy(ies), by use of LADWP's own endorsement form(s), by other written evidence of insurance acceptable to the Risk Manager, but always in a form acceptable to the Risk Manager and the Office of the City Attorney. The documents evidencing all specified coverages shall be filed with the LADWP prior to Contractor beginning operations hereunder. Said proof shall contain at a minimum, the applicable policy number, the inclusive dates of policy coverages, the date the protection begins for the Department of Water and Power, and the insurance carrier's name. It shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, material reduction in coverage or non-renewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) calendar days prior to the effective date thereof. The notification shall be sent by registered mail to: The Office of the City Attorney, Water and Power Division, Post Office Box 51111, JFB Room 340, Los Angeles, California 90051-0100.

2.8 Claims-Made Insurance Conditions

Should any portion of the required insurance be on a "Claims Made" policy, the Contractor/Vendor shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended three (3) years discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

2.9 Failure to Maintain and Provide as Cause for Termination

Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which the LADWP may immediately terminate or suspend the agreement.

2.10 Sub-Contractor Compliance

The Contractor/Vendor shall be responsible for all sub-contractors'/sub-vendors' compliance with the insurance requirements.

2.11 Periodic Right to Review/Update Insurance Requirements

The LADWP and Contractor/Vendor agree that the insurance policy limits specified on the attached Contract Insurance Requirements page may be reviewed for adequacy annually throughout the term of this Agreement by the Risk Manager/City Attorney, who may thereafter require Contractor/Vendor to adjust the amounts and types of insurance coverage however the Risk Manager/City Attorney deems to be adequate and necessary. City reserves the right to have submitted to it, upon request, all pertinent information about the agent and carrier providing such insurance, including applicable license and ratings.

2.12 Specific Insurance Requirements

The Bidder shall confirm to the requirements listed in the "Contract Insurance Requirements" sheet per **Exhibit L**.

2.13 Indemnification

The Contractor undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers and employees, and, at the option of the LADWP, defend the LADWP, and any and all of their Boards, officers, agents, representatives, employees, assigns and successors in interest from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including contractor's employees and agents, or damage or destruction to any property of either party hereto, or third persons in any manner arising by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this contract on the part of the contractor, or the contractor's officers, agents, employees, or subcontractors of any tier, except for the active negligence or willful misconduct of the LADWP, its Board, officers, agents, representatives or employees.

**EXHIBIT C
ESCROW AGREEMENT**

NO ESCROW AGREEMENT IS REQUIRED BY THIS AGREEMENT

EXHIBIT D
CONTRACTOR'S QUALITY ASSURANCE PROGRAM

NO CONTRACTOR'S QUALITY ASSURANCE IS REQUIRED BY THIS AGREEMENT

EXHIBIT E
BACKGROUND TECHNOLOGY

NO BACKGROUND TECHNOLOGY IS REQUIRED BY THIS AGREEMENT

**EXHIBIT F
RESPONSE**

Opex Corporation's proposal dated December 14, 2010 is hereby incorporated by reference.

**EXHIBIT G
INVOICE CRITERIA**

Los Angeles Department of Water and Power

NOTE: ANY FEE PAYMENTS MADE IN EXCESS OF FEES ACTUALLY OWED TO CONTRACTOR ARE NULL AND VOID, SHALL BE DEDUCTED FROM FUTURE FEE PAYMENTS AND/OR RETENTION, AND MAY RESULT IN LIABILITY FOR DAMAGES FOR PRESENTING FALSE CLAIMS

INVOICE PREPARATION CHECKLIST

ANY "NO" ANSWERS MAY RESULT IN THE DELAY OF PAYMENT

	<u>YES</u>	<u>NO</u>
1. Are you sending your invoice in triplicate to: (unless other specific instructions appear on your Purchase Order [PO])	_____	_____
Accounts Payable Business Unit Los Angeles Department of Water and Power City of Los Angeles PO Box 51211, Room 424 Los Angeles, CA 90051-5511		
<i>(NOTE: Delivery slips and invoices delivered with goods will not initiate payment)</i>		
2. Is your firm's invoice name exactly the same as on the PO/SPO?	_____	_____
3. Does your invoice, delivery slip, credit memo, or correspondence have		
a. Your correct vendor number?	_____	_____
b. The correct PO/SPO number?	_____	_____
c. Your Business Tax Registration Certificate Number or Vendor Requisition Number?	_____	_____
4. Have all materials/services been delivered?	_____	_____
5. Do invoice prices and quantities agree with the PO/SPO?	_____	_____
6. Does each billed item indicate the corresponding number on the PO/SPO? (Payment will not be made for any item or charges such as freight, restocking, etc. if not specifically allowed for in the PO.)	_____	_____
7. If freight charges are authorized in the PO, are you, and not the freight company, billing for the charges?	_____	_____

8. Are all taxes stated separately? (DWP is not exempt from payment of sales tax. Out-of-State vendor: Please indicate if California sales/use tax should be paid directly to the State of California.)

9. Is your invoice submitted in accordance with contract terms?

10. Does your invoice number appear on any credit memo?

**EXHIBIT H
PRIOR WORK PRODUCT**

NO PRIOR WORK PRODUCT IS REQUIRED BY THIS AGREEMENT

EXHIBIT I
HARDWARE MAINTENANCE/DELIVERABLES

1. MAINTENANCE SERVICE.

1.1 Maintenance Service, Generally. Maintenance Service ("Maintenance Service") shall include all labor and replacement parts necessitated by normal wear and tear from operation of the Equipment and necessary to maintain the Equipment in good operating condition. The Equipment shall be made available, subject to LADWP's reasonable security procedures and policies, to Contractor for the purpose of lubricating, testing, and adjusting the Equipment. Maintenance Service shall also include, during designated Service Coverage Hours (as "Service Coverage Hours" are defined below), programming of the Equipment for jobs of different specifications, provided that the Equipment has been designed to accommodate such specifications.

1.2 Definition of LADWP's Equipment Site(s). For purposes of this Maintenance Agreement, and as relates solely to LADWP's System 150, with IEM, Omaton and Model 60's ("Equipment"), "Site" is defined as the one (1) floor within LADWP's premises where a particular machine covered hereunder is physically located as of the date it is first covered by this Maintenance Agreement. As relates to all other Equipment, "Site" is defined as the exact physical location within LADWP's premises where the Equipment is assembled, installed and operated by the LADWP for the first time. Equipment moved to a different Equipment "Site" (as defined in this Paragraph) is subject to the maintenance limitations of this Maintenance Agreement.

1.3 Service Calls. Preventive maintenance calls are those periodic Maintenance Service calls initiated by Contractor to keep the Equipment operating in accordance with Contractor's published Specifications ("Preventive Maintenance Calls"). Demand maintenance calls are those Maintenance Service Calls initiated by LADWP to request that Contractor repair Equipment that is malfunctioning or not operating in accordance with the Contractor's published performance specifications for each type of machine ("Demand Calls"). The minimum number of Preventive Maintenance Calls for each machine covered by this Agreement is described in the following chart. Demand Calls in excess of the maximum may be billed at Contractor's published labor rates for such Maintenance Service then in effect, but there will be no additional charges for parts. A Preventive Maintenance Call may be performed in conjunction with a Demand Call placed by LADWP, depending upon, and at the discretion of, Contractor's Service Technician. (Note: "unltd" in the chart below = "unlimited calls")

Machine Type	150 / IEM	Model 60	Omaton
Demand	Unltd	5	unltd
Preventive Maintenance	12	12	4

1.4 Malfunction Incident Report. Contractor shall furnish a summary of the service provided to the LADWP upon completion of each Maintenance Service call ("Malfunction Incident Report"). The Malfunction Incident Report shall contain the following

information: (1) Date and time of arrival of Contractor's service technician; (2) Type, model number(s), and serial number(s) of units of Equipment serviced; (3) Time spent for repair; (4) Description of the malfunction (if any); and (5) List of parts replaced.

1.5 Response Times. For the System 150, IEM, MPS 30/40, Compass, and MPE 5.0/7.5 Equipment (collectively "Capital Equipment"), Contractor shall exert all reasonable efforts to respond to Demand Call requests within two (2) hours after such call is received by Contractor, during the designated Service Coverage Hours. For all other Equipment, Contractor shall exert all reasonable efforts to respond to Demand Call requests within four (4) hours after such call is received by Contractor, during the designated Service Coverage Hours. For a LADWP Site with System 150 and IEM Equipment, Maintenance Service may be provided on an "On Site" basis, defined as Maintenance Service provided by Contractor physically located at, and solely dedicated to, LADWP's Equipment Site. On Site coverage service will be billed to LADWP at additional cost according to Contractor's published rates and terms then in effect.

1.6 Parts. Only new standard parts or parts of equal quality shall be used in providing Maintenance Service.

1.7 Title to Replacement Parts. Title to all replacement parts provided pursuant to this Maintenance Agreement will pass to LADWP upon installation thereof. Title to replacement parts not provided as part of routine Maintenance Service will pass to LADWP upon payment in full for the part(s).

2. SERVICE COVERAGE HOURS.

2.1 Service Coverage Hours, Generally. All Equipment located at a particular LADWP Site must be maintained during the same maintenance service schedule. Maintenance Service will only be delivered by Contractor within the following guidelines:

2.2 Service Coverage Hours, LADWP Site with System 150. Contractor shall provide Maintenance service to LADWP during one consecutive five (5) day per week period, eight (8) consecutive hours per day ("Service Hours"), excluding Contractor holidays as described in Paragraph 2.4 below ("Basic Period"). LADWP shall designate the Coverage Hours, which shall be the same each day of the Basic Period, and for all Equipment located at LADWP's Site. Each Equipment Site of LADWP may determine, in its sole discretion, the Service Hours for Maintenance Service on Equipment at that Site. In the event that LADWP shall request that Contractor increase on a regular basis the number of Service Hours during which Contractor shall provide Maintenance Service at any Site ("Extended Basic Period"), LADWP shall pay to Contractor an additional charge; provided that such increase in the provision of Maintenance Services shall be billed in a minimum of half-shift increments only. For each additional half-shift increment of coverage, LADWP shall pay to Contractor an additional charge in the amount of 25% of the Standard Maintenance Charge ("Additional Service Charge"). Changes in the Service Hours may be made as follows:

2.2.1 Changes in Basic Period. LADWP shall have the right to change the hours of the Basic Period or the Extended Basic Period at any Site upon providing Contractor

fifteen (15) days' prior written notice in the event of a change not exceeding four (4) hours, or thirty (30) days' prior written notice in the event of a change of four (4) hours or more.

2.2.2 Increasing or Decreasing Basic Period. LADWP shall have the right to increase or decrease the number of Service Hours at any Site upon providing Contractor with at least thirty (30) days' prior written notice in the event of an increase or decrease not in excess of four (4) hours, or upon at least sixty (60) days' prior written notice in the event of an increase or decrease of four (4) hours or more. In no event shall LADWP have the right to decrease the Basic Period to less than forty (40) hours. All hours during which Maintenance Services will be provided must be contiguous.

2.3 Service Coverage Hours, LADWP Site Without a System 150. Contractor shall provide Maintenance Service to LADWP pursuant to this Maintenance Agreement during the hours of 7:00 AM to 3:00 PM, Monday through Friday, excluding Contractor holidays as described in Paragraph 2.4 below.

2.4 Contractor's Holidays. Contractor observes the following holidays: New Year's Day; President's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday After Thanksgiving; and Christmas Day. The list of holidays observed by Contractor is subject to change without notice, and an updated list will be forwarded to LADWP annually upon request. Upon providing Contractor with at least thirty (30) days' advance written notice, and subject to Contractor's approval, LADWP shall have the option to contract for Maintenance Service on Contractor's holidays. Services provided on Contractor's holidays will be rendered according to Contractor's published rates and terms then in effect.

2.5 "Weekend" Coverage. Subject to Contractor's approval, LADWP shall have the option to contract for the provision of Maintenance Services on the two days per week not covered pursuant to either Paragraph 2.2 or Paragraph 2.3 above, whichever is applicable ("Weekend Coverage"), upon providing thirty (30) days' prior written notice to Contractor. LADWP shall pay Contractor's standard, annual Weekend Coverage service fee ("Weekend Coverage Availability Fee"), based upon Contractor's published rates for such service then in effect, for each Site at which it desires Weekend Coverage. In addition to the Weekend Coverage Availability Fee, Contractor will bill LADWP for all Maintenance Service calls LADWP places on the Weekend on a per call basis at 1 and 1/2 times Contractor's hourly rate for Maintenance Services then in effect, portal-to-portal, with a two (2) hour minimum charge per Maintenance Service call.

**EXHIBIT J
SOFTWARE MAINTENANCE**

NO SOFTWARE MAINTENANCE IS REQUIRED BY THIS AGREEMENT

EXHIBIT K
RIGHT TO AUDIT CLAUSE

1. **Right to Audit:** The Contractor and the Contractor's subcontractors and suppliers shall be subject at any time with forty-five (45) calendar days prior written notice to audits by the Department or the Department's agents, collectively defined as "Authorized Auditors", relating to all billings and to verify compliance with all contract requirements relative to practices, methods, procedures, and documentation. The Authorized Auditors shall have access to all records and data relating to the contract. The audits will be performed using generally accepted accounting practices and principles. The Contractor shall maintain and the Authorized Auditors will have the right to examine and audit all books, records, documents, accounting procedures and practices, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred or anticipated to be incurred in performing the Contract. Any information provided on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The Contractor shall not, however, be required to furnish the Authorized Auditors with commonly available software. If the Contractor, the Contractor's subcontractors and/or suppliers are required to submit cost or pricing data in connection with the Contract and/or the Contract Amendment, the Authorized Auditors will have the right to examine all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. The Authorized Auditors will also have the right to reproduce, photocopy, download, transcribe, and the like any such records. The Contractor shall make said evidence or to the extent accepted by the Authorized Auditors, photographs, micro-photographs etc. or other authentic reproductions thereof available to the Authorized Auditors at the Contractor's offices at all reasonable times and without charge. The Contractor and the Contractor's subcontractors and suppliers shall keep and preserve all such records for a period of not less than 3 years from and after Final Payment or, if the Contract is terminated in whole or in part, until 3 years after final Contract closeout.

All Changes are subject to audit. Changes with an absolute value of one hundred thousand (\$100,000) dollars or more shall require an audit. The City may waive the right to audit where there was adequate price competition, an established catalog or market prices for commercial items sold in substantial quantities to the public, and/or prices set by law or regulation.

For a period of 3 years from the date of Final Payment under the Contract, and prior to the execution of any Contract Amendment that exceeds an absolute value of one hundred thousand dollars (\$100,000), the Authorized Auditors will have the right to examine all books, records, documents, and any other applicable data or evidence that relate to the negotiation and/or performance of the Contract and/or a contract amendment for the purpose of evaluating the accuracy and completeness of the cost or pricing data submitted by the Contractor. To the extent that the examination reveals inaccurate, incomplete, or non-current data, the data shall be considered defective; if the audit indicates the Contractor has been overpaid under a previous payment application, such overpayment, after 10 calendar days notice to the Contractor, shall be paid to the Department.

The Authorized Auditors may require that the Contractor supply appropriate documentation to support the costs or prices proposed for a Contract amendment, including a change order, and will refuse to complete negotiations until satisfactory documentation is submitted. The Contractor's books, records, documents and any other applicable data or evidence that relate to the negotiations and/or performance of the contract amendment shall be subject to audit and inspection.

Also subject to audit shall be the Contractor's records, books, documents and any other applicable data or evidence relating to those items on a billing that relates to:

- a. Work performed under the contract and/or a change order;
- b. Goods not yet incorporated into the work;
- c. Services or work performed under a contract amendment negotiated on an indefinite quantity basis; and
- d. Fixed-price change orders to validate the claimed percentage of completion on the payment application.

Notwithstanding the foregoing, if the audit reveals that the overpayment is equal to or greater than 10% of the billing, the Contractor shall pay all reasonable expenses and costs incurred by the Authorized Auditors arising out of or related to the audit up to the amount of the overpayment.

EXHIBIT L
CONTRACT INSURANCE REQUIREMENTS

EXHIBIT M
SECURITY REQUIREMENTS

"The Vendor (Contractor) is required to adhere to all Department physical and cyber-related security policies, standards, requirements and procedures (collectively, "Security Requirements"), applicable to the project. All Vendor personnel, equipment, products, services, and sub-contractors involved with the work must adhere to all applicable Security Requirements throughout the duration of the agreement or any extensions or amendments thereof. Security Requirements may be imposed by Department policy, or by Federal, State or Local laws, regulations or industry practices, including, without limitation, requirements that may be imposed by the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), the Western Electricity Coordinating Council (WECC) and the Department of Energy (DOE). Inability to meet the Department's Security Requirements may be considered when evaluating the Vendor (Contractor) for consideration and award of agreements and projects, including extensions or amendments to existing agreements. As security regulations and practices change over time, amendments and extensions to existing agreements may include additional Security Requirements not present in earlier agreements. "