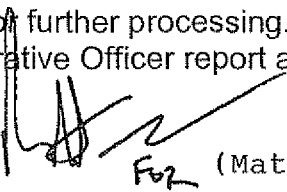


0150-09697-0000

TRANSMITTAL

TO The Council	DATE FEB 02 2012	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT	
<p style="text-align: center;">Proposed Contract with Gartner, Incorporated, for Information Technology Research and Advisory Subscription Services</p> <p style="text-align: center;">Transmitted for further processing. See the City Administrative Officer report attached.</p> <p style="text-align: center;"> FOR (Matt Szabo) MAYOR</p> <p>MAS:MAF:11120012c</p>		

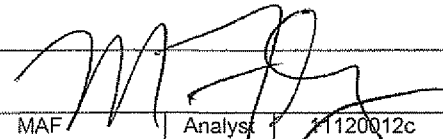

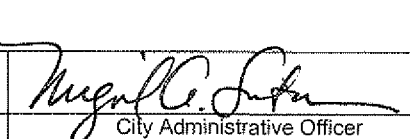
Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 01/25/2012	C.D. No. All	CAO File No.: 0150-09697-0000
Contracting Department/Bureau: Information Technology Agency		Contact: Laura Ito, 213.978.3322	
Reference: Request from the Mayor for report dated December 9, 2011			
Purpose of Contract: To subscribe to information technology research and advisory services			
Type of Contract: (x) New contract () Amendment		Contract Term Dates: One year effective July 1, 2011 through June 30, 2012	
Contract/Amendment Amount: \$278,280			
Proposed amount \$278,280 + Prior award(s) \$ 0 = Total \$278,280			
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*
1. Council has approved the purpose		X	
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested		X	
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: <1 %			
			*N/A = not applicable ** Contracts over \$100,000

COMMENTS

The Information Technology Agency (ITA) is requesting authority to execute a personal services contract with Gartner, Incorporated (Gartner) to provide information technology (IT) research and advisory subscription services. ITA indicates that the subscriber departments rely upon the technical guidance, direction, and knowledge provided by Gartner on a daily basis for IT procurement and technology deployment decision making. The proposed contract compensation totals \$278,280, which includes various subscription services for ITA (\$124,190), the Department of Water and Power (\$97,290), the Fire Department (\$11,740), the Department of Building and Safety (\$5,870), the General Services Department (\$5,870), and the Department of Public Works, Bureau of Sanitation (\$33,320). The term of the proposed contract is one year, effective retroactively from July 1, 2011 through June 30, 2012.

Gartner has been providing these subscription services to various City departments since 1998. The most recent services were provided through City contract C-114813, which was effective for a 32-month term expiring June 30, 2011. Contract C-114813 was originally executed in November 2008 utilizing an established State of California Multiple Award Schedule (CMAS) contract, which allowed the City to benefit from a standard government pricing structure. ITA indicates that prior to the expiration of contract C-114813, it began the process of extending the contract. However, through discussion with Gartner and the City Attorney, it was determined that the existing contract could not

		
MAF	Assistant CAO	City Administrative Officer

be extended due to a new requirement that CMAS piggyback procurement required the City to pay an administrative fee to the State. As this would result in the City paying a less favorable rate for Gartner's services, the City Attorney determined that a new contract should be executed. ITA is therefore requesting to execute a sole-source one-year contract with no renewal options with Gartner to continue the provision of subscription services while ITA conducts a new competitive Request for Proposal (RFP) process. ITA indicates that Gartner has continued providing the City departments subscription services subsequent to the expiration of contract C-114813, and therefore requests that the proposed contract term be retroactive to July 1, 2011 in order to pay for the services provided to date. Note that ITA also had an additional contract C-114812 with Gartner for research and advisory consulting services which expired in November 2011. ITA is not anticipating executing another new contract to continue the consulting services previously provided under contract C-114812.

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 (\$5,870 annual subscription fee), Advisor (\$8,950), IT Leaders (\$12,630), and Chief Information Officer (CIO) Signature (\$78,240). 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 eight and nine of the proposed contract. ITA indicates it conducted a survey of all subscriber departments in July 2011 to confirm the departments desired continuation of the subscription services. Each subscriber department funds their portion of the Gartner contract within their Contractual Services account and pays Gartner directly for the subscription services. ITA proposes to fund its portion of the contract, totaling \$124,190, utilizing Communication Services account savings realized due to more favorable contract rates for the City's telephone line services. ITA requests to transfer these funds from the Department's Communications Services account to the Contractual Services account to fund the Gartner contract. Since budgeted funds are available, approval of the contract complies with the City's Financial Policies.

In accordance with Charter Section 1022, the Personnel Department determined that City employees cannot perform the work proposed for contracting, and found that the work to be contracted requires knowledge of IT that is not required by the City's classifications. Gartner has complied with all applicable City contracting requirements. The Good Faith Effort Outreach requirement does not apply to this contract because ITA did not complete a competitive process. In accordance with Los Angeles Administrative Code Section 10.5(b)2, Council approval of the proposed contract is required because the proposed contract will replace an expired contract involving the same contractor with no new competitive process, resulting in a cumulative term of over three years and an estimated annual compensation exceeding \$134,713.

RECOMMENDATIONS

That the Council, subject to the approval of the Mayor:

1. Authorize the General Manager of the Information Technology Agency (ITA) to execute a personal services contract with Gartner, Incorporated for the provision of information technology research and advisory subscription services for term of one year effective July 1, 2011 through June 30, 2012 and compensation not to exceed \$278,280, subject to the approval of the City Attorney;

2. Transfer \$124,190 within the General Fund 100, Department 32 from Communication Services Account 009350 to Contractual Services Account 003040 in order to fund ITA's portion of the Gartner contract.

FISCAL IMPACT STATEMENT

Funding for the proposed information technology research and advisory subscription services contract with Gartner, Incorporated in the cumulative amount of \$278,280 is provided within various user department's 2011-12 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.

City of Los Angeles

California

INFORMATION TECHNOLOGY AGENCY

RANDI LEVIN
GENERAL MANAGER
CHIEF TECHNOLOGY OFFICER

MARK P. WOLF
Executive Officer

ASSISTANT GENERAL MANAGERS
Beverley Dembo
Kevin K Crawford



2011 DEC 12 PM 3:38

CITY ADMINISTRATIVE OFFICER

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

ita.lacity.org

ANTONIO R. VILLARAIGOSA
MAYOR

December 9, 2011

REF: ASB-329-11

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

Attention: Pamela Finley, 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. for a one year term. Approval of this contract will: (1) allow the City of Los Angeles' Information Technology Agency (ITA) and other City departments to purchase, at the most favorable rate offered, Gartner's subscriptions that provide invaluable resources and tools to City personnel who manage information technology, and (2) allow ITA to prepare and release a new Request for Proposals (RFP) to execute a replacement contract for these same services.

Background

On November 19, 2008, the City entered into a piggyback contract with Gartner, Inc. (Gartner) to purchase the IT CORE Research and Executive Program subscriptions specified in the CMAS contract for a term of three years, expiring June 30, 2011. 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 software, Exadata, 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, the ITA began the process to extend it via an amendment. Unfortunately, Gartner then informed ITA that the City can no longer piggyback on Gartner's CMAS and/or GSA contracts without paying an administrative fee to the State. The City Attorney opined that this is not a viable option as it would give the City a less favorable rate structure than that paid by the State. Other contracting options were explored, but ultimately the City Attorney determined that the previous contract could not be extended and a new one should be executed.

This determination was made based on the fact that it would have been impossible for ITA to release a Request for Proposals and execute a replacement contract before the current contract expired. Additionally, departments indicated that they required the service and, in the absence of a contract, would procure it individually through Authority for Expenditure at a non-enterprise rate which would result in higher costs for each department. This contract provides a discount for subscriptions because the City-wide total exceeds 25.

Under these extenuating circumstances, the City Attorney has approved ITA directly contracting with Gartner for one year in order to benefit from the expert services that Gartner is currently providing without interruption and also allow ITA sufficient time to release the RFP. Therefore, the term of the attached contract is for one year only with no option for renewal.

Gartner has submitted all the required documents and all the compliance documents have been verified and/or approved 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 applicable department budgets. No additional funding is required.

Honorable Antonio Villaraigosa
December 9, 2011
Page 3

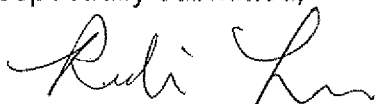
The City's total obligation under this Contract shall not exceed \$278,280 (Two Hundred Seventy-Eight Thousand Two Hundred Eighty dollars), subject to available funding.

Recommendation

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

Please contact Laura Ito at 978-3322 if you require additional information.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Randi Levin".

Randi Levin
General Manager

ec: Jacob Wexler, Office of the CAO
Laura Ito
Irene Mayeda
Nicanier Rosas

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 the Contractor to provide Information Technology (IT) research and advisory services;

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

WHEREAS, competitive bidding under Charter Section 371 is not practicable or advantageous to the City; and

WHEREAS, it is in the City's best interest to continue using Contractor's services to aid in the policy and strategic planning development during the period of time that the City is preparing an RFP for future research and advisory services;

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 as of July 1, 2011 and terminate one (1) year thereafter, unless earlier terminated. Pursuant to Section VI, this Contract shall be subject to termination by the City if funds are not appropriated of 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 specific to each subscription/membership level. Contractor agrees to sell only the subscriptions as referenced herein as described below and only to the departments listed in Section III.A for the entire term of the contract. Contractor warrants that its services provided hereunder shall conform to high professional standards.

Subscription/Membership Level deliverables:

A. CIO Signature –

Client may designate two (2) Licensed Users, referred to herein as: (i) the “Member,” who has access to all the Deliverables described below (except for the Professional Development for the Delegate); and (ii) the “Delegate,” who has access only to the Content, Assigned Service Delivery Team, Professional Development for the Delegate, Advisory Services, Symposium/ITxpo[®], and Online Networking (Gartner peer Connect) Deliverables described below.

■ Content

1. **Executive Programs Research Reports**—Up to 12 (twelve) Reports per year; covering topics selected by Gartner such as IT Governance, Business Value of IT, Architecture, and other areas where business and IT intersect.
2. **Gartner for Leadership Development**—Developed for the aspiring CIO and the professional development of the Delegate and accessed via the Gartner for Leadership Development website.
3. **Gartner for IT Executives**—Targeted role-specific content, such as podcasts, videocasts, polling, and top research picks accessed via any of the Gartner for IT Executives role websites.
4. **Teleconferences**—Up to 12 (twelve) teleconferences per year, hosted by Executive Programs Research Report Authors to discuss the topics of their Research Reports.
5. **Access** to Gartner Core Research.
6. **Access** to Gartner for IT Leaders content and role pages.
7. **Talking Technologies Series**—Concise and expert commentaries on the latest IT topics in a monthly audio program that can be listened to on gartner.com or downloaded to listen to in an MP3 format.

Note: Schedules referenced above are approximations and are dependent on the publication schedule of relevant Research.

■ Use of Research

The Member and the Delegate may each, on an occasional and infrequent basis, forward to specific individuals within the Client organization copies of individual research documents: (i) not to exceed 25 (twenty-five) separate documents per contract year for the Member, and (ii) not to exceed 25 (twenty-five) separate documents per contract year for the Delegate, for the purpose of facilitating executive decision-making. This forwarding of documents may not be done on a routine basis, or by means of posting on Client's corporate intranet, or in any other manner that has the intent or effect of avoiding the purchase of additional User licenses from Gartner.

■ **Assigned Service Delivery Team**

A service delivery team ("Delivery Team"), consisting of an Executive Partner and an Executive Client Manager, will be assigned to the Member and their respective Delegate, and will serve as the Member's primary points of contact for all Gartner resources available under this Service. The Delivery Team will work with the Member to develop a plan (the "Member Value Plan"), which will highlight value sought; identify key issues on which delivery of the Member's Service may focus; and outline how the Service can effectively deliver that value. Progress against the Member Value Plan will be reviewed during the contract year as follows:

1. **Strategy Meetings**—Up to four (4) times per year, the Executive Partner will meet face to face with either the Member, the Member and the Delegate, or the Delegate on the Member's behalf ("Strategy Meeting"). These Strategy Meetings may be used to: (i) review and apply Executive Programs Research, the annual Executive Programs CIO Agenda, or other relevant content; (ii) draw on the Executive Partner's professional experience to advise the Member in the context of the Member's issues; and (iii) develop, discuss the progress of, or evaluate the Member's Member Value Plan.
2. **Optional Substitutions for Strategy Meetings**—Each of the following architected sessions are available to the Member for their use during the contract period. The Delivery Team will work with the Member to determine which, if any, of these sessions would be of value for inclusion in the Member Value Plan. Each session used by the Member will count as one (1) of the four (4) Strategy Meetings to which they are entitled annually. Participation in these sessions is limited to the Member and members of the Member's team (as reasonably required for the Member's business purposes). In all instances, the Member must be present and the purpose of the session must be to advance the Member's agenda. Each of the following sessions may be used once per contract year:
 - a. **On-site Analyst Briefing**—Member meets on Client premises with a Gartner Analyst for a half-day for knowledge-based, individual or project advisory assistance, typically involving delivery of Gartner Content.

- b. **Executive Programs Workshop**—Member meets on Client premises with Gartner Executive Programs Expert for a half-day facilitated workshop focusing on the application of Gartner Executive Programs Research and action planning. Topic for the workshop will be selected by the Member and the Delivery Team from a list of available Executive Programs workshops and participation will be limited to 25 (twenty-five) Members and/or team members.
3. **Contextualized Targeted Gartner Research**—On an as-needed basis, the Delivery Team will e-mail to the Member or Delegate selected Research which has been synthesized and put into the Member's context, based on the Member Value Plan.

■ **Professional Development for the Delegate**

The Member has the option of providing professional development to the Delegate. At Member's option, the following will be offered to the Delegate:

1. **Individual Development Plan**—The assigned Executive Partner will work with the Delegate to develop an individual development plan (the "Individual Development Plan"), which will highlight objectives sought, identify key areas of focus, and outline how the Service can effectively meet those goals. Progress against the Individual Development Plan will be reviewed during the contract year as follows:
2. **Coaching Teleconferences**—Up to four (4) times per year, the Executive Partner will conduct teleconferences ("Coaching Teleconferences") with the Delegate. These Coaching Teleconferences may be used to: (i) review and apply Gartner for Leadership Development Research, Executive Programs research, or other relevant content; (ii) draw on the Executive Partner's professional experience to advise the Delegate in the context of the Delegate's professional and career goals; and (iii) develop, discuss the progress of, or evaluate the Delegate's Individual Development Plan.

■ **Advisory Services**

1. **Gartner for IT Executives Analyst Inquiry**—Provides the Member and the Delegate with access to Gartner Analysts who are associated with the Service purchased by Client.
 - a. Participation in Analyst Inquiry is limited to the Gartner Analyst, the Member and/or the Delegate, and members of the Member's team (as reasonably required for the Member's business purposes). In all instances, the Member and/or the Delegate must be present on the Inquiry call and the purpose of the Inquiry call must be to advance the Member's agenda.
 - b. Participation in Analyst Inquiry as part of this Service is subject to the terms set forth in the Usage Guidelines for Gartner Services posted on gartner.com.

2. **Executive Programs CIO Research Inquiries**—Inquiry access to Gartner Executive Programs CIO Researchers through IT Executives Analyst Inquiry; limited to topics covered in Executive Programs Research Reports, as published by Gartner Executive Programs.

■ **Events**

1. **Symposium/ITxpo®**—Two (2) complimentary invitations for attendance to Gartner Symposium/ITxpo®, including all standard Symposium attendee rights plus Executive Programs VIP access. These invitations are non-transferable except between the Member and their named Delegate.
2. **Exclusive Executive Programs Events**—Complimentary nontransferable invitation for attendance, by the Member only, at local content-based Gartner Events in Member’s region or country.

■ **Networking**

1. **Facilitated Networking**—Member may request meetings or conference calls with peers around a specific topic/issue in order to exchange information about best practices or areas of expertise. Available to the Member only.
2. **Online Networking**—Access to Gartner Peer Connect.

Note: Unless otherwise provided above: (i) you must be a Licensed User to access Gartner Research Services; (ii) passwords, Research documents and Analyst Inquiry may not be shared with Non-Users; and (iii) your use of this Service is governed by the Usage Guidelines for Gartner Services, which are accessible on the Policies section of gartner.com.

B. IT Leaders Reference seat –

Gartner for IT Leaders is a service that provides client (“Licensed Users”) with access to research and advice about information technology and the functional responsibilities of specific IT roles and affords Users the option of inquiry with Gartner Analysts. Gartner for IT Leaders makes it easier for Registered Users (“Users”) to find the information they need to make informed decisions by connecting our resources to their every-day needs.

- **Access to all Gartner for IT Leaders Role-Based Web pages**—Exclusive gartner.com home pages that serve as gateways to role-specific content, such as: activity cycles, blogs, polling, top research picks, and most-viewed research.
- **Community**—Access to an exclusive online community that provides insight and experience from both Gartner analysts and IT peers who share common interests related to specific roles.
- **News and Analysis**—Timely analysis of breaking news of interest to specific technology roles, which keeps IT leaders current.
- **Access to Gartner Core Research**—Through gartner.com. Research across a broad range of technology topics that provides a base of knowledge for all technology leaders.

- **Access to Gartner Benchmarking Analytics IT Key Metrics Data**—Accessible through gartner.com, IT Key Metrics Data provides a comprehensive database of the industry’s most definitive IT spending and staffing levels in addition to key technology cost and performance metrics.
- **A Range of Written Research Reports**, such as:
 3. **Vendor and Product Ratings**—A report that provides client organizations with a holistic view of the vendors from which they are purchasing products and services.
 4. **Special Reports**—Reports that (i.) may cover underlying research themes that cut across technology or industry-specific research, or (ii.) may provide in-depth strategic analysis of trends, industry developments, vendors, products and services.
 5. **Published Research**—Reports that focus on companies, products, markets, decision frameworks, tactical guidelines, case studies, and strategic planning assumptions.
 6. **Toolkit Resources**—Prescriptive, downloadable and diagnostic resources that provide actionable advice and guidance on how to execute specific actions organized by specific roles and activities. Downloadable tools and templates may be altered by Clients for their own internal non-commercial use only.

Note: You must be an authorized Licensed User to access Gartner Research Services or Analyst Inquiry. Passwords, Research documents and Analyst Inquiry may not be shared with non-Licensed Users. Gartner monitors client usage patterns. Unusual or excessive usage patterns may be audited in accordance with the Usage terms herein. Services are to be used for each Licensed User’s individual business purposes for the benefit of the Licensed User. Gartner periodically updates Service names and deliverables to reflect client needs and market relevancy.

Core Connect Research

Core Connect Research is a comprehensive program designed to help professionals achieve tangible business results. Clients receive instant access to the world’s foremost repository of expert analysis and opinion on everything important in IT including searchable databases of cutting-edge research, customized alerts that keep clients up-to-speed—and even personal consults with Gartner’s team of world-class analysts. This is the single most valuable IT program in the world. Nothing else compares when it comes to assisting client users generate business impact.

Core Connect Research is a service that provides research and advice about information technology for decision makers. Core Research provides clients with the base of knowledge and advice needed to capitalize on IT technologies and markets. There are two levels of Licensed User access to Core Connect Research: Reference and Advisor.

- The first level, called **Reference**, will provide access to all Gartner Core Research Focus Areas, Peer Connect, Webinars, and includes Web-based

access (on gartner.com) to all Gartner research, including more than 30,000 documents produced by more than 200 Gartner research programs.

- The second level, called **Advisor**, will provide the same access to Peer Connect, Webinars, and written research as the Reference level, plus un-metered analyst inquiry privileges, an audio subscription to Talking Technology, and one event ticket to any of Gartner's theme-focused events.

C. Advisor seat –

- **Gartner Core Connect Web Pages**—Provides access to a knowledge base and broad range of technology topics for technology leaders.
- **A Range of Written Research Reports**, such as:
 7. **Published Research**—Covers companies, products, markets, decision frameworks, tactical guidelines, case studies, and strategic planning assumptions.
 8. **Vendor and Product Ratings**—Provides a holistic view of IT vendors.
 9. **Special Reports**—Cover underlying themes that cut across technology research.
- **Peer Connect**—A secure online network of IT professionals who can access and leverage the collective experience of their peers.
- **Webinars**—Periodic Web conferences where Gartner analysts speak on timely topics in information technology and then solicit questions from listeners.
- **Standard Analyst Inquiry**—Licensed Users may engage with a Gartner Analyst to: (i) discuss a Gartner Research document published within the scope of their specific Service, and/or (ii) apply a Gartner Research document to a related issue that their company is facing. Typical inquiry sessions can take up to 30 (thirty) minutes of an Analyst's time. Standard Analyst Inquiry provides basic technology reviews of business-related documents that are 20 (twenty) pages or less, and take up to 60 (sixty) minutes of an Analyst's time. Inquiries requiring additional analysis or research by the Analyst are not included.
- **Talking Technology**—Concise and expert commentaries on the latest IT topics in a monthly audio program that can be listened to on gartner.com or downloaded to listen to in MP3 format.
- **Summit Event Ticket**—Admission to one (1) Gartner Summit Conference. Third day "Best Practice, Methodology and Implementation Days" at EMEA Summits, as well as other special programs, Gartner Seminars, tutorials, and workshops are not included in the Summit Ticket deliverable and may require an additional fee. Tickets are transferable within the Client organization but may not be transferred to another company.

Note: Unless otherwise provided above, use of this Service is governed by the Usage Guidelines for Gartner Services, which are accessible on the Policies section of gartner.com.

D. Reference seat –

- **Gartner Core Connect Web Pages**—Provides access to a knowledge base and broad range of technology topics for technology leaders.
- A Range of Written Research Reports, such as:
 10. **Published Research**—Covers companies, products, markets, decision frameworks, tactical guidelines, case studies, and strategic planning assumptions.
 11. **Vendor and Product Ratings**—Provides a holistic view of IT vendors.
 12. **Special Reports**—Cover underlying themes that cut across technology research.
- **Peer Connect**—A secure online network of IT professionals who can access and leverage the collective experience of their peers.
- **Webinars**—Periodic Web conferences where Gartner analysts speak on timely topics in information technology and then solicit questions from listeners.

Note: Unless otherwise provided above, use of this Service is governed by the Usage Guidelines for Gartner Services, which are accessible on the Policies section of gartner.com.

III. COMPENSATION AND METHOD OF PAYMENT

The total expenditure limit for this contract shall not exceed \$278,280 (Two Hundred Seventy-Eight Thousand Two Hundred Eighty dollars).

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 pay for the following (12-month) subscriptions:

<u>Information Technology Agency</u>			
Reference seat:	2 users @ \$5,870 each	\$ 11,740	
Advisor seat:	1 user @ \$8,950 each	8,950	
IT Leaders Ref:	2 users @ \$12,630 each	25,260	
CIO Signature:	1 annual membership	<u>78,240</u>	\$124,190
<u>Department of Water and Power</u>			
Reference seat:	12 users @ \$5,870 each	\$ 70,440	
Advisor seat:	3 users @ \$8,950 each	<u>26,850</u>	97,290
<u>Fire Department</u>			
Reference seat:	2 users @ \$5,870 each	\$ 11,740	11,740

<u>Department of Building and Safety</u>			
Reference seat:	1 user @ \$5,870 each	\$ 5,870	5,870
<u>General Services Department</u>			
Reference seat:	1 user @ \$5,870 each	\$ 5,870	5,870
<u>Department of Public Works, Bureau of Sanitation</u>			
Reference seat:	2 users @ \$5,870 each	\$ 11,740	
Advisor seat:	1 user @ \$8,950 each	8,950	
IT Leaders Ref:	1 user @ \$12,630 each	<u>12,630</u>	<u>33,320</u>
Total:			\$278,280

There shall not be any pricing increase or any increase in the number of subscriptions during the term of this contract. Contractor may not charge any City department an amount that will exceed the cumulative compensation limit shown above for that department.

B. Invoices

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

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: _____
Title: _____
Address: _____
Telephone: _____
Fax: _____
E-Mail: _____

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: 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

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. INCORPORATION OF THE STANDARD PROVISIONS

This Contract which consists of fourteen (14) pages, the attached Service Agreement license terms and the other specific documents cited herein constitute the entire Contract between the City and Contractor. The Standard Provisions for City Contracts (Rev. 03/09) is hereby attached to this Contract as Appendix A and incorporated herein by reference.

IX. 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 agreement. To the extent that said services were performed in accordance with the terms and conditions of this agreement, those services are hereby ratified.

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 Lagmay, City Clerk

GARTNER, INC.

by _____

Signature

Date

Name

Title

Date

Signature

Name

Title

Date

BTRC NO. _____

CONTRACT NO. _____

Service Agreement (SA) License Terms:

An SA for subscription-based research and related services (the "**Services**") is cancelable, and may be terminated as provided in the City's Standard Provisions for Service Contracts, which are attached as Appendix A,

1. **Ownership and Use of the Services.** Gartner owns and retains all rights to the Services not expressly granted to Client. Only the individuals named in this 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.

2. **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. GARTNER SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT CLIENT MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN, except to the extent required under the City's Standard Provisions for Service Contracts, which are attached to this Contract as Appendix A.

3. **Client Confidential Information.** Gartner agrees to keep confidential any Client-specific information communicated by Client to Gartner in connection with this 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 Gartner; (3) entered the public domain through no fault of Gartner subsequent to Client's communication to Gartner; (4) is in Gartner's possession free of any obligation of confidence at the time of Client's communication to Gartner; or (5) is communicated by the Client to a third party free of any obligation of confidence. Additionally, Gartner may disclose such information to the extent required by legal process.

4. **Miscellaneous**

(a) **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.

(b) **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.

(c) **No Third Party Beneficiaries.** This SA is for the benefit of the parties only.

(d) **Surviving Clauses.** Sections 2, 3, and 4 (b), (c) and (d) shall survive the termination of this SA.

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions 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**.

Appendix A

- 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: 11/16/2011

Agreement/Reference: Subscription 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

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

All Risk Coverage Boiler and Machinery
 Flood Builder's Risk
 Earthquake _____

_____ **Pollution Liability** _____

_____ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds** 100% of the contract price

_____ **Crime Insurance** _____

Other: 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

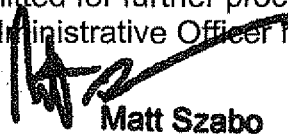
0150-09697-0000

TRANSMITTAL

TO The Council	DATE FEB 02 2012	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT	

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

Transmitted for further processing.
See the City Administrative Officer report attached.



Matt Szabo
(COPY)
MAYOR

MAS:MAF:11120012c

Matt Szabo
(COPY)

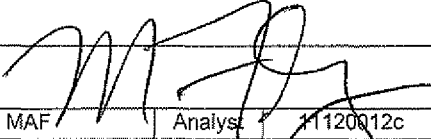
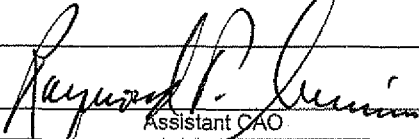
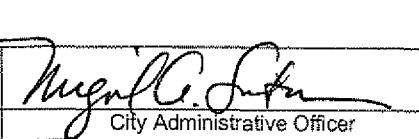
Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 01/25/2012	C.D. No. All	CAO File No.: 0150-09697-0000				
Contracting Department/Bureau: Information Technology Agency		Contact: Laura Ito, 213.978.3322					
Reference: Request from the Mayor for report dated December 9, 2011							
Purpose of Contract: To subscribe to information technology research and advisory services							
Type of Contract: (x) New contract () Amendment		Contract Term Dates: One year effective July 1, 2011 through June 30, 2012					
Contract/Amendment Amount: \$278,280							
Proposed amount \$278,280 + Prior award(s) \$ 0 = Total \$278,280							
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) is requesting authority to execute a personal services contract with Gartner, Incorporated (Gartner) to provide information technology (IT) research and advisory subscription services. ITA indicates that the subscriber departments rely upon the technical guidance, direction, and knowledge provided by Gartner on a daily basis for IT procurement and technology deployment decision making. The proposed contract compensation totals \$278,280, which includes various subscription services for ITA (\$124,190), the Department of Water and Power (\$97,290), the Fire Department (\$11,740), the Department of Building and Safety (\$5,870), the General Services Department (\$5,870), and the Department of Public Works, Bureau of Sanitation (\$33,320). The term of the proposed contract is one year, effective retroactively from July 1, 2011 through June 30, 2012.

Gartner has been providing these subscription services to various City departments since 1998. The most recent services were provided through City contract C-114813, which was effective for a 32-month term expiring June 30, 2011. Contract C-114813 was originally executed in November 2008 utilizing an established State of California Multiple Award Schedule (CMAS) contract, which allowed the City to benefit from a standard government pricing structure. ITA indicates that prior to the expiration of contract C-114813, it began the process of extending the contract. However, through discussion with Gartner and the City Attorney, it was determined that the existing contract could not

		
MAF	Assistant CAO	City Administrative Officer

be extended due to a new requirement that CMAS piggyback procurement required the City to pay an administrative fee to the State. As this would result in the City paying a less favorable rate for Gartner's services, the City Attorney determined that a new contract should be executed. ITA is therefore requesting to execute a sole-source one-year contract with no renewal options with Gartner to continue the provision of subscription services while ITA conducts a new competitive Request for Proposal (RFP) process. ITA indicates that Gartner has continued providing the City departments subscription services subsequent to the expiration of contract C-114813, and therefore requests that the proposed contract term be retroactive to July 1, 2011 in order to pay for the services provided to date. Note that ITA also had an additional contract C-114812 with Gartner for research and advisory consulting services which expired in November 2011. ITA is not anticipating executing another new contract to continue the consulting services previously provided under contract C-114812.

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 (\$5,870 annual subscription fee), Advisor (\$8,950), IT Leaders (\$12,630), and Chief Information Officer (CIO) Signature (\$78,240). 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 eight and nine of the proposed contract. ITA indicates it conducted a survey of all subscriber departments in July 2011 to confirm the departments desired continuation of the subscription services. Each subscriber department funds their portion of the Gartner contract within their Contractual Services account and pays Gartner directly for the subscription services. ITA proposes to fund its portion of the contract, totaling \$124,190, utilizing Communication Services account savings realized due to more favorable contract rates for the City's telephone line services. ITA requests to transfer these funds from the Department's Communications Services account to the Contractual Services account to fund the Gartner contract. Since budgeted funds are available, approval of the contract complies with the City's Financial Policies.

In accordance with Charter Section 1022, the Personnel Department determined that City employees cannot perform the work proposed for contracting, and found that the work to be contracted requires knowledge of IT that is not required by the City's classifications. Gartner has complied with all applicable City contracting requirements. The Good Faith Effort Outreach requirement does not apply to this contract because ITA did not complete a competitive process. In accordance with Los Angeles Administrative Code Section 10.5(b)2, Council approval of the proposed contract is required because the proposed contract will replace an expired contract involving the same contractor with no new competitive process, resulting in a cumulative term of over three years and an estimated annual compensation exceeding \$134,713.

RECOMMENDATIONS

That the Council, subject to the approval of the Mayor:

1. Authorize the General Manager of the Information Technology Agency (ITA) to execute a personal services contract with Gartner, Incorporated for the provision of information technology research and advisory subscription services for term of one year effective July 1, 2011 through June 30, 2012 and compensation not to exceed \$278,280, subject to the approval of the City Attorney;

2. Transfer \$124,190 within the General Fund 100, Department 32 from Communication Services Account 009350 to Contractual Services Account 003040 in order to fund ITA's portion of the Gartner contract.

FISCAL IMPACT STATEMENT

Funding for the proposed information technology research and advisory subscription services contract with Gartner, Incorporated in the cumulative amount of \$278,280 is provided within various user department's 2011-12 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.

City of Los Angeles

California

INFORMATION TECHNOLOGY AGENCY

RANDI LEVIN
GENERAL MANAGER
CHIEF TECHNOLOGY OFFICER

MARK P. WOLF
Executive Officer

ASSISTANT GENERAL MANAGERS
Beverley Dembo
Kevin K Crawford



2011 DEC 12 PM 3:38

CITY ADMINISTRATIVE OFFICER

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

ita.lacity.org

ANTONIO R. VILLARAIGOSA
MAYOR

December 9, 2011

REF: ASB-329-11

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

Attention: Pamela Finley, 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. for a one year term. Approval of this contract will: (1) allow the City of Los Angeles' Information Technology Agency (ITA) and other City departments to purchase, at the most favorable rate offered, Gartner's subscriptions that provide invaluable resources and tools to City personnel who manage information technology, and (2) allow ITA to prepare and release a new Request for Proposals (RFP) to execute a replacement contract for these same services.

Background

On November 19, 2008, the City entered into a piggyback contract with Gartner, Inc. (Gartner) to purchase the IT CORE Research and Executive Program subscriptions specified in the CMAS contract for a term of three years, expiring June 30, 2011. 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 software, Exadata, Storage Area Networks, Service Oriented Architecture (SOA), IT Security, Hardware procurement, Microsoft Licensing, Smart Grid, Enterprise Asset Management, and PC Lifecycle management / Desktop virtualization.

Honorable Antonio Villaraigosa

December 9, 2011

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Prior to the expiration of the contract, the ITA began the process to extend it via an amendment. Unfortunately, Gartner then informed ITA that the City can no longer piggyback on Gartner's CMAS and/or GSA contracts without paying an administrative fee to the State. The City Attorney opined that this is not a viable option as it would give the City a less favorable rate structure than that paid by the State. Other contracting options were explored, but ultimately the City Attorney determined that the previous contract could not be extended and a new one should be executed.

This determination was made based on the fact that it would have been impossible for ITA to release a Request for Proposals and execute a replacement contract before the current contract expired. Additionally, departments indicated that they required the service and, in the absence of a contract, would procure it individually through Authority for Expenditure at a non-enterprise rate which would result in higher costs for each department. This contract provides a discount for subscriptions because the City-wide total exceeds 25.

Under these extenuating circumstances, the City Attorney has approved ITA directly contracting with Gartner for one year in order to benefit from the expert services that Gartner is currently providing without interruption and also allow ITA sufficient time to release the RFP. Therefore, the term of the attached contract is for one year only with no option for renewal.

Gartner has submitted all the required documents and all the compliance documents have been verified and/or approved 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 applicable department budgets. No additional funding is required.

Honorable Antonio Villaraigosa
December 9, 2011
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The City's total obligation under this Contract shall not exceed \$278,280 (Two Hundred Seventy-Eight Thousand Two Hundred Eighty dollars), subject to available funding.

Recommendation

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

Please contact Laura Ito at 978-3322 if you require additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randi Levin". The signature is fluid and cursive, with a large initial "R" and "L".

Randi Levin
General Manager

ec: Jacob Wexler, Office of the CAO
Laura Ito
Irene Mayeda
Nicanier Rosas

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 the Contractor to provide Information Technology (IT) research and advisory services;

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

WHEREAS, competitive bidding under Charter Section 371 is not practicable or advantageous to the City; and

WHEREAS, it is in the City's best interest to continue using Contractor's services to aid in the policy and strategic planning development during the period of time that the City is preparing an RFP for future research and advisory services;

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 as of July 1, 2011 and terminate one (1) year thereafter, unless earlier terminated. Pursuant to Section VI, this Contract shall be subject to termination by the City if funds are not appropriated of 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 specific to each subscription/membership level. Contractor agrees to sell only the subscriptions as referenced herein as described below and only to the departments listed in Section III.A for the entire term of the contract. Contractor warrants that its services provided hereunder shall conform to high professional standards.

Subscription/Membership Level deliverables:

A. CIO Signature –

Client may designate two (2) Licensed Users, referred to herein as: (i) the “Member,” who has access to all the Deliverables described below (except for the Professional Development for the Delegate); and (ii) the “Delegate,” who has access only to the Content, Assigned Service Delivery Team, Professional Development for the Delegate, Advisory Services, Symposium/ITxpo[®], and Online Networking (Gartner peer Connect) Deliverables described below.

■ Content

1. **Executive Programs Research Reports**—Up to 12 (twelve) Reports per year; covering topics selected by Gartner such as IT Governance, Business Value of IT, Architecture, and other areas where business and IT intersect.
2. **Gartner for Leadership Development**—Developed for the aspiring CIO and the professional development of the Delegate and accessed via the Gartner for Leadership Development website.
3. **Gartner for IT Executives**—Targeted role-specific content, such as podcasts, videocasts, polling, and top research picks accessed via any of the Gartner for IT Executives role websites.
4. **Teleconferences**—Up to 12 (twelve) teleconferences per year, hosted by Executive Programs Research Report Authors to discuss the topics of their Research Reports.
5. **Access** to Gartner Core Research.
6. **Access** to Gartner for IT Leaders content and role pages.
7. **Talking Technologies Series**—Concise and expert commentaries on the latest IT topics in a monthly audio program that can be listened to on gartner.com or downloaded to listen to in an MP3 format.

Note: Schedules referenced above are approximations and are dependent on the publication schedule of relevant Research.

■ Use of Research

The Member and the Delegate may each, on an occasional and infrequent basis, forward to specific individuals within the Client organization copies of individual research documents: (i) not to exceed 25 (twenty-five) separate documents per contract year for the Member, and (ii) not to exceed 25 (twenty-five) separate documents per contract year for the Delegate, for the purpose of facilitating executive decision-making. This forwarding of documents may not be done on a routine basis, or by means of posting on Client's corporate intranet, or in any other manner that has the intent or effect of avoiding the purchase of additional User licenses from Gartner.

■ **Assigned Service Delivery Team**

A service delivery team ("Delivery Team"), consisting of an Executive Partner and an Executive Client Manager, will be assigned to the Member and their respective Delegate, and will serve as the Member's primary points of contact for all Gartner resources available under this Service. The Delivery Team will work with the Member to develop a plan (the "Member Value Plan"), which will highlight value sought; identify key issues on which delivery of the Member's Service may focus; and outline how the Service can effectively deliver that value. Progress against the Member Value Plan will be reviewed during the contract year as follows:

1. **Strategy Meetings**—Up to four (4) times per year, the Executive Partner will meet face to face with either the Member, the Member and the Delegate, or the Delegate on the Member's behalf ("Strategy Meeting"). These Strategy Meetings may be used to: (i) review and apply Executive Programs Research, the annual Executive Programs CIO Agenda, or other relevant content; (ii) draw on the Executive Partner's professional experience to advise the Member in the context of the Member's issues; and (iii) develop, discuss the progress of, or evaluate the Member's Member Value Plan.
2. **Optional Substitutions for Strategy Meetings**—Each of the following architected sessions are available to the Member for their use during the contract period. The Delivery Team will work with the Member to determine which, if any, of these sessions would be of value for inclusion in the Member Value Plan. Each session used by the Member will count as one (1) of the four (4) Strategy Meetings to which they are entitled annually. Participation in these sessions is limited to the Member and members of the Member's team (as reasonably required for the Member's business purposes). In all instances, the Member must be present and the purpose of the session must be to advance the Member's agenda. Each of the following sessions may be used once per contract year:
 - a. **On-site Analyst Briefing**—Member meets on Client premises with a Gartner Analyst for a half-day for knowledge-based, individual or project advisory assistance, typically involving delivery of Gartner Content.

- b. **Executive Programs Workshop**—Member meets on Client premises with Gartner Executive Programs Expert for a half-day facilitated workshop focusing on the application of Gartner Executive Programs Research and action planning. Topic for the workshop will be selected by the Member and the Delivery Team from a list of available Executive Programs workshops and participation will be limited to 25 (twenty-five) Members and/or team members.
3. **Contextualized Targeted Gartner Research**—On an as-needed basis, the Delivery Team will e-mail to the Member or Delegate selected Research which has been synthesized and put into the Member's context, based on the Member Value Plan.

■ **Professional Development for the Delegate**

The Member has the option of providing professional development to the Delegate. At Member's option, the following will be offered to the Delegate:

1. **Individual Development Plan**—The assigned Executive Partner will work with the Delegate to develop an individual development plan (the "Individual Development Plan"), which will highlight objectives sought, identify key areas of focus, and outline how the Service can effectively meet those goals. Progress against the Individual Development Plan will be reviewed during the contract year as follows:
2. **Coaching Teleconferences**—Up to four (4) times per year, the Executive Partner will conduct teleconferences ("Coaching Teleconferences") with the Delegate. These Coaching Teleconferences may be used to: (i) review and apply Gartner for Leadership Development Research, Executive Programs research, or other relevant content; (ii) draw on the Executive Partner's professional experience to advise the Delegate in the context of the Delegate's professional and career goals; and (iii) develop, discuss the progress of, or evaluate the Delegate's Individual Development Plan.

■ **Advisory Services**

1. **Gartner for IT Executives Analyst Inquiry**—Provides the Member and the Delegate with access to Gartner Analysts who are associated with the Service purchased by Client.
 - a. Participation in Analyst Inquiry is limited to the Gartner Analyst, the Member and/or the Delegate, and members of the Member's team (as reasonably required for the Member's business purposes). In all instances, the Member and/or the Delegate must be present on the Inquiry call and the purpose of the Inquiry call must be to advance the Member's agenda.
 - b. Participation in Analyst Inquiry as part of this Service is subject to the terms set forth in the Usage Guidelines for Gartner Services posted on gartner.com.

2. **Executive Programs CIO Research Inquiries**—Inquiry access to Gartner Executive Programs CIO Researchers through IT Executives Analyst Inquiry; limited to topics covered in Executive Programs Research Reports, as published by Gartner Executive Programs.

■ **Events**

1. **Symposium/ITxpo®**—Two (2) complimentary invitations for attendance to Gartner Symposium/ITxpo®, including all standard Symposium attendee rights plus Executive Programs VIP access. These invitations are non-transferable except between the Member and their named Delegate.
2. **Exclusive Executive Programs Events**—Complimentary nontransferable invitation for attendance, by the Member only, at local content-based Gartner Events in Member's region or country.

■ **Networking**

1. **Facilitated Networking**—Member may request meetings or conference calls with peers around a specific topic/issue in order to exchange information about best practices or areas of expertise. Available to the Member only.
2. **Online Networking**—Access to Gartner Peer Connect.

Note: Unless otherwise provided above: (i) you must be a Licensed User to access Gartner Research Services; (ii) passwords, Research documents and Analyst Inquiry may not be shared with Non-Users; and (iii) your use of this Service is governed by the Usage Guidelines for Gartner Services, which are accessible on the Policies section of gartner.com.

B. IT Leaders Reference seat –

Gartner for IT Leaders is a service that provides client ("Licensed Users") with access to research and advice about information technology and the functional responsibilities of specific IT roles and affords Users the option of inquiry with Gartner Analysts. Gartner for IT Leaders makes it easier for Registered Users ("Users") to find the information they need to make informed decisions by connecting our resources to their every-day needs.

- **Access to all Gartner for IT Leaders Role-Based Web pages**—Exclusive gartner.com home pages that serve as gateways to role-specific content, such as: activity cycles, blogs, polling, top research picks, and most-viewed research.
- **Community**—Access to an exclusive online community that provides insight and experience from both Gartner analysts and IT peers who share common interests related to specific roles.
- **News and Analysis**—Timely analysis of breaking news of interest to specific technology roles, which keeps IT leaders current.
- **Access to Gartner Core Research**—Through gartner.com. Research across a broad range of technology topics that provides a base of knowledge for all technology leaders.

- **Access to Gartner Benchmarking Analytics IT Key Metrics Data**—Accessible through gartner.com, IT Key Metrics Data provides a comprehensive database of the industry's most definitive IT spending and staffing levels in addition to key technology cost and performance metrics.
- **A Range of Written Research Reports**, such as:
 3. **Vendor and Product Ratings**—A report that provides client organizations with a holistic view of the vendors from which they are purchasing products and services.
 4. **Special Reports**—Reports that (i.) may cover underlying research themes that cut across technology or industry-specific research, or (ii.) may provide in-depth strategic analysis of trends, industry developments, vendors, products and services.
 5. **Published Research**—Reports that focus on companies, products, markets, decision frameworks, tactical guidelines, case studies, and strategic planning assumptions.
 6. **Toolkit Resources**—Prescriptive, downloadable and diagnostic resources that provide actionable advice and guidance on how to execute specific actions organized by specific roles and activities. Downloadable tools and templates may be altered by Clients for their own internal non-commercial use only.

Note: You must be an authorized Licensed User to access Gartner Research Services or Analyst Inquiry. Passwords, Research documents and Analyst Inquiry may not be shared with non-Licensed Users. Gartner monitors client usage patterns. Unusual or excessive usage patterns may be audited in accordance with the Usage terms herein. Services are to be used for each Licensed User's individual business purposes for the benefit of the Licensed User. Gartner periodically updates Service names and deliverables to reflect client needs and market relevancy.

Core Connect Research

Core Connect Research is a comprehensive program designed to help professionals achieve tangible business results. Clients receive instant access to the world's foremost repository of expert analysis and opinion on everything important in IT including searchable databases of cutting-edge research, customized alerts that keep clients up-to-speed—and even personal consults with Gartner's team of world-class analysts. This is the single most valuable IT program in the world. Nothing else compares when it comes to assisting client users generate business impact.

Core Connect Research is a service that provides research and advice about information technology for decision makers. Core Research provides clients with the base of knowledge and advice needed to capitalize on IT technologies and markets. There are two levels of Licensed User access to Core Connect Research: Reference and Advisor.

- The first level, called **Reference**, will provide access to all Gartner Core Research Focus Areas, Peer Connect, Webinars, and includes Web-based

access (on gartner.com) to all Gartner research, including more than 30,000 documents produced by more than 200 Gartner research programs.

- The second level, called **Advisor**, will provide the same access to Peer Connect, Webinars, and written research as the Reference level, plus un-metered analyst inquiry privileges, an audio subscription to Talking Technology, and one event ticket to any of Gartner's theme-focused events.

C. Advisor seat –

- **Gartner Core Connect Web Pages**—Provides access to a knowledge base and broad range of technology topics for technology leaders.
- **A Range of Written Research Reports**, such as:
 7. **Published Research**—Covers companies, products, markets, decision frameworks, tactical guidelines, case studies, and strategic planning assumptions.
 8. **Vendor and Product Ratings**—Provides a holistic view of IT vendors.
 9. **Special Reports**—Cover underlying themes that cut across technology research.
- **Peer Connect**—A secure online network of IT professionals who can access and leverage the collective experience of their peers.
- **Webinars**—Periodic Web conferences where Gartner analysts speak on timely topics in information technology and then solicit questions from listeners.
- **Standard Analyst Inquiry**—Licensed Users may engage with a Gartner Analyst to: (i) discuss a Gartner Research document published within the scope of their specific Service, and/or (ii) apply a Gartner Research document to a related issue that their company is facing. Typical inquiry sessions can take up to 30 (thirty) minutes of an Analyst's time. Standard Analyst Inquiry provides basic technology reviews of business-related documents that are 20 (twenty) pages or less, and take up to 60 (sixty) minutes of an Analyst's time. Inquiries requiring additional analysis or research by the Analyst are not included.
- **Talking Technology**—Concise and expert commentaries on the latest IT topics in a monthly audio program that can be listened to on gartner.com or downloaded to listen to in MP3 format.
- **Summit Event Ticket**—Admission to one (1) Gartner Summit Conference. Third day "Best Practice, Methodology and Implementation Days" at EMEA Summits, as well as other special programs, Gartner Seminars, tutorials, and workshops are not included in the Summit Ticket deliverable and may require an additional fee. Tickets are transferable within the Client organization but may not be transferred to another company.

Note: Unless otherwise provided above, use of this Service is governed by the Usage Guidelines for Gartner Services, which are accessible on the Policies section of gartner.com.

D. Reference seat –

- **Gartner Core Connect Web Pages**—Provides access to a knowledge base and broad range of technology topics for technology leaders.
- A Range of Written Research Reports, such as:
 10. **Published Research**—Covers companies, products, markets, decision frameworks, tactical guidelines, case studies, and strategic planning assumptions.
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Note: Unless otherwise provided above, use of this Service is governed by the Usage Guidelines for Gartner Services, which are accessible on the Policies section of gartner.com.

III. COMPENSATION AND METHOD OF PAYMENT

The total expenditure limit for this contract shall not exceed \$278,280 (Two Hundred Seventy-Eight Thousand Two Hundred Eighty dollars).

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 pay for the following (12-month) subscriptions:

<u>Information Technology Agency</u>			
Reference seat:	2 users @ \$5,870 each	\$ 11,740	
Advisor seat:	1 user @ \$8,950 each	8,950	
IT Leaders Ref:	2 users @ \$12,630 each	25,260	
CIO Signature:	1 annual membership	<u>78,240</u>	\$124,190

<u>Department of Water and Power</u>			
Reference seat:	12 users @ \$5,870 each	\$ 70,440	
Advisor seat:	3 users @ \$8,950 each	<u>26,850</u>	97,290

<u>Fire Department</u>			
Reference seat:	2 users @ \$5,870 each	\$ 11,740	11,740

<u>Department of Building and Safety</u>			
Reference seat:	1 user @ \$5,870 each	\$ 5,870	5,870
<u>General Services Department</u>			
Reference seat:	1 user @ \$5,870 each	\$ 5,870	5,870
<u>Department of Public Works, Bureau of Sanitation</u>			
Reference seat:	2 users @ \$5,870 each	\$ 11,740	
Advisor seat:	1 user @ \$8,950 each	8,950	
IT Leaders Ref:	1 user @ \$12,630 each	<u>12,630</u>	<u>33,320</u>
Total:			\$278,280

There shall not be any pricing increase or any increase in the number of subscriptions during the term of this contract. Contractor may not charge any City department an amount that will exceed the cumulative compensation limit shown above for that department.

B. Invoices

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

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: _____
Title: _____
Address: _____
Telephone: _____
Fax: _____
E-Mail: _____

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: 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

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. INCORPORATION OF THE STANDARD PROVISIONS

This Contract which consists of fourteen (14) pages, the attached Service Agreement license terms and the other specific documents cited herein constitute the entire Contract between the City and Contractor. The Standard Provisions for City Contracts (Rev. 03/09) is hereby attached to this Contract as Appendix A and incorporated herein by reference.

IX. 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 agreement. To the extent that said services were performed in accordance with the terms and conditions of this agreement, those services are hereby ratified.

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. Lighnter, Assistant City Attorney

Laura Ito
Director of Finance and Administration
Information Technology Agency

Date

Date

ATTEST:
June Lagmay, City Clerk

GARTNER, INC.

by _____

Signature

Date

Name

Title

Date

Signature

Name

Title

Date

BTRC NO. _____

CONTRACT NO. _____

Service Agreement (SA) License Terms:

An SA for subscription-based research and related services (the "**Services**") is cancelable, and may be terminated as provided in the City's Standard Provisions for Service Contracts, which are attached as Appendix A,

1. **Ownership and Use of the Services.** Gartner owns and retains all rights to the Services not expressly granted to Client. Only the individuals named in this 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.

2. **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. GARTNER SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT CLIENT MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN, except to the extent required under the City's Standard Provisions for Service Contracts, which are attached to this Contract as Appendix A.

3. **Client Confidential Information.** Gartner agrees to keep confidential any Client-specific information communicated by Client to Gartner in connection with this 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 Gartner; (3) entered the public domain through no fault of Gartner subsequent to Client's communication to Gartner; (4) is in Gartner's possession free of any obligation of confidence at the time of Client's communication to Gartner; or (5) is communicated by the Client to a third party free of any obligation of confidence. Additionally, Gartner may disclose such information to the extent required by legal process.

4. **Miscellaneous**

(a) **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.

(b) **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.

(c) **No Third Party Beneficiaries.** This SA is for the benefit of the parties only.

(d) **Surviving Clauses.** Sections 2, 3, and 4 (b), (c) and (d) shall survive the termination of this SA.

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions 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**.

Appendix A

- 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: 11/16/2011

Agreement/Reference: Subscription 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
<hr/>	
<input checked="" type="checkbox"/> Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)	WC <u>Statutory</u>
	EL <u>\$1,000,000</u>
<input type="checkbox"/> Waiver of Subrogation in favor of City <input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act	
<hr/>	
<input checked="" type="checkbox"/> General Liability	<u>\$1,000,000</u>
<input checked="" type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Sexual Misconduct <input type="checkbox"/> Fire Legal Liability <input type="checkbox"/>	
<hr/>	
<input type="checkbox"/> Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	
<hr/>	
<input checked="" type="checkbox"/> Professional Liability (Errors and Omissions)	<u>\$1,000,000</u>
Discovery Period <u>12 Months After Completion of Work or Date of Termination</u>	
<hr/>	
<input type="checkbox"/> Property Insurance (to cover replacement cost of building - as determined by insurance company)	
<input type="checkbox"/> All Risk Coverage <input type="checkbox"/> Boiler and Machinery <input type="checkbox"/> Flood <input type="checkbox"/> Builder's Risk <input type="checkbox"/> Earthquake	
<hr/>	
<input type="checkbox"/> Pollution Liability	
<hr/>	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	<u>100% of the contract price</u>
<input type="checkbox"/> 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