

0150-09697-0001

TRANSMITTAL

TO
The Council

DATE

COUNCIL FILE NO.

MAR 14 2013

FROM
The Mayor

COUNCIL DISTRICT

**Proposed Contract with Gartner, Incorporated
for Information Technology Research and Advisory Subscription Services**

Transmitted for your consideration.
See the City Administrative Officer report attached.


MAYOR

MAS:MAF:11130018c

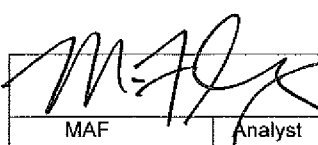
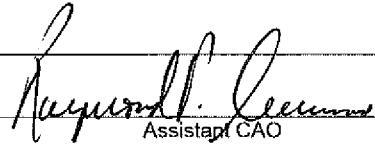
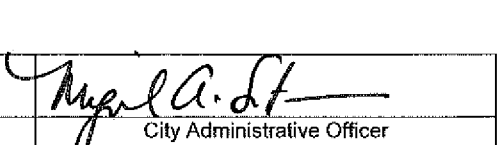
Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
 (\$25,000 or Greater and Longer than Three Months)

To: The Mayor		Date: 03/07/2013	C.D. No. All	CAO File No.: 0150-09697-0001			
Contracting Department/Bureau: Information Technology Agency			Contact: Laura Ito, 213.978.3322				
Reference: Request from the Mayor for report dated January 3, 2013							
Purpose of Contract: To subscribe to information technology research and advisory services							
Type of Contract: (x) New contract () Amendment			Contract Term Dates: Three years effective July 1, 2012 through June 30, 2015				
Contract/Amendment Amount: \$951,735 (Not to exceed \$288,735 in 2012-13; \$318,000 in 2013-14; and \$345,000 in 2014-15)							
Proposed amount \$951,735 + Prior award(s) \$0 = Total \$951,735							
Source of funds: Funding is provided within each user Department's Contractual Services Account.							
Name of Contractor: Gartner, Incorporated							
Address: 56 Top Gallant Road, Stamford, CT 06902							
	Yes	No	N/A*	8. Contractor has complied with:	Yes	No	N/A*
1. Council has approved the purpose	X			a. Equal Employmt. Oppty./Affirm. Action	X		
2. Appropriated funds are available	X			b. Good Faith Effort Outreach**			X
3. Charter Section 1022 findings completed	X			c. Equal Benefits Ordinance	X		
4. Proposals have been requested		X		d. Contractor Responsibility Ordinance	X		
5. Risk Management review completed	X			e. Slavery Disclosure Ordinance	X		
6. Standard Provisions for City Contracts included	X			f. Bidder Certification CEC Form 50	X		
7. Workforce that resides in the City: <1 %				*N/A = not applicable ** Contracts over \$100,000			

COMMENTS

The Information Technology Agency (ITA) requests authority to execute a contract with Gartner, Incorporated (Gartner) to provide information technology (IT) research and advisory subscription services. ITA indicates that the various subscriber City departments rely upon the technical guidance provided by Gartner for IT procurement and deployment decision making. The proposed contract compensation totals \$951,735 over a three-year term retroactive to July 1, 2012 through June 30, 2015. The Fiscal Year 2012-13 expenditure is not to exceed \$288,735, which includes various subscription services for ITA (\$129,213), the Department of Water and Power (\$100,221), the Fire Department (\$12,094), the Department of Building and Safety (\$6,047), the Department of General Services (\$6,047), and the Department of Public Works, Bureau of Sanitation (\$35,113).

Gartner has been providing subscription services to various City departments since 1998. The most recent Gartner subscription services were provided through City Contract C-120248, which was effective for a one-year term expiring June 30, 2012. ITA previously indicated that the Department intended to release a Request for Proposals (RFP) in order to complete a new competitive procurement process to select a successor IT research and advisory services provider. ITA now indicates that while the RFP was being prepared, Gartner provided the Department information regarding a competitive procurement process for IT research services completed by the State of Kansas (Kansas), pursuant to which Gartner was selected as the successful proposer. The Kansas contract is effective for a term of five years from July 29, 2011 through July 30, 2016. ITA proposes to "piggyback" on the competitive procurement process completed by Kansas and execute a new contract with Gartner. ITA indicates that Gartner has continued providing the City subscription

 MAF	 Assistant CAO	 City Administrative Officer
---	--	--

services subsequent to the expiration of Contract C-120248, and therefore requests that the proposed contract term be retroactive to July 1, 2012 in order to pay for the services provided to date.

Under the terms of the proposed contract, the various subscriber City departments will have access to Gartner's proprietary IT research and resources through a web-portal, forums, and webinars designed exclusively for subscribers. Subscriber access is provided in varying levels, including Reference (\$6,047 annual subscription fee), Advisor (\$9,219), Information Technology Leaders (\$13,800), and Chief Information Officer (CIO) Signature (\$80,300). Each access level provides additional services, with the CIO Signature level providing executive workshops, on-site meetings, and strategy briefings. The City departments each have varying levels of access, as detailed on pages two and three of the proposed contract, for a total expenditure not to exceed \$288,735 during 2012-13. The subscription fees under the proposed contract for the Reference and Advisor subscriptions are approximately 50 percent less than the fees provided within the Kansas contract, as Gartner provided the City additional discounts in order to more closely match the fees under Contract C-120248. The fees do represent a volume pricing discount available to the City as a result of purchasing at least 25 subscriptions. The proposed contract provides for 29 total subscriptions; if the subscriptions decrease to fewer than 25, the City's fee per subscription type will increase.

The subscription fees will be subject to increases of up to three percent per year for the second and third years of the proposed contract. ITA has proposed a total three-year contract compensation not to exceed \$951,735, or \$288,735 during 2012-13, \$318,000 in 2013-14, and \$345,000 in 2014-15. The 2013-14 and 2014-15 amounts will allow for the potential three percent annual fee increase as well as provide minimal flexibility in the event City departments would like to change or add subscription services. The subscription fees under the proposed contract average approximately four percent higher than the fees under Contract C-120248, which totaled \$278,280 for the same level of subscriptions. Each department funds its own subscription fees(s) and pays Gartner directly for the subscription services.

As a recognized leader in technology research, market information, intelligence, and analysis, Gartner is uniquely positioned to provide cost benefit information and current data to assist the City with strategic IT decision-making. As subscribers, City departments have access to this research and to the knowledgeable staff at Gartner. Within the past year, for example, ITA has utilized Gartner's research and analysis services regarding topics such as: call center telephony deployment strategies, software compliance audit requirements, web-based content management, public safety frequency spectrum deployment, mobile phone application security, enterprise system support options, and various technology procurements.

In accordance with Charter Section 1022, the Personnel Department determined that City employees do not have the expertise to perform the work proposed to be contracted. Gartner has complied with all applicable City contracting requirements. The Good Faith Effort Outreach requirement does not apply to the proposed contract because ITA did not complete a competitive process, but is instead piggybacking on a competitive process completed by another jurisdiction. In accordance with Los Angeles Administrative Code Section 10.5, Council approval of the proposed contract is required because the proposed contract replaces an expired contract involving the same parties for the same services with a cumulative term exceeding three years.

RECOMMENDATION

That the Council approve, and authorize the General Manager of the Information Technology Agency to execute, a personal services contract with Gartner, Incorporated for the provision of information technology research and advisory subscription services for a term of three years effective July 1, 2012 through June 30, 2015 and compensation not to exceed \$951,735, subject to the approval of the City Attorney.

FISCAL IMPACT STATEMENT

First-year funding for the proposed information technology research and advisory subscription services contract with Gartner, Incorporated in the cumulative amount of \$288,735 is provided within various user department's 2012-13 Adopted Budget accounts. There is no additional impact on the General Fund. The recommendations stated in this report are in compliance with the City Financial Policies as budgeted funds are available to support the proposed contract expenditures for the 2012-13 Fiscal Year, and payments in future fiscal years, up to the proposed contract maximum compensation of \$951,735, will be subject to annual appropriation by the Mayor and City Council.

CITY OF LOS ANGELES
CALIFORNIA

GARY LEE MOORE, P.E.
INTERIM GENERAL MANAGER
CHIEF TECHNOLOGY OFFICER

MARK P. WOLF
EXECUTIVE OFFICER
ASSISTANT GENERAL MANAGERS
TED M. ROSS
GREG STEINMEHL, INTERIM



ANTONIO R. VILLARAIGOSA
MAYOR

INFORMATION TECHNOLOGY
AGENCY

ROOM 1400, CITY HALL EAST
200 NORTH MAIN STREET
LOS ANGELES, CA 90012
(213) 978-3311
FAX (213) 978-3310

ITA.LACITY.ORG

JAN -3 PM 3:41
ADMINISTRATIVE OFFICER

January 2, 2013

REF: ASB-001-13

Honorable Antonio Villaraigosa
Mayor, City of Los Angeles
Room 303, City Hall
Los Angeles, CA 90012

Attention: Mandy Morales, Legislative Coordinator

Subject: **REQUEST FOR PERSONAL SERVICES CONTRACT – GARTNER, INC.**

Dear Mayor Villaraigosa:

In accordance with Executive Directive No. 3, attached for your review and approval is a personal services contract with Gartner, Inc. (Gartner) for a three year term. Approval of this contract will allow the City of Los Angeles' Information Technology Agency (ITA) and other City departments to purchase Gartner's subscriptions that provide invaluable resources and tools to City personnel who manage information technology (IT).

Background

The City has been utilizing Gartner for IT Research and Advisory Services for approximately the last twelve (12) years. On March 8, 2012, the City entered into a Personal Services contract with Gartner for one year from July 1, 2011 to June 30, 2012. These annual subscriptions provided the authorized users web access to Gartner's proprietary databases and research documents and analysis/consultation by Gartner via on-line discussion, facsimile, e-mail, telephone or on-site briefings. Departments using this contract include ITA, Water and Power, Sanitation, Fire, General Services, and Building and Safety. Among the projects and topics on which departments seek advice and guidance on best practices from Gartner are 311 Call Centers, Customer Relationship Management software, Cell phone management, Oracle People software licensing and negotiations, Storage Area Networks, Service Oriented Architecture (SOA), IT Security, Hardware procurement, Microsoft Licensing, Smart Grid, Enterprise Asset Management, and PC Lifecycle management / Desktop virtualization.

Prior to the expiration of the contract, ITA began the process of developing a Request for Proposals for IT Research and Advisory Services. During this period, Gartner provided a vehicle for the City to procure the same services via a new agreement with

Gartner at substantially discounted pricing. This vehicle is the Kansas Research Services Contract (Contract #35945). The City's previous contract with Gartner secured four (4) licensing categories as follows:

- Gartner Core Connect (GCC) Reference (multi-member)
- Gartner Core Connect (GCC) Advisor (multi-member)
- Gartner For IT Leaders (GITL) Reference (multi-member)
- IT Executive CIO Signature

Upon the City's request, and in an effort to continue providing and making available similar services that are essential and important to City IT decision-makers, Gartner offered the City special GCC Legacy volume pricing comparable to the rate structure in our most recent Gartner contract. The GCC Legacy discount pricing applies to the GCC Reference and GCC Advisor licensing categories. These two (2) categories would be offered at a discount of approximately 44% and 55% when compared to the current Kansas contract pricing. Based on the City's projected licensing volumes for the upcoming fiscal year for these two (2) GCC categories, a potential savings of approximately \$153,400 per year would be realized. The two (2) remaining categories, the GITL Reference and the IT Executive CIO Signature are subject to the prevailing current Kansas Contract category pricing. The City Attorney opined that in lieu of the RFP process, piggybacking on the Kansas Contract is a viable option as it would give the City a favorable rate structure.

Both ITA and Gartner have confirmed that user departments still require the services Gartner provides within the contract. In the absence of a contract, each department would be compelled to procure the licenses individually through an Authority for Expenditure at a non-enterprise rate which would result in higher costs for each department. This contract provides a special Gartner Core Legacy volume discount for subscriptions because the City-wide total exceeds 25 licenses (currently the City has 29 licenses).

ITA has negotiated with Gartner the terms and conditions for Year 2 and Year 3 renewals. The maximum increase per year for the two license categories for the special Gartner Core Legacy volume pricing would be 3% (if any). If the 3% maximum increase were applied to the current rates, in Year 2 and Year 3, it would still represent an approximate 40% discount off the current Kansas State pricing. The remaining two license categories (GITL Reference and IT Executive CIO) would be subject to the prevailing Kansas Contract rates which would correspond to the Gartner State and Local pricing. The total Year 2 and Year 3 maximum limits allow for the potential 3% increase per year and the possibility of adding two (2) more licenses depending on the category. The special Gartner Core Connect Legacy volume pricing would continue if the City maintains a City-wide total of 25 subscription licenses or more. If the City falls below the 25 subscription threshold, new pricing would apply and the formal amendment process would be required.

Gartner has submitted all the required documents except for the affidavits in BAVN, which Gartner is in the process of uploading. The affidavits are subject to verification and approval by Office of Contract Compliance at Public Works/Bureau of Contract Administration.

	Yes	No	N/A*	8. Contractor has complied with:	Yes	No	N/A*
1. Council has approved the purpose			x	a. Equal Employmt. Oppty./Affirm. Action	x		
2. Appropriated funds are available	x			b. Good Faith Effort Outreach			x
3. Charter Section 1022 completed	x			c. Equal Benefits Ordinance	x		
4. Proposals have been requested	x			c. Contractor Responsibility Ordinance	x		
5. Risk Management review completed	x			e. Slavery Disclosure Ordinance	x		
6. Standard Provisions for City Contract	x			f. Bidder Certification CEC Form 50	x		
7. Workforce that resides in the City: <1 %	*N/A = not applicable						

The headquarter address and workforce information for Gartner is as follows:

Headquarter Address: 56 Top Gallant Road, Stamford, CT 06902

The contract has been approved by the City Attorney as to form.

Fiscal Impact

Sufficient funds exist in ITA's 3040 Contractual Services Account for these services and in the user department budgets. No additional funding is required.

The City's total potential obligations under this Contract, subject to available funding, are as follows:

1. Fiscal Year 2012-2013: Shall not exceed \$288,735 (Two Hundred Eighty-Eight Thousand Seven Hundred Thirty-Five dollars).
2. Fiscal Year 2013-2014: Shall not exceed \$318,000 (Three Hundred and Eighteen Thousand dollars).
3. Fiscal Year 2014-2015: Shall not exceed \$345,000 (Three Hundred and Forty-Five Thousand dollars).

Recommendation

That the Mayor authorize the General Manager of the Information Technology Agency, or his designee, to execute a personal services contract with Gartner, Inc. for information technology research and advisory services for a three year term.

Honorable Antonio Villaraigosa

January 2, 2013

Page 4

Please contact Laura Ito, Director of Finance and Administration at 978-3322 if you require additional information.

Respectfully submitted,



Gary Lee Moore, P.E.
Interim General Manager

ec: Melissa Fleming, Office of the City Administrative Officer
Laura Ito, ITA
Betty Ngo, ITA
Richard Tom, ITA
Irene Mayeda, ITA
Nicanier Rosas, ITA

CONTRACT

between

CITY OF LOS ANGELES

and

GARTNER, INC.

THIS Contract is made and entered into by and between the City of Los Angeles, a municipal corporation (hereinafter referred to as "City"), acting by and through the Information Technology Agency and Gartner, Inc., a Connecticut corporation, (hereinafter referred to as "Contractor") with reference to the following:

WITNESSETH:

WHEREAS, the City uses various technology and computer systems and software;

WHEREAS, the Information Technology Agency ("ITA") is responsible for providing leadership and assistance to other City departments regarding computer technology and its uses;

WHEREAS, the City desires to engage the services of a contractor to provide Information Technology (IT) research and advisory services;

WHEREAS, the City desires to utilize the State of Kansas Research Assistance (RA) Services Contract (Appendix B), Contract No. 35945, dated July 28, 2011 (hereinafter referred to as "Master Agreement"), to procure subscriptions and licenses for Contractor's IT Research and Advisory Services (Core Connect, Gartner for IT Leaders and IT Executive Portfolio); and

WHEREAS, the services to be performed by the Contractor are of an expert and technical nature and are temporary and occasional in character.

NOW, THEREFORE, in consideration of the above premises, and of the covenants and agreements hereafter set forth, the parties hereby covenant and agree as follows:

I. TERM OF CONTRACT

The term of this Contract shall commence on July 1, 2012 and terminate three (3) years later. This Contract shall be subject to termination by the City if funds are not appropriated for these services in each ensuing fiscal year commencing July 1.

II. STATEMENT OF WORK

Contractor hereby agrees to perform the services requested by the City described in the Master Agreement Specifications section and Research and Advisory Services (Core Connect, Gartner for IT Leaders and IT Executive Portfolio). Contractor agrees to sell only the subscriptions as referenced herein.

It is expressly understood and agreed that the requirements and terms of the Master Agreement shall constitute and are hereby made a part of this Contract, and Contractor agrees to carry out and fully perform each and all of the provisions of this Contract and the Master Agreement. Contractor warrants that its services provided hereunder shall conform to high professional standards.

III. COMPENSATION AND METHOD OF PAYMENT

The total expenditures for this contract shall not exceed \$288,735 (Two Hundred Eighty-Eight Thousand Seven Hundred Thirty-Five dollars) for the initial year.

Contractor further understands and agrees that execution of this Contract does not guarantee that any or all funds will be expended.

A. Compensation

The City agrees to acquire the following subscriptions during the initial year at the prices listed below:

Year 1 – INITIAL CONTRACT

Information Technology Agency

Reference seat:	2 users @ \$6,047 each	\$ 12,094	
Advisor seat:	1 user @ \$9,219 each	9,219	
IT Leader Ref:	2 users @ \$13,800 each	27,600	
IT CIO Signature:	1 annual membership	<u>80,300</u>	\$129,213

Department of Water and Power

Reference seat:	12 users @ \$6,047 each	\$ 72,564	
Advisor seat:	3 users @ \$9,219 each	<u>27,657</u>	100,221

Fire Department

Reference seat:	2 users @ \$6,047 each	\$ 12,094	12,094
-----------------	------------------------	-----------	--------

Department of Building and Safety

Reference seat:	1 user @ \$6,047 each	\$ 6,047	6,047
-----------------	-----------------------	----------	-------

General Services Department

Reference seat:	1 user @ \$6,047 each	\$ 6,047	6,047
-----------------	-----------------------	----------	-------

Department of Public Works, Bureau of Sanitation

Reference seat:	2 users @ \$6,047 each	\$ 12,094	
Advisor seat:	1 user @ \$9,219 each	9,219	
IT Leader Ref:	1 user @ \$13,800 each	<u>13,800</u>	<u>35,113</u>
Total:			\$288,735

The City acknowledges that the Legacy Pricing for Year 1 is based on a volume license discount of 25 or more licenses. The potential renewal pricing for Year 2 and Year 3 will be under the following terms and conditions:

Year 2 – RENEWAL

Contractor will provide the ITA Project Manager with the per license cost for each category a minimum of 45 days prior to the renewal date for review and approval. Contractor will provide a list of City departments and the proposed license quantity and category for each department to the ITA Project Manager a minimum of 45 days prior to the renewal date for review and approval. The per license cost for each category must be identical for all departments. The City will continue to receive a volume license discount as long as the City purchases a minimum of 25 licenses. There may be an annual maintenance fee increase per individual license based on the Year 1 individual license cost, if applicable. The annual maintenance fee will not exceed 3% per individual license for the Gartner Core Reference and Gartner Core Advisor Seat License(s). All other Gartner services will be available at the then current State of Kansas Research Assistance (RA) Services Contract No. 35945 price. The total amount of funds that would be expended would directly correlate to the amount of licenses purchased. To allow for the possibility of an annual increase and the purchase of additional licenses, the maximum compensation limit in Year 2 would be \$318,000.

Year 3 – RENEWAL

Contractor will provide the ITA Project Manager with the per license cost for each category a minimum of 45 days prior to the renewal date for review and approval. Contractor will provide a list of City departments and the proposed license quantity and category for each department to the ITA Project Manager a minimum of 45 days prior to the renewal date for review and approval. The per license cost for each category must be identical for all departments. The City will continue to receive a volume license discount as long as the City purchases a minimum of 25 licenses. There may be an annual maintenance fee increase per individual license based on the Year 2 individual license cost, if applicable. The annual maintenance fee will not exceed 3% per individual license for the Gartner Core Reference and Gartner Core Advisor Seat License(s). All other

Gartner services will be available at the then current State of Kansas Research Assistance (RA) Services Contract No. 35945 price. The total amount of funds that would be expended would directly correlate to the amount of licenses purchased. To allow for the possibility of an annual increase and the purchase of additional licenses, the maximum compensation limit in Year 3 would be \$345,000.

The City will have the option to purchase additional seat(s) or reduce the subscriptions purchased at each succeeding year.

The City acknowledges that in Year 2 and Year 3, if the City purchases less than 25 licenses, the volume discount will not be applicable and pricing shall be subject to the then current Gartner State & Local prices for products and services actually ordered by the City for that specific year. Contractor will provide written proof of current Gartner State and Local price.

Any requests for additional licenses by the departments listed above or by other City departments will be initiated in writing by the respective department and subject to the approval of ITA. Contractor may not charge any City department an amount in excess of the approved per license cost. Contractor may not charge any department for any additional licenses other than the number of license stated in the Year 1 description without the written consent of ITA and provided the cumulative compensation limit for Fiscal Year has not been exceeded.

Contractor may not exceed the cumulative compensation limit shown in Year 1, Year 2 and/or Year 3 for the departments listed above unless there is a fully executed amendment to this Contract increasing such compensation limit.

B. Invoices

Contractor shall submit invoices, with all supporting backup documentation, to the respective department listed above in Sec.III.A. A copy of each invoice must also be submitted to ITA. Payment of invoices shall be subject to approval by City.

ITA invoices shall be submitted in triplicate to ITA pursuant to procedures described herein. The Contractor is required to submit invoices that conform to City standards and include, at a minimum, the following information:

1. City Contract Number
2. Contractor's State of California Sales and Use Tax Permit Number
3. City of Los Angeles Business Tax Registration Certificate Number

4. Name and address of Contractor
5. Name and address of (City) department being billed
6. Date of the invoice
7. Description, unit cost and number of subscriptions purchased.
8. Payment terms, total due and due date
9. Certification by a duly authorized officer of Contractor
10. Discounts and terms (if applicable)
11. Remittance Address (if different from Contractor address)

All invoices shall be submitted on the Contractor's letterhead or contain the Contractor's official logo. Invoices shall be submitted within 30 days of service, or monthly. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by the City manager.

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

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

IV. CONTRACT REPRESENTATIVES

The following representative individuals and addresses shall serve as the place to which notices and other correspondence between the parties shall be sent. The City and Contractor shall notify, in writing, the other party of any changes in the information.

A. Contractor Representative

The Contractor hereby appoints the following person to represent the Contractor with respect to all matters pertaining to this Contract. Said representative shall be responsible for submitting all of the respective forms and statements as required by this Contract:

Name: Joy Kalinowski
Title: Senior Account Executive
Address: 400 N. Continental Blvd. 6th floor
El Segundo, CA 90245

Telephone: 310-379-2488
Fax: 310-798-8749
E-Mail: joy.kalinowski@gartner.com

B. City's Representative

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

Name: Laura Ito
Title: Director of Finance and Administration
Address: 200 North Main Street, 1400
Los Angeles, CA 90012
Telephone: (213) 978-3322
Fax: (213) 978-3310
E-mail: laura.ito@lacity.org

C. City's Project Manager

The City hereby appoints the following person to act as the Project Manager:

Name: Betty Ngo
Title: Information Systems Manager II
Address: 200 N. Main Street, 14th Floor
Los Angeles, CA 90012
Telephone: (213) 978-3066
Fax: (213) 978-2870
E-Mail: betty.ngo@lacity.org

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

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

If the name of the person designated to receive the notices, demands or communications or the address of such person is changed, written notice shall be given, as described in Section IV, within five (5) working days of said change.

V. CONTRACT AUDITS AND RECORDS

Contractor agrees that once annually, the City or its delegates will have the right to review, obtain, and copy all records pertaining to performance of the Contract. Contractor agrees to provide the City or its delegate, at no cost to the City, with any

relevant information requested and shall permit the City or its delegate access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. Contractor further agrees to maintain such records for a period of three (3) years after final payment under the Contract.

Contractor shall not disclose any information or documentation regarding City to any outside parties.

VI. TERMINATION

This Contract may be terminated in whole or in part prior to completion at any time by the City upon thirty (30) days written notice to the other party. In the event of termination by City pursuant to this provision, Contractor shall invoice and the City shall pay for services performed or purchases documented and approved by the City under this Contract through the effective date of termination.

VII. FIRST SOURCE HIRING ORDINANCE

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

- A. CONTRACTOR/CONSULTANT shall, prior to the execution of the contract, provide to the DAA a list of anticipated employment opportunities that CONTRACTOR/CONSULTANT estimate they will need to fill in order to perform the services under the Contract.
- B. CONTRACTOR/CONSULTANT further pledges that it will, during the term of the Contract, shall a) At least seven business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Community Development Department (CDD), which will refer individuals for interview; b) Interview qualified individuals referred by CDD; and c) Prior to filling any employment opportunity, the CONTRACTOR/CONSULTANT shall inform the DAA of the names of the Referral Resources used, the names of the individuals they referred, the names of the referred individuals who the CONTRACTOR/CONSULTANT interviewed and the reasons why referred individuals were not hired.
- C. Any Subcontract entered into by the CONTRACTOR/CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.

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

Where under the provisions of Section 10.44.13 of the Los Angeles Administrative Code the designated administrative agency has determined that the CONTRACTOR/CONSULTANT intentionally violated or used hiring practices for the purpose of avoiding the article, the determination must be documented in the Awarding Authority's Contractor Evaluation, required under Los Angeles Administrative Code Section 10.39 et seq., and must be documented in each of the Contractor's subsequent Contractor Responsibility Questionnaires submitted under Los Angeles Administrative Code Section 10.40 et seq. This measure does not limit the City's authority to act under this article.

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

VIII. RATIFICATION CLAUSE

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

IX. SPECIAL PROVISIONS

A. License. Contractor owns and retains all rights to the Services not expressly granted to Client in this provision. Only the individuals named in an SA (each a "**Licensed User**") may access the Services. Each Licensed User will be issued a unique password, which may not be shared. Client agrees to review and comply with the *Usage Guidelines for Gartner Services* ("**Guidelines**"), which are accessible to all Licensed Users via the "Policies" section of gartner.com. Among other things, these Guidelines describe how Client may substitute Licensed Users, excerpt from and/or share Gartner research documents within the Client organization, and quote or excerpt from the Services externally.

B. Disclaimer of Warranties. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND GARTNER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR AS TO ACCURACY, COMPLETENESS OR ADEQUACY OF INFORMATION. CLIENT RECOGNIZES THE UNCERTAINTIES INHERENT IN ANY ANALYSIS OR INFORMATION THAT MAY BE PROVIDED AS PART OF THE SERVICES, AND

ACKNOWLEDGES THAT THE SERVICES ARE NOT A SUBSTITUTE FOR ITS OWN INDEPENDENT EVALUATION AND ANALYSIS AND SHOULD NOT BE CONSIDERED A RECOMMENDATION TO PURSUE ANY COURSE OF ACTION. CONTRACTOR SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT CLIENT MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN. CLIENT UNDERSTANDS THAT IT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE USE OF THE SERVICES.

C. Client Confidential Information. Contractor agrees to keep confidential any Client-specific information communicated by Client to Contractor in connection with an SA that is (i) clearly marked confidential if provided in written form, or (ii) preceded by a statement that such information is confidential, if provided in oral form, and such statement is confirmed in writing within 15 days of its initial disclosure. This obligation of confidence shall not apply to any information that: (1) is in the public domain at the time of its communication; (2) is independently developed by Contractor (3) entered the public domain through no fault of Contractor subsequent to Client's communication to Contractor; (4) is in Contractor's possession free of any obligation of confidence at the time of Client's communication to Contractor or (5) is communicated by the Client to a third party free of any obligation of confidence. Additionally, Contractor may disclose such information to the extent required by legal process.

D. Assignability. This SA and the rights granted to Client hereunder may not be assigned, sublicensed or transferred, in whole or in part, by either party without the prior written consent of the other party, except to a successor to substantially all of the business or assets of a party by merger or acquisition. Where consent is required, it will not be unreasonably withheld.

E. Use of Name, Trademark, and Logo. Absent the prior written consent of the other party, neither party shall use the name, trademarks, or logo of the other in promotional materials, publicity releases, advertising, or any other similar publications or communications.

F. No Third Party Beneficiaries. This Agreement is for the benefit of the parties only. None of the provisions of this Agreement are for the benefit of, or enforceable by any third party.

X. CONTRACT MODIFICATIONS, CHANGES OR AMENDMENTS

This Contract which consists of eleven (11) pages plus specific documents cited herein constitutes the entire Contract between the City and Contractor and may be amended only by further written agreement.

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

- The provisions of this Contract
- Appendix A: Standard Provisions for City Personal Service Contracts (Rev. 03/09)
- Appendix B: Kansas Research and Advisory Service Contract (Contract No. 35945)

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

Approved as to form:

CITY OF LOS ANGELES

CARMEN A. TRUTANICH, City Attorney

by _____
Laurel L. Lightner, Assistant City Attorney

Laura Ito
Director of Finance and Administration
Information Technology Agency

Date

Date

ATTEST:
June A. Lagmay, City Clerk

GARTNER, INC.

by _____

Signature

Date

Name

Title

Date

Signature

Name

Title

Date

BTRC NO. _____

CONTRACT NO. _____

STANDARD PROVISIONS FOR CITY CONTRACTS

TABLE OF CONTENTS

PSC-1	<u>CONSTRUCTION OF PROVISIONS AND TITLES HEREIN</u>	1
PSC-2	<u>NUMBER OF ORIGINALS</u>	1
PSC-3	<u>APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT</u>	1
PSC-4	<u>TIME OF EFFECTIVENESS</u>	2
PSC-5	<u>INTEGRATED CONTRACT</u>	2
PSC-6	<u>AMENDMENT</u>	2
PSC-7	<u>EXCUSABLE DELAYS</u>	2
PSC-8	<u>BREACH</u>	2
PSC-9	<u>WAIVER</u>	3
PSC-10	<u>TERMINATION</u>	3
PSC-11	<u>INDEPENDENT CONTRACTOR</u>	4
PSC-12	<u>CONTRACTOR'S PERSONNEL</u>	4
PSC-13	<u>PROHIBITION AGAINST ASSIGNMENT OR DELEGATION</u>	5
PSC-14	<u>PERMITS</u>	5
PSC-15	<u>CLAIMS FOR LABOR AND MATERIALS</u>	5
PSC-16	<u>CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED</u>	5
PSC-17	<u>RETENTION OF RECORDS, AUDIT AND REPORTS</u>	5
PSC-18	<u>FALSE CLAIMS ACT</u>	6
PSC-19	<u>BONDS</u>	6
PSC-20	<u>INDEMNIFICATION</u>	6
PSC-21	<u>INTELLECTUAL PROPERTY INDEMNIFICATION</u>	6

TABLE OF CONTENTS (Continued)

PSC-22 INTELLECTUAL PROPERTY WARRANTY.....7

PSC-23 OWNERSHIP AND LICENSE.....7

PSC-24 INSURANCE8

PSC-25 DISCOUNT TERMS8

PSC-26 WARRANTY AND RESPONSIBILITY OF CONTRACTOR.....8

PSC-27 NON-DISCRIMINATION8

PSC-28 EQUAL EMPLOYMENT PRACTICES9

PSC-29 AFFIRMATIVE ACTION PROGRAM11

PSC-30 CHILD SUPPORT ASSIGNMENT ORDERS15

**PSC-31 LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR
WORKER RETENTION ORDINANCE16**

PSC-32 AMERICANS WITH DISABILITIES ACT17

PSC-33 CONTRACTOR RESPONSIBILITY ORDINANCE.....18

**PSC-34 MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE
OUTREACH PROGRAM18**

PSC-35 EQUAL BENEFITS ORDINANCE.....18

PSC-36 SLAVERY DISCLOSURE ORDINANCE19

EXHIBIT 1 - INSURANCE CONTRACTUAL REQUIREMENTS20

STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

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

PSC-2. NUMBER OF ORIGINALS

The number of original texts of this Contract shall be equal to the number of the parties hereto, one text being retained by each party. At the **CITY'S** option, one or more additional original texts of this Contract may also be retained by the City.

PSC-3. APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

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

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

PSC-4. TIME OF EFFECTIVENESS

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

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

PSC-5. INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written, or oral, relating thereto. This Contract may be amended only as provided for in paragraph PSC-6 hereof.

PSC-6. AMENDMENT

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-4.

PSC-7. EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

PSC-8. BREACH

Except for excusable delays as described in PSC-7, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights

and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

PSC-9. WAIVER

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

PSC-10. TERMINATION

A. TERMINATION FOR CONVENIENCE

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

B. TERMINATION FOR BREACH OF CONTRACT

1. Except for excusable delays as provided in PSC-7, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, the **CITY** may give **CONTRACTOR** written notice of such default. If **CONTRACTOR** does not cure such default or provide a plan to cure such default which is acceptable to the **CITY** within the time permitted by the **CITY**, then the **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then the **CITY** may immediately terminate this Contract.
3. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates the

CITY'S lobbying policies, then the **CITY** may immediately terminate this Contract.

4. In the event the **CITY** terminates this Contract as provided in this section, the **CITY** may procure, upon such terms and in such manner as the **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to the **CITY** for all of its costs and damages, including, but not limited, any excess costs for such services.
5. All finished or unfinished documents and materials produced or procured under this Contract, including all intellectual property rights thereto, shall become **CITY** property upon date of such termination. **CONTRACTOR** agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.
6. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-10(A) Termination for Convenience.
7. The rights and remedies of the **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

PSC-11. INDEPENDENT CONTRACTOR

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

PSC-12. CONTRACTOR'S PERSONNEL

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

CONTRACTOR shall not use subcontractors to assist in performance of this Contract without the prior written approval of the **CITY**. If the **CITY** permits the use of subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of

this Contract. The **CITY** has the right to approve **CONTRACTOR'S** subcontractors, and the **CITY** reserves the right to request replacement of subcontractors. The **CITY** does not have any obligation to pay **CONTRACTOR'S** subcontractors, and nothing herein creates any privity between the **CITY** and the subcontractors.

PSC-13. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

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

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

PSC-14. PERMITS

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

PSC-15. CLAIMS FOR LABOR AND MATERIALS

CONTRACTOR shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), against **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.

PSC-16. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED

If applicable, **CONTRACTOR** represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code. For the term covered by this Contract, **CONTRACTOR** shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance, and shall not allow any such Certificate to be revoked or suspended.

PSC-17. RETENTION OF RECORDS, AUDIT AND REPORTS

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form, in accordance with

requirements prescribed by the **CITY**. These records shall be retained for a period of no less than three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. Said records shall be subject to examination and audit by authorized **CITY** personnel or by the **CITY'S** representative at any time during the term of this Contract or within the three years following final payment made by the **CITY** hereunder or the expiration date of this Contract, whichever occurs last. **CONTRACTOR** shall provide any reports requested by the **CITY** regarding performance of this Contract. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

PSC-18. FALSE CLAIMS ACT

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

PSC-19. BONDS

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

PSC-20. INDEMNIFICATION

Except for the active negligence or willful misconduct of the **CITY**, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, **CONTRACTOR** undertakes and agrees to defend, indemnify and hold harmless the **CITY** and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract by **CONTRACTOR** or its subcontractors of any tier. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-20 shall survive expiration or termination of this Contract.

PSC-21. INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the **CITY**, and any of its Boards, Officers, Agents, Employees, Assigns,

and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the **CITY'S** actual or intended use of any Work Product furnished by **CONTRACTOR**, or its subcontractors of any tier, under the Agreement. Rights and remedies available to the **CITY** under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the **CITY**. The provisions of PSC-21 shall survive expiration or termination of this Contract.

PSC-22. INTELLECTUAL PROPERTY WARRANTY

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

PSC-23. OWNERSHIP AND LICENSE

Unless otherwise provided for herein, all Work Products originated and prepared by **CONTRACTOR** or its subcontractors of any tier under this Contract shall be and remain the exclusive property of the **CITY** for its use in any manner it deems appropriate. Work Products are all works, tangible or not, created under this Contract including, without limitation, documents, material, data, reports, manuals, specifications, artwork, drawings, sketches, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas matters and combinations thereof, and all forms of intellectual property. **CONTRACTOR** hereby assigns, and agrees to assign, all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared by **CONTRACTOR** under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for the **CITY** to perfect, memorialize, or record the **CITY'S** ownership of rights provided herein.

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

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

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

PSC-24. INSURANCE

During the term of this Contract and without limiting **CONTRACTOR'S** indemnification of the **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by **CONTRACTOR**, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to **CITY** requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-25. DISCOUNT TERMS

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

PSC-26. WARRANTY AND RESPONSIBILITY OF CONTRACTOR

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-27. NON-DISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the **CITY**. In performing this Contract, **CONTRACTOR** shall not

discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, domestic partner status, marital status or medical condition. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

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

PSC-28. EQUAL EMPLOYMENT PRACTICES

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

- A. During the performance of this Contract, **CONTRACTOR** agrees and represents that it will provide equal employment practices and **CONTRACTOR** and each subcontractor hereunder will ensure that in his or her employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. **CONTRACTOR** agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, **CONTRACTOR** shall certify in the specified format that he or she has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of

race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.

- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of his or her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of **CITY** contracts. On their or either of their request **CONTRACTOR** shall provide evidence that he or she has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of **CITY** contracts. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has failed to comply with the Equal Employment Practices provisions of a **CITY** contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until **CONTRACTOR** shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this Contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- H. Intentionally blank.
- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- J. At the time a supplier registers to do business with the **CITY**, or when an individual bid or proposal is submitted, **CONTRACTOR** shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of **CITY** Contracts.

- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
 - 1. Hiring practices;
 - 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 - 3. Training and promotional opportunities; and
 - 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by **CONTRACTOR**, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of **CONTRACTOR** to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject **CONTRACTOR** to the imposition of any and all sanctions allowed by law, including but not limited to termination of the **CONTRACTOR'S** Contract with the **CITY**.

PSC-29. AFFIRMATIVE ACTION PROGRAM

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

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

their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

- C. As part of the **CITY'S** supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, **CONTRACTOR** shall certify on an electronic or hard copy form to be supplied, that **CONTRACTOR** has not discriminated in the performance of **CITY** contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- D. **CONTRACTOR** shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of **CITY** contracts, and on their or either of their request to provide evidence that it has or will comply therewith.
- E. The failure of any **CONTRACTOR** to comply with the Affirmative Action Program provisions of **CITY** contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to **CONTRACTOR**.
- F. Upon a finding duly made that **CONTRACTOR** has breached the Affirmative Action Program provisions of a **CITY** contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the **CITY**. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said **CONTRACTOR** is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such **CONTRACTOR** shall be disqualified from being awarded a contract with the **CITY** for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that **CONTRACTOR** has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a **CITY** contract, there may be deducted from the amount payable to **CONTRACTOR** by the **CITY** under the contract, a penalty of ten dollars

(\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a **CITY** contract.

- H. Notwithstanding any other provisions of a **CITY** contract, the **CITY** shall have any and all other remedies at law or in equity for any breach hereof.
- I. Intentionally blank.
- J. Nothing contained in **CITY** contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. **CONTRACTOR** shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the **CITY**. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, **CONTRACTOR** may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, **CONTRACTOR** must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
 - 1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 - 2. **CONTRACTOR** may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the **CITY** with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and **CONTRACTOR**.

- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;
 5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the **CITY'S** Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the **CITY** and may be used at the discretion of the **CITY** in its Contract Compliance Affirmative Action Program.
- P. Intentionally blank.

- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the **CITY** and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the **CITY**.

PSC-30. CHILD SUPPORT ASSIGNMENT ORDERS

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

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, the failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders or Notices of Assignment, or the failure of any Principal Owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to **CONTRACTOR** by the **CITY**.

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

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

PSC-31. LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

- A. Unless otherwise exempt, this Contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:
1. **CONTRACTOR** assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
 2. **CONTRACTOR** further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. **CONTRACTOR** shall require each of its subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. **CONTRACTOR** shall deliver the executed pledges from each such subcontractor to the **CITY** within ninety (90) days of the execution of the subcontract. **CONTRACTOR'S** delivery of executed pledges from each such subcontractor shall fully discharge the obligation of **CONTRACTOR** with respect to such pledges and fully discharge the obligation of **CONTRACTOR** to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
 3. **CONTRACTOR**, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the **CITY** with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. **CONTRACTOR** shall post the Notice of Prohibition Against Retaliation provided by the **CITY**.
 4. Any subcontract entered into by **CONTRACTOR** relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of PSC-31 and shall incorporate the provisions of the LWO and the SCWRO.

5. **CONTRACTOR** shall comply with all rules, regulations and policies promulgated by the **CITY'S** Designated Administrative Agency which may be amended from time to time.

- B. Under the provisions of Sections 10.36.3(c) and 10.37.6(c) of the Los Angeles Administrative Code, the **CITY** shall have the authority, under appropriate circumstances, to terminate this Contract and otherwise pursue legal remedies that may be available if the **CITY** determines that the subject **CONTRACTOR** has violated provisions of either the LWO or the SCWRO, or both.

- C. Where under the LWO Section 10.37.6(d), the **CITY'S** Designated Administrative Agency has determined (a) that **CONTRACTOR** is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the **CITY** in such circumstances may impound monies otherwise due **CONTRACTOR** in accordance with the following procedures. Impoundment shall mean that from monies due **CONTRACTOR**, **CITY** may deduct the amount determined to be due and owing by **CONTRACTOR** to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures described therein through final and binding arbitration. Whether **CONTRACTOR** is to continue work following an impoundment shall remain in the sole discretion of the **CITY**. **CONTRACTOR** may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

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

PSC-32. AMERICANS WITH DISABILITIES ACT

CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, and its implementing regulations. **CONTRACTOR** will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. **CONTRACTOR** will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by **CONTRACTOR**, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

PSC-33. CONTRACTOR RESPONSIBILITY ORDINANCE

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

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, **CONTRACTOR** pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this Contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. **CONTRACTOR** further agrees to: (1) notify the **CITY** within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that **CONTRACTOR** is not in compliance with all applicable federal, state and local laws in performance of this Contract; (2) notify the **CITY** within thirty calendar days of all findings by a government agency or court of competent jurisdiction that **CONTRACTOR** has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the **CITY**; and (4) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the **CITY** within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

PSC-34. MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE OUTREACH PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women and Other Business Enterprise firms on a level so designated in its proposal, if any. **CONTRACTOR** certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. **CONTRACTOR** shall not change any of these designated subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of the **CITY**, provided that such approval shall not be unreasonably withheld.

PSC-35. EQUAL BENEFITS ORDINANCE

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

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

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

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Department of Public Works, Office of Contract Compliance at (213) 847-1922."

PSC-36. SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time. **CONTRACTOR** certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract.

EXHIBIT 1**INSURANCE CONTRACTUAL REQUIREMENTS**

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

CONTRACTUAL REQUIREMENTS**CONTRACTOR AGREES THAT:**

1. Additional Insured/Loss Payee. The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.

2. Notice of Cancellation. All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.

3. Primary Coverage. CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.

4. Modification of Coverage. The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.

5. Failure to Procure Insurance. All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

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

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

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

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

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

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-4, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name: Gartner, Inc.

Date: 06/12/2012

Agreement/Reference: IT Research and Advisory Services

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

Limits

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

WC Statutory

EL \$1,000,000

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

General Liability

\$1,000,000

Products/Completed Operations

Sexual Misconduct

Fire Legal Liability

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

Professional Liability (Errors and Omissions)

\$1,000,000

Discovery Period 12 Months After Completion of Work or Date of Termination from the Architect

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

All Risk Coverage

Boiler and Machinery

Flood

Builder's Risk

Earthquake

Pollution Liability

12 Months After Completion of Work or Date of Termination

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

100% of the contract price

Crime Insurance

Other: Sent to Nic Rosas @ ITA

1) If a contractor has no employees and decides to not cover herself/himself for workers' compensation, please complete the form entitled "Request for Waiver of Workers' Compensation Insurance Requirement" located at: <http://cao.lacity.org/risk/InsuranceForms.htm>

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

Division of Purchases
900 SW Jackson, Room 102N
Topeka, KS 66612-1286

Dennis R. Taylor, Secretary
Chris Howe, Director



Department of Administration

phone: 785-296-2376
fax: 785-296-7240
email: chris.howe@da.ks.gov
www.da.ks.gov/purch

Sam Brownback, Governor

CONTRACT AWARD

Date of Award: July 28, 2011

Contract ID: 0000000000000000000035945

SMART Vendor ID: 0000002454

Replaces Contract: 03372

Procurement Officer: Bonnie L Edwards

Telephone: 785-296-3125

E-Mail Address: bonnie.edwards@da.ks.gov

Web Address: <http://da.ks.gov/purch>

Item: Research Assistance (RA) Servi

Agency/Business Unit: Statewide Optional Use

Period of Contract: Date of Award through July 30, 2016
(With the option to renew for one (1) additional five (5) year renewal period)

Contractor: GARTNER INC
12600 GATEWAY BLVD
FORT MYERS, FL 33913-8006
Local Telephone: (607) -857-5746
Contact Person: Eric Pautz
Email: eric.pautz@gartner.com

Payment Terms: Net 30

Political Subdivisions: Pricing is available to the political subdivisions of the State of Kansas.

Procurement Cards: Agencies may not use a P-Card for purchases from this contract.

Administrative Fee: No Administrative Fee will be assessed against purchases from this contract.

The above referenced contract award was recently posted to the Division of Purchases internet website. The document can be downloaded by going to the following website:
<http://www.da.ks.gov/purch/Contracts/>

TERMS AND CONDITIONS

1. **Contract Documents:** In the event of a conflict in terms of language among the documents, the following order of precedence shall govern:
 - o Form DA 146a;
 - o written modifications to the executed contract;
 - o written contract signed by the parties;
 - o the RFP, including any and all amendments; and
 - o Contractor's written proposal submitted in response to the RFP as finalized.

2. **Contract Formation:** No contract shall be considered to have been entered into by the State until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful contractor.

3. **Notices:** All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") that may be required or desired to be given by either party to the other shall be IN WRITING and addressed as follows:

Kansas Division of Purchases
900 SW Jackson St, Room 102N
Topeka, Kansas 66612-1286
RE: Contract Number 35945

or to any other persons or addresses as may be designated by notice from one party to the other.

4. **Termination for Cause:** The Director of Purchases may terminate this contract, or any part of this contract, for cause under any one of the following circumstances:
 - o the Contractor fails to make delivery of goods or services as specified in this contract;
 - o the Contractor provides substandard quality or workmanship;
 - o the Contractor fails to perform any of the provisions of this contract, or
 - o the Contractor fails to make progress as to endanger performance of this contract in accordance with its terms.

The Director of Purchases shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as State may authorize in writing), the Director of Purchases shall issue the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.

5. **Termination for Convenience:** The Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, the Director of Purchases shall determine that the termination is in the best interest of the State of Kansas. In the event that the Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least 30 days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.
6. **Rights and Remedies:** If this contract is terminated, the State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The State shall be obligated only for those services and materials rendered and accepted prior to the date of termination.

In the event of termination, the Contractor shall receive payment prorated for that portion of the contract period services were provided to or goods were accepted by State subject to any offset by State for actual damages including loss of federal matching funds.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

7. **Force Majeure:** The Contractor shall not be held liable if the failure to perform under this contract arises out of causes beyond the control of the Contractor. Causes may include, but are not limited to, acts of nature, fires, tornadoes, quarantine, strikes other than by Contractor's employees, and freight embargoes.
8. **Waiver:** Waiver of any breach of any provision in this contract shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by State shall not constitute a waiver.
9. **Independent Contractor:** Both parties, in the performance of this contract, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor accepts full responsibility for payment of unemployment insurance, workers compensation, social security, income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this contract.

10. **Staff Qualifications:** The Contractor shall warrant that all persons assigned by it to the performance of this contract shall be employees of the Contractor (or specified Subcontractor) and shall be fully qualified to perform the work required. The Contractor shall include a similar provision in any contract with any Subcontractor selected to perform work under this contract.

Failure of the Contractor to provide qualified staffing at the level required by the contract specifications may result in termination of this contract or damages.

11. **Subcontractors:** The Contractor shall be the sole source of contact for the contract. The State will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the contract shall apply without qualification to any services performed or goods provided by any subcontractor.
12. **Proof of Insurance:** Upon request, the Contractor shall present an affidavit of Worker's Compensation, Public Liability, and Property Damage Insurance to the Division of Purchases.
13. **Conflict of Interest:** The Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any professional personnel who are also in the employ of the State and providing services involving this contract or services similar in nature to the scope of this contract to the State. Furthermore, the Contractor shall not knowingly employ, during the period of this contract or any extensions to it, any state employee who has participated in the making of this contract until at least two years after his/her termination of employment with the State.
14. **Confidentiality:** The Contractor may have access to private or confidential data maintained by State to the extent necessary to carry out its responsibilities under this contract. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services under this contract. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this contract shall be disseminated by either party except as authorized by statute, either during the period of the contract or thereafter. Contractor agrees to return any or all data furnished by the State promptly at the request of State in whatever form it is maintained by Contractor. On the termination or expiration of this contract, Contractor will not use any of such data or any material derived from the data for any purpose and, where so instructed by State, will destroy or render it unreadable.
15. **Nondiscrimination and Workplace Safety:** The Contractor agrees to abide by all federal, state and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws or rules or regulations may result in termination of this contract.
16. **Environmental Protection:** The Contractor shall abide by all federal, state and local laws, and rules and regulations regarding the protection of the environment. The Contractor shall report any violations to the applicable governmental agency. A violation of applicable laws or rule or regulations may result in termination of this contract for cause.

17. **Hold Harmless:** The Contractor shall indemnify the State against any and all loss or damage to the extent arising out of the Contractor's negligence in the performance of services under this contract and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract.

The State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property.

18. **Care of State Property:** The Contractor shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Contractor's use in connection with the performance of this contract. The Contractor shall reimburse State for such property's loss or damage caused by Contractor, normal wear and tear excepted.
19. **Prohibition of Gratuities:** Neither the Contractor nor any person, firm or corporation employed by the Contractor in the performance of this contract shall offer or give any gift, money or anything of value or any promise for future reward or compensation to any State employee at any time.
20. **Retention of Records:** Unless the State specifies in writing a different period of time, the Contractor agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this contract for a period of five (5) years from the date of the expiration or termination of this contract.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

The Contractor agrees that authorized federal and state representatives, including but not limited to, personnel of the using agency; independent auditors acting on behalf of state and/or federal agencies shall have access to and the right to examine records during the contract period and during the five (5) year post contract period. Delivery of and access to the records shall be within five (5) business days at no cost to the state.

21. **Antitrust:** If the Contractor elects not to proceed with performance under any such contract with the State, the Contractor assigns to the State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by the State pursuant to this contract.
22. **Modification:** This contract shall be modified only by the written agreement and approval of the parties. No alteration or variation of the terms and conditions of the contract shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.
23. **Assignment:** The Contractor shall not assign, convey, encumber, or otherwise transfer its rights or duties under this contract without the prior written consent of the State. State may reasonably withhold consent for any reason.
- This contract may terminate for cause in the event of its assignment, conveyance, encumbrance or other transfer by the Contractor without the prior written consent of the State.
24. **Third Party Beneficiaries:** This contract shall not be construed as providing an enforceable right to any third party.
25. **Captions:** The captions or headings in this contract are for reference only and do not define, describe, extend, or limit the scope or intent of this contract.
26. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this contract shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.
27. **Governing Law:** This contract shall be governed by the laws of the State of Kansas and shall be deemed executed in Topeka, Shawnee County, Kansas.

28. **Jurisdiction:** The parties shall bring any and all legal proceedings arising hereunder in the State of Kansas District Court of Shawnee County, unless otherwise specified and agreed upon by the State of Kansas. Contractor waives personal service of process, all defenses of lack of personal jurisdiction and forum non conveniens. The Eleventh Amendment of the United States Constitution is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment.
29. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA 146a) are incorporated by reference and made a part of this contract.
30. **Integration:** This contract, in its final composite form, shall represent the entire agreement between the parties and shall supersede all prior negotiations, representations or agreements, either written or oral, between the parties relating to the subject matter hereof. This Agreement between the parties shall be independent of and have no effect on any other contracts of either party.
31. **Debarment of State Contractors:** Any Contractor who defaults on delivery or does not perform in a satisfactory manner as defined in this Agreement may be barred for up to a period of three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes. Contractor shall disclose any conviction or judgment for a criminal or civil offense of any employee, individual or entity which controls a company or organization or will perform work under this Agreement that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property; (3) conviction under state or federal antitrust statutes; and (4) any other offense to be so serious and compelling as to affect responsibility as a state contractor. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in the termination of the contract.
32. **Immigration and Reform Control Act of 1986 (IRCA):** All contractors are expected to comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. This Act, with certain limitations, requires the verification of the employment status of all individuals who were hired on or after November 6, 1986, by the contractor as well as any subcontractor or sub-contractors. The usual method of verification is through the Employment Verification (I-9) Form.
- The contractor hereby certifies without exception that such contractor has complied with all federal and state laws relating to immigration and reform. Any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and, at the State's option, may subject the contract to termination for cause and any applicable damages.
- Unless provided otherwise herein, all contractors are expected to be able to produce for the State any documentation or other such evidence to verify Contractor's IRCA compliance with any provision, duty, certification or like item under the contract.
33. **Worker Misclassification:** The contractor and all lower tiered subcontractors under the contractor shall properly classify workers as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes, and income tax withholding. Failure to do so may result in contract termination.
34. **Injunctions:** Should Kansas be prevented or enjoined from proceeding with the acquisition before or after contract execution by reason of any litigation or other reason beyond the control of the State, Contractor shall not be entitled to make or assert claim for damage by reason of said delay.
35. **Statutes:** Each and every provision of law and clause required by law to be inserted in the contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party the contract shall be amended to make such insertion or correction.

36. **Federal, State and Local Taxes:** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. The Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Contract. The State of Kansas is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the bidder's price quotation. Upon request, the State shall provide to the Contractor a certificate of tax exemption.

The State makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

37. **Accounts Receivable Set-Off Program:** If, during the course of this contract the Contractor is found to owe a debt to the State of Kansas, agency payments to the Contractor may be intercepted / setoff by the State of Kansas. Notice of the setoff action will be provided to the Contractor. Pursuant to K.S.A. 75-6201 et seq, Contractor shall have the opportunity to challenge the validity of the debt. If the debt is undisputed, the Contractor shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

K.S.A. 75-6201 et seq. allows the Director of Accounts & Reports to setoff funds the State of Kansas owes Contractors against debts owed by the Contractors to the State of Kansas. Payments setoff in this manner constitute lawful payment for services or goods received. The Contractor benefits fully from the payment because its obligation to the State is reduced by the amount subject to setoff.

38. **Definitions:** A glossary of common procurement terms is available at <http://da.ks.gov/purch>, under "Purchasing Forms".

39. **Indefinite Quantity Contract:** This is an open-ended contract between the Contractor and the State to furnish an undetermined quantity of a good or service in a given period of time. The quantities ordered will be those actually required during the contract period, and the Contractor will deliver only such quantities as may be ordered. No guarantee of volume is made. An estimated quantity based on past history or other means may be used as a guide.

40. **HIPAA Confidentiality:** Per the Health Insurance Portability and Accountability Act (1996) (HIPAA), the agency is a covered entity under the act and therefore Contractor is not permitted to use or disclose health information in ways that the agency could not. This protection continues as long as the data is in the hands of the Contractor.

The Contractor shall establish and maintain procedures and controls acceptable to the agency to protect the privacy of members' information. Unless the Contractor has the member's written consent, the Contractor shall not use any personally identifiable information obtained for any reason other than that mandated by this agreement

41. **Prices:** Prices shall remain firm for the entire contract period and subsequent renewals. Prices shall be net delivered, including all trade, quantity and cash discounts. Any price reductions available during the contract period shall be offered to the State of Kansas. Failure to provide available price reductions may result in termination of the contract for cause.

42. **Payment:** Payment Terms are Net 30 days. Payment date and receipt of order date shall be based upon K.S.A. 75-6403(b). This Statute requires state agencies to pay the full amount due for goods or services on or before the 30th calendar day after the date the agency receives such goods or services or the bill for the goods and services, whichever is later, unless other provisions for payment are agreed to in writing by the Contractor and the state agency. NOTE: If the 30th calendar day noted above falls on a Saturday, Sunday, or legal holiday, the following workday will become the required payment date.

Payments shall not be made for costs or items not listed in this contract.

43. **Materials and Workmanship:** The Contractor shall perform all work and furnish all supplies and materials, machinery, equipment, facilities, and means, necessary to complete all the work required by this Contract, within the time specified, in accordance with the provisions as specified.

The contractor shall be responsible for all work put in under these specifications and shall make good, repair and/or replace, at the contractor's own expense, as may be necessary, any defective work, material, etc., if in the opinion of agency and/or Division of Purchases said issue is due to imperfection in material, design, workmanship or contractor fault.

44. **Industry Standards:** If not otherwise provided, materials or work called for in this contract shall be furnished and performed in accordance with best established practice and standards recognized by the contracted industry and comply with all codes and regulations which shall apply.
45. **Implied Requirements:** All products and services not specifically mentioned in this contract, but which are necessary to provide the functional capabilities described by the specifications, shall be included.
46. **Acceptance:** No contract provision or use of items by the State shall constitute acceptance or relieve the Contractor of liability in respect to any expressed or implied warranties.
47. **Ownership:** All data, forms, procedures, software, manuals, system descriptions and work flows developed or accumulated by the Contractor under this contract shall be owned by the using agency. The Contractor may not release any materials without the written approval of the using agency.
48. **Software Code and Intellectual Property Rights:** As applicable, all original software and software code and related intellectual property developed or created by the Contractor in the performance of its obligations under this Contract or any Task Order issued under this Contract, shall become the sole property of the State of Kansas. The Contractor will surrender all original written materials, including any reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically or magnetically recorded material, used to develop this software or software code and related intellectual property to the state entity for which it was developed.
49. **Data:** Any and all data required to be provided at any time during the contract term shall be made available in a format as requested and/or approved by the State.
50. **Certification of Materials Submitted:** The RFP, together with the specifications set forth herein and all data submitted by the contractor to support their response including brochures, manuals, and descriptions covering the operating characteristics of the item(s) proposed, shall become a part of the contract between the Contractor and the State of Kansas. Any written representation covering such matters as reliability of the item(s), the experience of other users, or warranties of performance shall be incorporated by reference into the contract.
51. **Inspection:** The State reserves the right to reject, on arrival at destination, any items which do not conform with specification of the Contract.
52. **Transition Assistance:** In the event of contract termination or expiration, Contractor shall provide all reasonable and necessary assistance to State to allow for a functional transition to another vendor.

SPECIFICATIONS

The term of this contract is for a five (5) year period from the date of award with a one (1) additional five (5) year renewal by written agreement of the parties. The purpose of this RFP is to establish a multi-vendor statewide contract, from which state agencies and all subdivisions of government can obtain subscription services for information technology research, product evaluations, expert advice, decision models, and other information beneficial for the research, development and implementation of information technology projects and services through state and local government.

There shall be no guaranteed minimum or maximum work to any one Contractor or to Contractors in the aggregate from this contract. It is the intent of the state to offer most RA work through this RFP but the state reserves the right to offer RA work through other RFP's.

The RFP may be re-released, at the sole discretion of the Division of Purchases, throughout the effective period, including any subsequent renewal periods, to permit additional Contractors to be added to the qualified list. Contractors selected to be on the qualified list during the initial or following solicitations and during the initial and any subsequent renewal periods do not need to resubmit proposals to subsequent releases. Contractors already on the qualified list may update their responses, if a re-release is made.

RFP responses will be evaluated on a pass/fail basis. Criteria for inclusion in the qualified list may include but is not limited to financial standing, depth of resources, demonstrated competence in successfully delivering RA services, and recognition that there have been no major problems in delivery of prior services to the State of Kansas.

5.1. Services to be provided:

The state often requires that RA services be engaged for larger IT projects, topics, issues, actions, plans, budgets or agencies. These services usually pose significant impact in their conclusions to warrant the acquisition of external information.

5.2. State Resources if Provided:

The state agency may assign agency staff to work with Contractor staff on a RA engagement. If agency staff is assigned, the Contractor and agency shall clearly designate in the executed award which entity is responsible for supervision of the assigned person(s) and how their performance is to be measured. Special care shall be taken in the event there are shared personnel resources to maintain the independent nature of the RA activity relative to the project.

5.3. General Provisions:

Unless a departure is otherwise specifically noted in writing within a Purchase Order, the following provisions shall apply to all Purchase Orders issued pursuant to this Contract:

1. All charges shall be billed in accordance with the response to a given Purchase Order. Prices and deliverables shall not change during the term of the award unless a written amendment to the award is negotiated between the agency and Contractor.
2. All work will generally be delivered to or offices based in Topeka, Kansas. There will be no reimbursement for travel expenses other than as listed below:
 - a. For work done in Topeka, no travel expense shall be paid.
 - Work required by the agency to be performed outside Topeka may receive reimbursement at the rates stated in the State of Kansas "Employee Travel Expense Reimbursement Handbook" in effect at the time the travel expense is incurred. Reimbursement for travel shall require prior written approval by the agency head or designee. Invoices for all travel expense reimbursement shall include applicable receipts.
3. The state agency will normally provide office space, supplies and equipment unless otherwise specified in the Purchase Order. Any abuse of agency-provided resources by the Contractor or its subcontractor may result in

the award termination, the Contractor being removed from the qualified list and/or recovery of any associated costs, at the sole discretion of the agency with the approval of the Director of the Division of Purchases or the Director's designee. Recovery of any associated costs may include non-payment of current invoices, deductions from future invoices or any other means available to the agency for such recovery.

4. All contracts entered into under this RFP must conform to all federal and state laws and regulation applicable to the agency.
5. All documents and materials, including but not limited to patents and royalties, pertaining to the work accomplished shall become the property of the state agency upon completion thereof, without restrictions as to their further use. The Federal Government shall also be granted a royalty free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and allow others to use for Federal Government purposes, such software, modifications, plans, documents and documentation as result under this contract, the Contractor may not release any such data without the written approval of the agency or the Federal Government.
6. Contractors shall provide the usual support services to their assigned staff. Monitoring assigned tasks will be completed by agency staff. This does not, however, release the Contractor of its responsibility for supervision of their staff.
7. Neither Contractor nor Contractor's personnel shall be deemed to be employees of the State. Contractor shall take appropriate measures to ensure that its personnel who perform services are adequately covered by any and all employer related taxes and insurance in accordance with applicable law. Contractor shall at all times comply with applicable employment laws as regards their employees.
8. The contractor warrants fault-free performance in the processing of date and date-related data (including, but not limited to, calculating, comparing, and sequencing) by all goods and services delivered. Fault-free performance includes, but is not limited to, the manipulation of data with correct results when using dates prior to, through, and beyond January 1, 2000, and shall be transparent to the user.

Hardware and software products, individually and in combination, shall provide the correct system date and correct calculations which utilize or refer to the date data, without human intervention, including leap year calculations. Hardware and software products, individually and in combination, shall also provide correct results when moving forward or backward across the year 2000.
9. The Contractor must be in good standing with the State of Kansas and have no significant problems in prior work for the state.
10. The Contractor is responsible for the work performed by their subcontractors and management of their subcontractors.
11. Data confidentiality must be maintained by the Contractor and any of its subcontractors. Contractor may be exposed to confidential state documents. The Contractor shall adhere to applicable confidentiality and security provisions as communicated by the agency. Contractor shall operate under the direction, control and supervision of the agency for the purpose of handling confidential or secured information. In the event a Contractor or subcontractor violates this provision, the Contractor and/or subcontractor may, at the sole discretion of the Director of the Division of Purchases, be barred from submitting proposals for future Purchase Orders.
12. No Contractor may perform Research Assistance Services for a project where they have any other interest, whether as a prime or subcontractor. Appointment as a Research Assistance Contractor shall preclude appointment for any other work on the same project so long as the Research Assistance assignment remains active.
13. If an agency so designates, security clearances, which may include background investigations, shall be obtained on all personnel of the Contractor and their subcontractors, if any, prior to the beginning of any work for an agency. Costs to obtain such clearances or complete such background investigations shall be borne by the affected agency. However, Contractor and Contractor's employees or subcontractors shall comply fully with requests for information necessary to affect such clearances or investigations.

COST SHEET:

Research and Advisory Services	Unit Pricing (\$)
CORE CONNECT	
Gartner Core Connect Reference single-member	19,100
Gartner Core Connect Reference multi-member	10,900
Gartner Core Connect Advisor single-member	28,600
Gartner Core Connect Advisor multi-member	20,500
GARTNER FOR IT LEADERS (GITL)	
GITL Reference single-member	22,200
GITL Reference multi-member	13,800
GITL Advisor single-member	31,800
GITL Advisor multi-member	23,500
GARTNER FOR IT LEADERS (GITL) WORKGROUP	
GITL Workgroup Cross Function: 1 Advisor & 3 Workgroup Members	66,400
GITL Workgroup Cross Function: Add-on Member (up to 7 max. per base Workgroup)	14,300
GITL Workgroup Role: 1 Advisor & 3 Workgroup Members	49,300
GITL Workgroup Role: Add-on Member (up to 7 max. per base Workgroup)	8,600
GITL Workgroup Essentials 1 Advisor & 3 Workgroup Members	43,900
GITL Workgroup Essentials: Add-on Member (up to 7 max. per base Workgroup)	6,800
INDUSTRY ADVISORY SERVICES (IAS-G) - Single Industry	
IAS-G Reference single-member	28,400
IAS-G Reference multi-member	20,000
IAS-G Advisor single member	42,100
IAS-G Advisor multi member	33,700
IAS-G Advisor Add-on to IT Executives or Enterprise IT Leaders	9,900
INDUSTRY ADVISORY SERVICE (IAS-G) WORKGROUP - Single Industry	
IAS-G Workgroup Cross Function: 1 Advisor & 3 Workgroup Members	90,400
IAS-G Workgroup Cross Function: Add-on Member (up to 7 max. per base Workgroup)	18,900
IAS-G Workgroup Role: 1 Advisor & 3 Workgroup Members	68,200
IAS-G Workgroup Role: Add-on Member (up to 7 max. per base Workgroup)	11,500
IAS-G Workgroup Essentials 1 Advisor & 3 Workgroup Members	54,100
IAS-G Workgroup Essentials: Add-on Member (up to 7 max. per base Workgroup)	6,800
ENTERPRISE IT LEADERS (EITL)	
Enterprise IT Leaders single-member	54,000
Enterprise IT Leaders multi-member	45,200
ENTERPRISE IT LEADERS (EITL) WORKGROUP	
EITL Workgroup Cross Function: 1 Advisor & 3 Workgroup Members	88,100
EITL Workgroup Cross Function: Add-on Member (up to 7 max. per base Workgroup)	14,300
EITL Workgroup Role: 1 Advisor & 3 Workgroup Members	71,000
EITL Workgroup Role: Add-on Member (up to 7 max. per base Workgroup)	8,600
EITL Workgroup Essentials 1 Advisor & 3 Workgroup Members	65,600

EITL Workgroup Essentials: Add-on Member (up to 7 max. per base Workgroup)	6,800
IT EXECUTIVE PORTFOLIO	
IT Executives CIO Signature	80,300
IT Executives CIO single member	73,700
IT Executives CIO multi-member	65,500
IT Executive Essentials single-member	49,300
IT Executive Essentials multi-member	44,100
IT NEWS AND INSIGHTS	
	500
GARTNER FOR IT ASSOCIATES *	
Gartner for IT Associates 200 documents	32,400
Gartner for IT Associates 300 documents	48,600
Gartner for IT Associates 400 documents	64,800
Gartner for IT Associates 500 documents	81,000
Gartner for IT Associates Add-on 100 documents	16,200
* Purchasing terms and conditions apply	
STRATEGIC ADVISORY SERVICES (SAS)	
2011 SAS Worldwide Client - Internal Use of Analyst Time	11,900
2011 SAS Worldwide Client - Remote Advisory Engagement	6,100
2011 SAS Worldwide Client - External Speaking Engagement	18,300
EVENTS	
2011 Symposium Ticket - North America	2,795
2011 Themed Summit Ticket - North America	1,750
BURTON IT1 *	
Gartner Burton IT1 for Small and Mid Size Government Agency **	
Gartner Burton IT1 Advisor for Agency with up to 4,000 Employees	45,600
Gartner Burton IT1 Reference for Agency with up to 4,000 Employees	30,400
Gartner Burton IT1 Department	
Gartner Burton IT1 Department Advisor - up to 40 seats	90,200
Gartner Burton IT1 Department Reference - up to 40 seats	60,800
* Purchasing terms and conditions apply	
** Check with Sales representative for availability.	
IT SCORECARDS	
Level I Scorecard	20,600
Level II Scorecard	41,200
Level I Scorecard - Enhanced	47,800

The pricing for years two through nine of the Gartner proposal are provided for evaluation purposes only. Gartner reserves the right to refresh its pricing and product offerings on an annual basis consistent with the prices listed in the Gartner State & Local price list. The refreshed Pricing and Product offering will be provided to State of Kansas in January of each new calendar year in writing and the pricing will become effective within 14 days of submission to Client by Gartner and applicable to any renewal of existing services or initiation of new services.

Subject to the terms and conditions of the bid specifications and this contract, State hereby accepts the offer of Gartner, Inc. as expressed by Contractor's bid submitted to the Division of Purchases on July 19, 2011, in response to Bid Event Number EVT0000709.

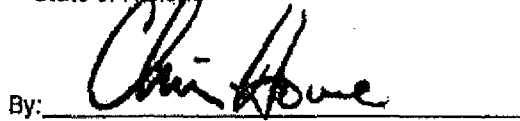
It is understood and agreed by the parties that pursuant to the bid, Contractor agrees to furnish Research Assistance (RA) Services for Statewide Optional Use on order of the Agency(s) at the price or prices contained herein.

This contract is entered into this 28th day of July, 2011 by and between the State of Kansas (State) and Gartner, Inc., O'Fallon, MO (Contractor).

Contractor: Gartner, Inc.

State of Kansas

By: 

By: 

CHRIS HOWE
DIRECTOR OF PURCHASES

Printed Name: _____

Title: **Phillip A. Cummings**
Director, Government Contracts

State of Kansas
Department of Administration
DA-146a (Rev. 04-11)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 04-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. If the termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor, 10/20/10
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."