

0150-09752-0000

TRANSMITTAL

TO
The City Council

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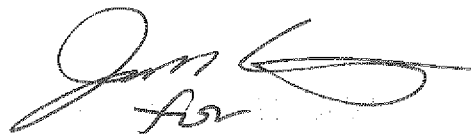
COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT

**Personal Services Contract with Ventyx, Inc. for
Maintenance of the EMPAC Software for the Clean Water Program**

Approved and forwarded for your consideration.
See the City Administrative Officer report attached.



MAYOR

MAS:ER:06130024t

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

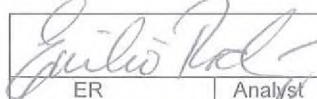
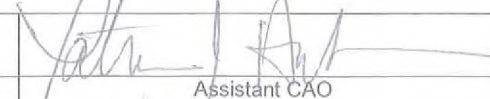

To: The Mayor	Date: 10-16-12	C.D. No. All	CAO File No.: 0150-09752-0000		
Contracting Department/Bureau: Bureau of Sanitation		Contact: Anita Fernandez (323) 342-6288			
Reference: Transmittal from the Board of Public Works dated April 6, 2012					
Purpose of Contract: Sole Source Contract with Ventyx, Inc. for the software maintenance of the Enterprise Maintenance, Planning and Control (EMPAC) System					
Type of Contract: (X) New contract () Amendment		Contract Term Dates: July 1, 2012 to June 30, 2018			
Contract/Amendment Amount: \$2 million Proposed amount \$ 2 million + Prior award(s) \$ 0 = Total \$ 2 million					
Source of funds: Sewer Construction Maintenance and Operations (SCMO) Fund 760					
Name of Contractor: Ventyx, Inc.					
Address: 3301 Windy Ridge Parkway, Suite 200, Atlanta, GA 30339					
	Yes	No	N/A*		
1. Council has approved the purpose	X				
2. Appropriated funds are available	X				
3. Charter Section 1022 findings completed			X		
4. Proposals have been requested		X			
5. Risk Management review completed	X				
6. Standard Provisions for City Contracts included	X				
7. Workforce that resides in the City: 0%					
			*N/A = not applicable ** Contracts over \$100,000		
			8. Contractor has complied with:		
			Yes	No	N/A*
			X		
					X
			X		
			X		
			X		

COMMENTS

The Bureau of Sanitation (Bureau) requests authority to execute a sole source personal services contract with Ventyx, Inc. (Ventyx) to provide software maintenance and support services for the Enterprise Maintenance Planning and Control (EMPAC) system and its integrations to other applications used by the Bureau's Clean Water program. The EMPAC manages maintenance programs for all four wastewater treatment plants and the collection system network. Key functions of the system include identifying and reducing asset failure, managing preventative work and identifying areas for work optimization. The system maintains over 350,000 infrastructure functional points inclusive of pumps, centrifuges, scrubbers and pipelines.

The EMPAC is integrated with the Department of General Services' Supply Management System (SMS) and the Bureau's Field Automation for Sanitation Trucks (FAST) field tracking system. The proper functioning of EMPAC and its integrations with SMS and FAST, particularly through the course of upgrades or enhancements to any of these systems, is critical to the operations of the wastewater infrastructure and in maintaining compliance with regulatory permits.

Ventyx (previously under the name of Indus International) developed the EMPAC software and performed all of the implementation for the Bureau. The system was implemented in July 2001 and has been serviced exclusively by Ventyx through sole source agreements. The last agreement expired on May 2, 2008, and service since has been funded through interim purchase orders. The

 ER	 Assistant CAO	 City Administrative Officer
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last service procurement was in effect through June 30, 2012. The system currently has no service support. Because the integrations of EMPAC to SMS and FAST are unique to the City's implementation, specific expertise from Ventyx is necessary for proper functioning of the systems.

Scope of Services and Cost

The scope of work includes but is not limited to service upgrades, troubleshooting, defect corrections and technical support. Although the EMPAC system has been in place for over 10 years, it is not expected to obsolesce over the contract term. A long term service agreement results in approximately \$2,000 to \$3,000 in annual savings from the Maintenance Fee and ensures service continuity. Should the vendor replace EMPAC with a new system, the contract would continue covering maintenance.

The Maintenance Fee is the only ongoing cost in this contract. All other services, as noted in the following table, would be provided on an as-needed basis. The City guarantees no minimum amount of work for as-needed services.

Service	As-Needed	Six-year Cost Ceiling	First Year Cost
EMPAC Annual Maintenance Fee		\$663,000	\$123,000
SMS Integration Support	X	\$350,000	\$58,000
On-call Professional Services	X	\$300,000	\$50,000
Mobile Computing Integration (BOS mobile applications)	X	\$200,000	\$33,000
Software Licensing	X	\$400,000	\$66,000
Contingency	X	\$87,000	\$0
Total		\$2,000,000	\$330,000

Compensation, Invoicing and Payment

The estimated annual cost of the contract is \$330,000 with a ceiling of \$2 million. First year funding is budgeted within the Sewer Construction Maintenance and Operations Fund. The balance of \$1.67 million will be requested from special funds in future budgets. Billing will be performed on a monthly basis. Compensation will be provided on a lump sum basis or through hourly billing rates. Generally, the Bureau uses the lump sum method for information technology projects since payment is contingent on deliverables which provides the City leverage in containing costs within its agreed budget. The hourly rate method is generally utilized on smaller, less complicated tasks. Rates and fees are established in the agreement. The preferred method must be specified in a Statement of Services issued by the Bureau for each task.

City Contracting Provisions

The contract does not require a Charter Section 1022 determination as the vendor requires use of its specially trained and certified staff to service the EMPAC software and related integrations. Charter Section 371(e)(2) provides that a contract may be awarded on a non-competitive basis if for the performance of professional, scientific, expert, technical or other special services of a temporary and occasional character for which competitive bidding is determined to be not practicable or advantageous. Sole sourcing is warranted inasmuch as Ventyx is the author and owner of EMPAC and its integrations with other City systems, and is the only firm with the expertise, knowledge and sufficient qualified personnel to perform the work. The City is a licensee of Ventyx's products.

The City Attorney has approved the contract as to form.

RECOMMENDATION

That the Mayor and Council authorize the Board of Public Works (Board) to execute a sole source personal services contract with Ventyx, Inc., as attached to this report, for maintenance and support of the Enterprise Maintenance Planning and Control (EMPAC) system, its interfaces to the Supply Management System (SMS), the Field Automation for Sanitation Trucks (FAST) system and other related products as utilized by the Bureau of Sanitation, for a term of six years and a cost ceiling of \$2 million.

FISCAL IMPACT STATEMENT

There is no General Fund impact. The recommendations comply with the City's Financial Policies in that the contract is supported from ongoing special fund revenue. The contract has a cost ceiling of \$2 million over a six-year term, with the first year cost of \$330,000 included within the Sewer Construction Maintenance and Operations Fund budget. The contract includes a Financial Liability Clause limiting the City's liability to the extent of appropriations for this purpose.

MAS:ER:06130024

Attachment

CONTRACT NO. C-

PERSONAL SERVICES CONTRACT

BETWEEN

THE CITY OF LOS ANGELES

AND

VENTYX INC.

FOR

SOFTWARE MAINTENANCE OF

ENTERPRISE MAINTENANCE, PLANNING AND CONTROL

AND RELATED

PRODUCTS AND INTEGRATIONS

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AGREEMENT

This AGREEMENT, made and entered into as of July 1, 2012 ("Effective Date") by and between the City of Los Angeles, a municipal corporation acting by order of and through its Board of Public Works, hereinafter referred to as the "CITY", and "Ventyx Inc." hereinafter referred to as the "CONSULTANT" or "CONTRACTOR", and is set forth as follows:

WITNESSETH

WHEREAS, the CITY had a contract with Ventyx (formerly Indus International) to implement a new computerized maintenance management system with Enterprise Maintenance, Planning and Control (EMPAC) software from Ventyx; and

WHEREAS, four (4) wastewater treatment plants and wastewater and storm water collection systems use EMPAC to manage assets; and

WHEREAS, the CONSULTANT integrated EMPAC with the citywide procurement system, Supply Management System (SMS), for purchasing materials and spare parts for assets maintenance; and

WHEREAS, the CONSULTANT integrated EMPAC with the Field Automation for Sanitation Trucks (FAST) system for work management related to wastewater and storm water collection system assets maintenance; and

WHEREAS, EMPAC is also integrated with the Cohesive Mobile Entry (CME) for mobile stores management and barcode functions used at the Hyperion Treatment Plant Warehouse; and

WHEREAS, the CITY relies heavily on EMPAC and its integration with SMS, FAST, and CME for all aspects of asset management in the Wastewater Program; and

WHEREAS, the EMPAC implementation and support contract (C-108094) between the CITY and the CONSULTANT expired on May 3, 2008; and

WHEREAS, the CITY issued Purchase Orders to the CONSULTANT to cover maintenance through June 30, 2012 to ensure uninterrupted coverage; and

WHEREAS, the General Services Department (GSD) currently has a contract with PeopleSoft USA, Inc. for the SMS implementation; and

WHEREAS, the contract with PeopleSoft USA, Inc. does not provide technical consulting services for the integration with EMPAC; and

WHEREAS, the CITY does not have the necessary resources or expertise to provide software support of EMPAC and its integration with SMS, FAST and CME; and

WHEREAS, the CONSULTANT is the author of EMPAC and its integrations with SMS and FAST which qualifies CONSULTANT to provide these technical services; and

WHEREAS, the services required for the necessary software migration, integration, and implementation of the necessary additional software features are professional, expert, and technical in nature, and the related tasks are temporary and occasional in character; and

WHEREAS, the CITY recognizes that the CONSULTANT is the only firm with the expertise, knowledge, and sufficient personnel to perform the technical functions as detailed in the Scope of Services below; and

WHEREAS, the CONSULTANT has agreed to perform the above referenced tasks in a professionally sound manner in accordance with all applicable laws, rules, regulations and other requirements of local, state, and federal governments for a minimum of six (6) years from the Effective Date of this AGREEMENT;

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this AGREEMENT, it is understood and agreed by and between the parties hereto as follows:

ARTICLE 1 – SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, and/or section headings appearing herein have been inserted for convenience and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, intent or construction of any of the terms or provisions hereof. The language of this AGREEMENT shall be construed according to its fair meaning and not strictly for or against the CITY or the CONSULTANT. The word "CONTRACTOR" AND "CONSULTANT" herein in this Agreement includes the party or parties identified in the Agreement. The singular shall include the plural; if there is more than one CONSULTANT 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.

ARTICLE 2 – DEFINITIONS

It is understood that the following words and phrases are used herein; each shall have the meaning set forth opposite the same:

AGREEMENT

This contractual agreement between the CITY and

	Ventyx.
BOARD	The Board of Public Works of the City of Los Angeles.
BUREAU	Bureau of Sanitation, Department of Public Works, City of Los Angeles.
CITY	The City of Los Angeles, Board of Public Works, or its subordinate Bureaus. The term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles, or who is authorized to represent the City of Los Angeles in matters concerning this AGREEMENT. CITY includes all persons employed or authorized by the CITY.
CONSULTANT/CONTRACTOR	Ventyx, Inc.
CPI	United States Consumer Price Index for all items.
EMPAC	Enterprise Maintenance Planning and Control
FAST	Field Automation for Sanitation Trucks
GSD	General Services Department
LICENSED PROGRAM	An off-the-shelf computer program or program module that is licensed to the CITY by CONSULTANT.
PROJECT	The maintenance and support of the LICENSED PROGRAMS.

PROJECT MANAGER	The CITY's representative in all matters within the scope of the AGREEMENT.
VENTYX PARTNERS	<u>Solution Partner</u> - A partner who directly offers complementary products that are an essential part of the end-to-end solutions.
	<u>Service Partner</u> - A Ventyx Inc. approved company that provides systems integration and consulting services in partnership with Ventyx Inc.
	<u>Platform Partner</u> - A hardware or software partner offering products that form part of the Ventyx solution offerings.

ARTICLE 3 – PROJECT DESCRIPTION

On December 14, 1998, the BOARD approved the execution of a contract (C-97798) between Indus International (now Ventyx Inc.) and the BUREAU for the implementation of a new computerized maintenance management system for the Wastewater Program with Enterprise Maintenance Planning And Control (EMPAC) software. The four (4) Wastewater Treatment Plants and Wastewater Collections division use EMPAC for asset, maintenance and inventory management activities. The CONSULTANT developed the EMPAC interface with the new customized Citywide Supply Management System (SMS), a procurement system

implemented by the Department of General Services (GSD) using PeopleSoft software.

In September 2003, the BUREAU implemented Field Automation for Sanitation Trucks (FAST) application for use in wastewater collection maintenance trucks to enable crews to enter maintenance activity data from the field into EMPAC. FAST uses the NaviGate software from Gatekeeper Systems, Inc. The CONSULTANT worked with Gatekeeper Systems, Inc. to develop the EMPAC to FAST electronic interface. The FAST application has been deployed for sewer and storm water maintenance crews at all wastewater collection yards.

Cohesive Mobile Entry (CME) is an off-the-shelf product with a built-in interface to EMPAC. CME uses a mobile wireless device to communicate with EMPAC which allows warehouse personnel to perform routine EMPAC Stores functions on the spot in real-time.

Since the integration of EMPAC to SMS, FAST, and CME may require upgrades and modifications, the BUREAU needs this sole source contract with the CONSULTANT for as-needed consulting expertise and assistance concerning the EMPAC system and its interfaces with SMS, FAST and CME. Each implementation of a new release of EMPAC, SMS and FAST may require software modifications and affect the integration between the systems.

Because the EMPAC to SMS and FAST integrations are unique to the CITY's implementation, specific expertise from the CONSULTANT is necessary for keeping all of the systems operating properly. Failure to secure this sole source contract with the CONSULTANT will adversely affect the maintenance program for all four (4) Wastewater Treatment Plants and Sewer and Stormwater Collection Systems.

**ARTICLE 4 – RESPONSIBILITIES OF AND SERVICES TO BE PERFORMED BY
THE CONSULTANT**

The services required under this AGREEMENT include CONSULTANT technical support as deemed necessary by the PROJECT MANAGER for the successful software maintenance of EMPAC and its integrations to other applications as set forth herein and in any applicable Statement of Service (SOS). The CONSULTANT shall provide appropriate staff as required by the CITY to perform specified tasks. When the CITY desires the CONSULTANT staff for work not customarily included in the software maintenance support in Section 4.4.1, the PROJECT MANAGER shall issue a task order, detailing the tasks and deliverables. Once the task order is issued, the CONSULTANT shall provide a SOS, specifying details of the work to be performed, time schedule and cost for the completion of each task. Once the SOS is received and reviewed, if the PROJECT MANAGER agrees with the cost and schedule of the SOS, he/she shall sign the SOS. If the PROJECT MANAGER does not agree with the cost or schedule proposed by the CONSULTANT, the PROJECT MANAGER and the CONSULTANT shall negotiate the SOS costs and schedule until both parties agree or until the CITY abandons the work. No work shall be performed under this AGREEMENT unless both parties have signed off on the SOS. Once the SOS is approved, the CITY PROJECT MANAGER will issue a notice to proceed. Services shall include, but not be limited to the following:

- 4.1 The CONSULTANT shall perform the services described in Article 4.4. and any other services as specified in each SOS. The CONSULTANT shall perform such work with a degree of skill and diligence normally employed by professional analysts or consultants performing the same or similar services.

4.2 The CONSULTANT warrants that the services will be performed in a manner consistent with generally accepted industry standards. CITY's sole remedy and CONSULTANT's sole obligation in the event of a breach of the warranty contained herein is, at CONSULTANT's option and upon agreement with the CITY: (i) to re-perform the services, or (ii) to refund the amounts paid by CITY for the services which were not as warranted, provided CONSULTANT has received notice from CITY within sixty (60) days of the completion of the services which CITY alleges were not performed consistent with the warranty in Section 10.

4.3 Maintenance of Records

The CONSULTANT shall maintain all records, including records of financial transactions, pertaining to the performance of this AGREEMENT, 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 (3) years following final payment made by the CITY hereunder or the expiration date of this AGREEMENT, 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 AGREEMENT or within the three (3) years, following final payment made by the CITY hereunder or the expiration date of this AGREEMENT, whichever occurs last. The CONSULTANT shall provide any reports requested by the CITY regarding performance of this AGREEMENT. Any subagreement entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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4.4 Scope of Services

4.4.1 Annual Maintenance Fee for Asset Suite, InSiteEE , EMPAC and Service Suite

Software for a maximum of six (6) years which will be paid annually. The rate for Annual Maintenance and support will be \$121,242 for the first year. The rate for each subsequent year will be the previous year's amount plus the current CPI rate for all items at the time the renewal is due, or 3%, whichever is less, for each year the CITY chooses to renew the Annual Maintenance and Support Services. The CONSULTANT shall provide the necessary staff and/or resources to work directly with the CITY and other consultants in support of the EMPAC application.

The support includes, but is not limited to the following:

- access to Ventyx Client Services, eService, the latest EMPAC software updates
- defect corrections, troubleshooting and fixing
- remote diagnostics support pursuant to the CITY's Maintenance Agreement

As part of the Annual Maintenance Fee, CONSULTANT shall provide one (1) free Mindshare pass to the CITY for each Conference that convenes during the term of this agreement.

4.4.2 EMPAC/SMS Integration Support (estimated at \$350,000 over 6 years) -

The CONSULTANT shall provide the necessary staff and/or resources to work directly with the CITY and other consultants in supporting EMPAC/SMS

integration. The support includes, but is not limited to telephone support, documentation, software configuration, tuning, software modification, project management and testing. The cost for the EMPAC/SMS integration Support is only an estimate. The CONSULTANT shall provide EMPAC/SMS Integration Support services on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONSULTANT from the CITY. The CONSULTANT shall not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

4.4.3 On-call Professional Services (estimated at \$300,000 over 6 years) -

The CONSULTANT shall provide consultation, assessment, analysis, and recommendations on implementation activities for the LICENSED PROGRAMS. The services provided include, but are not limited to telephone support, documentation, planning activities, project management, migration activities, data reconciliation, and new software integration and implementation with the BUREAU licensed software. The cost for these services is only an estimate. The CONSULTANT shall provide On-call Professional Services on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONSULTANT from the CITY. The CONSULTANT shall not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

/

4.4.4 Mobile Computing Integration (estimated at \$200,000 over 6 years)

The CONSULTANT shall provide the necessary staff and/or resources to work directly with the CITY and other consultants in the support of the integration between the LICENSED PROGRAMS and the BUREAU's mobile applications.

The support provided includes, but is not limited to, telephone support, documentation, software modification, software configuration, tuning, testing, project management and implementation of new integration functionality. The cost for the Mobile Computing Integration is only an estimate. The CONSULTANT shall provide Mobile Computing Integration on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONSULTANT from the CITY. The CONSULTANT shall not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

4.4.5 Software Licensing (estimated at \$400,000 over 6 years) -

The CONSULTANT shall provide additional licenses and/or licenses for add-on software for the BUREAU licensed applications from Ventyx and VENTYX PARTNERS. The cost for this licensing is only an estimate. The CONSULTANT shall provide Software Licensing on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONSULTANT from the CITY. The CONSULTANT shall not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

4.5 Consultant Schedule of Services and Costs

4.5.1 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule of services and subsequent revisions and reports, the CONSULTANT shall prepare the schedule and submit it to the PROJECT MANAGER within fifteen (15) calendar days of the Notice to Proceed. This schedule shall be submitted electronically in Microsoft Project format. The CONSULTANT shall perform the work in accordance with the signed SOS and prepare revisions and updates in a timely manner.

4.5.2 The CONSULTANT's schedule referenced in Article 4.5.1 shall show the start and finish dates of each part or division of work and shall show all submittals associated with each work activity. The CONSULTANT shall allow a minimum of fifteen (15) calendar days from the date of submittal for the PROJECT MANAGER to review each submittal, unless a longer period of time is specified in this AGREEMENT. The work activities in the schedule shall be of sufficient detail to document that adequate planning has been done for proper execution of the work and such that it provides an appropriate basis for monitoring and evaluating the progress of the work. The schedule shall show all major work items, points of interface with the CITY and milestone submittals. The PROJECT MANAGER will review the CONSULTANT's schedules and provide comments on overall compliance with the requirements.

- 4.5.3 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule and the subsequent revisions and reports, the CONSULTANT shall submit an updated schedule to the PROJECT MANAGER at least five (5) working days prior to the submittal of the CONSULTANT's monthly payment request. The updated CONSULTANT's schedule shall accurately reflect the status of work and incorporate all changes into the schedule. Updated schedules shall also be submitted at the request of the PROJECT MANAGER. Upon approval of an amended schedule, the approved changes shall be reflected in the next scheduled update submittal by the CONSULTANT, or other update submittal approved by the PROJECT MANAGER.
- 4.5.4 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule and the subsequent revisions and reports, the CONSULTANT shall submit a monthly progress report. This shall consist of a monthly narrative progress report due no later than the 10th day of the following month, the purpose of which is to provide a brief description of the status of work and to address any problems and issues that may delay timely completion.
- 4.5.5 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule and the subsequent revisions and reports, the CONSULTANT shall participate in Progress meetings with the PROJECT MANAGER. The frequency of these meetings shall be at the discretion of the PROJECT MANAGER. The CONSULTANT shall document all meetings and distribute any related documents to attendees.

ARTICLE 5 – KEY CONSULTANT PERSONNEL

5.1 The CONSULTANT designates the following person to represent CONSULTANT in all matters pertaining to this AGREEMENT:

Mr. Ian Wray, Ventyx

3301 Windy Ridge Parkway, Suite 200,

Atlanta, GA 30339

P: 770-989-4026

C: 678-596-2335

Ian.Wray@Ventyx.com

Additional technical specialists may be assigned subject to the PROJECT MANAGER's approval.

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

shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

The CITY designates Anita Fernandez as its PROJECT MANAGER to represent the CITY in all matters within the scope of the AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term "approval of CITY," "consult with CITY," "confer with CITY," or similar terms are used, they shall refer to the PROJECT MANAGER. The PROJECT MANAGER may designate an assistant to act in her stead. The CITY may designate another CITY employee to succeed Anita Fernandez as the PROJECT MANAGER. The CONSULTANT will be notified in writing in such event.

The CITY shall furnish, without charge, facilities and resources available to the CONSULTANT as deemed reasonably necessary and appropriate by the CITY.

ARTICLE 7 – TERM OF AGREEMENT

Unless otherwise provided, the term of this AGREEMENT shall begin on July 1, 2012 and shall be in effect until June 30, 2018 unless terminated as provided under Article 8 or extended by amendment or change order to this AGREEMENT and signed by both parties.

ARTICLE 8 – TERMINATION

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- 8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense,

except as may be reasonably necessary to terminate its activities.

- 8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this AGREEMENT shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the CONSULTANT at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONSULTANT'S default.

If termination for default is effected by the CONSULTANT or if termination for convenience is effected by the CITY, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the CONSULTANT for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the CONSULTANT relating to written commitments that were executed prior to the termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this AGREEMENT.

- 8.4 Upon receipt of a termination action under Articles 8.1, 8.2 or 8.3 above, the CONSULTANT shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY all finished or unfinished documents and materials produced or procured under this AGREEMENT.
- 8.5 Upon termination under Articles 8.1, 8.2 or 8.3 above, the CITY may take over the work and may award another party an AGREEMENT to complete the work under this AGREEMENT.
- 8.6 If, after the termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this article.
- 8.7 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 AGREEMENT.
- 8.8 The foregoing notwithstanding the licensing terms of any LICENSED PROGRAM acquired by the CITY hereunder shall survive any termination or expiration of the AGREEMENT and the CITY shall have the right to continue to use said LICENSED

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PROGRAMS under those terms unless and until one of the parties terminates said license as provided herein.

ARTICLE 9 – SUBCONTRACT APPROVAL

If the need to subcontract should arise, the CONSULTANT shall obtain prior written approval from the CITY and submit a copy of all subcontracts to the CITY with the subconsultant's name and dollar amount of each subcontract. Wholly owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10 - COMPENSATION, INVOICING, AND PAYMENT

10.1 Definitions

"Cost" as used herein is defined as the sum of: (1) Billing Salary Rates; (2) Other Direct Cost with no markup; (3) Profit and (4) Subcontract Expenses as defined below.

10.1.1 "Billing Salary Rates" shall be at the rates approved by the PROJECT MANAGER, to be charged by CONSULTANT for employees' time directly chargeable to their performance of the project work. Billing Salary Rate increases are limited to once per year, per employee, on the anniversary date

of the CONSULTANT's AGREEMENT execution, and are subject to the approval of the CITY.

Any adjustment to the subconsultants' salaries and Hourly Billing Rates shall be reviewed and approved by the PROJECT MANAGER prior to invoicing.

Adjustments to subconsultants' salaries and Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONSULTANT's AGREEMENT execution. Any such increases shall be in accordance with established BUREAU policy at the time the adjustment is approved.

10.1.2 "Other Direct Cost" includes those costs of CONSULTANT directly identifiable to or incurred in the performance of services hereunder, including but not limited to reproduction, freight, messenger service, travel (in accordance with established CITY policies), equipment owned or rented by CONSULTANT (any equipment purchased and paid for under this PROJECT shall become the property of the CITY), auto mileage charges (based on IRS allowable amounts), and supplies used in the work. Communication expenses, cost of office space, equipment, and supplies furnished to CITY personnel at CONSULTANT's location shall be paid by the CITY. The CITY shall receive the full benefit of any free travel, frequent flyer mileage, discounts and/or any other advantages which are acquired by the CONSULTANT as a result of CITY sponsored travel.

10.1.3 Costs incurred by the CONSULTANT prior to the actual date of full execution of this AGREEMENT shall only be payable to CONSULTANT if said costs were

incurred in completing any task specifically authorized by this AGREEMENT and said costs are reviewed and approved by the CITY and said approval for payment occurs after this AGREEMENT is fully executed.

10.1.4 **Exhibit A**, Project Services Cost Estimate, attached hereto and incorporated herein by this reference, shall be the format used for the estimated total cost by task for each Statement of Services (SOS). For a SOS specifying a Lump Sum compensation method, the Project Services Cost Estimate shall set forth the total project cost and the appropriate payment milestones.

10.1.5 Hourly Billing Rate is a method of compensation whereby CONSULTANT is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in **Exhibit F**. The hourly billing rates shall be approved by the PROJECT MANAGER for CONSULTANT employees' time directly chargeable to their performance of the project work and includes salary, fringe benefits, overhead, profit, and all other expenses incurred by CONSULTANT. Payments shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Statement of Services (SOS).

10.1.6 The CITY will not pay for CONSULTANT's nor subconsultant's personnel for invoice preparation. The CITY will not pay for CONSULTANT's nor subconsultant's communication expenses and computer time charges.

10.2 Compensation

The CONSULTANT shall perform the work specified in Article 4.4, and the CITY shall compensate CONSULTANT either on a Lump Sum basis, or an Hourly Billing Rate

basis upon mutual written agreement. The CITY shall designate the compensation method in the Statement of Services (SOS) to be issued under this AGREEMENT. If the SOS specified the compensation as being on a Cost Reimbursement Plus Profit or Hourly Billing Rate basis, payment shall be made in accordance with the Task Cost Estimates to be provided for CITY approval prior to issuance of SOS for any task under this AGREEMENT. Hourly rates, subconsultant fees and other direct/indirect charges shall be in accordance with rates set herein. Individuals who CONSULTANT wishes to add to the project must have their compensation rate approved by the PROJECT MANAGER, and a revised Scope of Services must be prepared as evidence of this addition. The total cost ceiling shall be stated in the SOS.

In the event the SOS specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or milestones as set forth in the SOS. The total cost ceiling shall be stated in the SOS.

The total cost ceiling for this AGREEMENT is \$2,000,000.00.

10.3 Invoicing and Payment

10.3.1 For a SOS specifying a Cost Reimbursement Plus Profit method of payment, the CONSULTANT shall, once each month, submit to CITY an original and three (3) copies of an invoice in a format acceptable to the CITY which will include all costs and a proportionate amount of profit due the CONSULTANT for services provided during the preceding month. CITY shall review the CONSULTANT's invoice and notify the CONSULTANT of exceptions or disputed

items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved for payment by the CITY. Invoices shall be prepared in a format that is acceptable to the CITY and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be reasonably required by the CITY to establish the amount of such invoices as allowable expenses. All invoices shall be subject to audit.

10.3.2 The CITY shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the Project Services Cost Estimate set forth. The CONSULTANT shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or otherwise incur costs in excess of the Project Services Cost Estimate unless and until the CITY shall have notified the CONSULTANT in writing that such Project Services Cost Estimate has been increased and shall have specified in such notice an estimated Project Services Cost Estimate, which shall thereupon constitute the cost performance of this AGREEMENT. In the absence of the specified notice, the CITY shall not be obligated to reimburse the CONSULTANT for any costs in excess of the Project Services Cost Estimate set forth, whether those costs were incurred during the course of the AGREEMENT or as a result of termination.

10.3.3 When and to the extent that the Project Services Cost Estimate has been increased, any costs incurred by the CONSULTANT in excess of the Project

Services Cost Estimate for any SOS, prior to such increase, shall be allowable to the same extent as if such costs had been incurred after the increase.

- 10.3.4 The CITY's liability under this AGREEMENT shall only be to the extent of the present appropriation to fund the AGREEMENT. No action, statement, or omission of any officer, agent, or employee of the CITY shall impose any obligation upon CITY, such officer, agent, or employee, except to the extent the CITY has appropriated funds and otherwise in accordance with the terms of this AGREEMENT.

The CONSULTANT and the CITY agree that no indebtedness for work performed which results in costs under this AGREEMENT shall arise against the CITY until and unless there is an appropriation of funds to pay for such work. However, if the CITY shall appropriate funds for any successive fiscal years, the CITY's liability shall be extended to the extent of such appropriation subject to the terms and conditions of this AGREEMENT.

- 10.3.5 For SOS specifying a Lump Sum method of payment or the Hourly Billing Rate method, the CONSULTANT shall submit to the CITY, upon the satisfactory completion of each task/milestone, an original and three (3) copies of an invoice in a format acceptable to the CITY. The CITY shall review the CONSULTANT's invoice and notify the CONSULTANT of exceptions or disputed items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved by the CITY.

10.3.6 The CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the California 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.

ARTICLE 11 - AMENDMENTS, CHANGES, OR MODIFICATIONS

Amendments, changes or modifications in the terms of this AGREEMENT may be made at any time by mutual written AGREEMENT between the parties hereto and shall be signed by the persons authorized to bind the parties thereto.

ARTICLE 12 -- INDEMNIFICATION AND INSURANCE

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless 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), damage or liability of any nature whatsoever, for death or injury to any person, including CONSULTANT'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 to the extent of the negligent acts, errors, omissions or willful misconduct incident to the performance of this AGREEMENT on the part of the CONSULTANT or its subconsultants of any tier. Rights and remedies available to the CITY under provision are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the laws of the United States, the State of California, and the CITY. The CITY shall provide CONSULTANT written notice of such claim, information, and assist in the defense of such action. Upon written agreement from CITY, CONSULTANT shall assume sole authority to defend or settle such claim consistent with Los Angeles City Charter Sections 271, et .seq. The provisions of this paragraph survive termination or expiration of this AGREEMENT.

12.1.1 Intellectual Property Infringement Indemnification

CONSULTANT shall and hereby does defend, indemnify and hold CITY harmless from and against any and all claims, liabilities, damages and expenses, including legal costs and reasonable attorneys' fees (in-house and outside counsel), arising out of any allegation that any portion of the Work Product or Services (a) infringes a United States patent, copyright or trademark, or (b) misappropriates any third party trade secret (collectively, an "Infringement Claim"); provided, however, that (i) CITY gives

CONSULTANT notification in writing of any such Infringement Claim and provide assistance, at CONSULTANT's expense, in the defense of such Infringement Claim; and (ii) upon written agreement from CITY, CONSULTANT shall have the authority to defend or settle such Infringement Claim, consistent with the Los Angeles City Charter Sections 271 et, seq.

12.1.2 Indemnification Limitations

CONSULTANT shall have no obligation for any Infringement Claim arising out of or relating to: (a) a modification to any of the Work Products created by CITY or a third party hired by CITY, (b) use of the Work Product or Services other than in accordance with the Documentation or the terms of this Agreement; (c) any Third-Party Software not supplied by CONSULTANT; or (d) use of the Work Product or Services in combination with any other hardware, software or other materials, other than in accordance with the Documentation or the terms of this Agreement, where absent such combination, the Work Product or Services would not be the subject of the Infringement Claim. These limitations related to (a) – (c) shall not apply where the modifications adjustment, change, adoption or use is done for the CITY to enjoy the intended benefits of the Work Products under this AGREEMENT. In addition to the foregoing, to the extent that any Third Party Software licensor has agreed to indemnify CONSULTANT with respect to any Infringement Claim arising out of or relating to Third Party Software, CONSULTANT shall pass through and assign the benefit of such infringement indemnity to CITY to the extent CONSULTANT is able to do so. Such third-

party indemnification, if any, shall not replace or diminish any of CONSULTANT's obligation to defend and indemnify under this AGREEMENT.

12.1.3 Effect of Infringement Claim

If an Infringement Claim is or, in CONSULTANT's reasonable belief, is likely to be asserted, (a) CONSULTANT will, at its option after consultation with CITY, either (i) promptly procure for CITY the right to use and exercise its rights with respect to the Work Product or Services as provided in this Agreement; or (ii) promptly replace, at a time mutually convenient to CITY and CONSULTANT, the CONSULTANT Work Product or Services or affected part thereof with other non-infringing products or services or modify the Work Product or Services or affected part thereof to make it not infringing while retaining substantially similar functionality. If the remedies set forth in clauses (a)(i) and (a)(ii) are not commercially feasible, as determined by CONSULTANT in its reasonable discretion, the CONSULTANT may negotiate with the CITY to discontinue using the alleged infringed Work Product, and the licenses granted pursuant to it, and pay to the City a full refund of the license and maintenance service fees paid by CITY for the alleged infringing Work Product or Services. Under no circumstances would CITY be liable for any license fees of the allegedly infringed Work Products or Service, after the CITY has ceased use of such allegedly infringing, except the alleged infringement is cured by CONSULTANT according to (a) (i) or (a) (ii) above. This Subsection 12.1.3 shall not negate, replace, alleviate or diminish any of CONSULTANT's liabilities under this Section or elsewhere in this AGREEMENT.

12.1.4 Exclusive Remedy

The provisions of this section 12 state the sole, exclusive, and entire liability of CONSULTANT to CITY, and is CITY's sole remedy with respect to, any claim of infringement or misappropriation or alleged infringement or misappropriation of any third-party patent, copyright, trademark, trade secret or other intellectual property right.

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits listed on the Insurance Requirements Sheet (Form Gen 146/IR), as amended, in EXHIBIT C hereto, covering its operations hereunder. Such insurance shall conform to CITY requirements established by charter, ordinance or policy, and shall comply with the instructions set forth in EXHIBIT C, as amended and in the form Instructions and Information on Complying with City Insurance Requirements, rev10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT C hereto, as amended. Such EXHIBIT C is hereby incorporated by reference and made a part of this AGREEMENT.

ARTICLE 13 – INDEPENDENT CONTRACTORS

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

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

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

4.1.1 CONSULTANT will work continuously on Priority 1 issues until they are resolved.

CONSULTANT shall provide response times based on their Platinum level targets. The chart below shows the expected response times based on priority for Platinum Level Support:

Priority	Severity	Platinum Level Service Request Response Target (hours)
1 - Critical/Urgent	Unable to work	1
2 - Major/High	System is up, but there is/are major problem(s).	2
3 - Medium	System is up, but there is/are moderate problem(s). Work-around is possible	4
4 - Low	Nuisance and/or minor.	8

14.2 The CONSULTANT shall provide professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the CONSULTANT under this AGREEMENT. The CONSULTANT shall, at no additional cost to CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.

14.3 CITY's sole remedy and CONSULTANT's sole obligation in the event of a breach of the warranty contained herein is, at CONSULTANT's option and upon agreement with the CITY: (i) to re-perform the Services, or (ii) to refund the amounts paid by CITY for the

Services which were not as warranted, provided CONSULTANT has received notice from CITY within sixty (60) days of the completion of the Services which CITY alleges were not performed consistent with the warranty in Section 14.

14.4 The CONSULTANT shall exhibit proper professional judgment in the use of information furnished by the CITY in Article 6. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, the CONSULTANT shall notify the CITY in a reasonable manner after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.

14.5 The CONSULTANT shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.

14.6 Except as specified in Article 12 and as otherwise provided in this AGREEMENT, the CONSULTANT shall be and shall remain liable, in accordance with applicable law, for all damages to CITY caused by the CONSULTANT'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to CITY, CITY-furnished data, or any third party, which damages shall not exceed 2 times the amounts paid or payable for the particular service, as set forth at Section 4.4 "Scope of Services," giving rise to the

liability. With the exception of intellectual property infringement indemnification and breach of confidentiality obligations, CONSULTANT shall not be liable for any special, consequential or indirect damages, however arising, even if it has been advised of the possibility of such damages.

ARTICLE 15 – OWNERSHIP OF WORK PRODUCTS

"Work Product" means any of the CONSULTANT's written expression, in all media and formats, of the CONSULTANT's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, modifications, interfaces, source and object code, software, and other technical information that the CONSULTANT has already created, possessed or owned before commencing any work under this AGREEMENT or that the CONSULTANT will be creating or acquiring under this AGREEMENT. All Work Product is the property of the CONSULTANT and is licensed perpetually and nonexclusively to the CITY, at no additional license fee, pursuant to the terms of the license for software contained in the License Agreement between the parties and subject to the terms hereof, with the License Agreement being subordinate to this AGREEMENT in case of conflict of terms. Use, disclosure and distribution of CITY information or data is subject to CITY's prior written approval. To the extent the CITY acquires any rights in the Work Product, the CITY hereby assigns those rights to CONSULTANT.

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Work Product shall not include any documents, material, data, drawings, plans, specifications, requirements, modifications, screen displays, interfaces, computer data files, basis for calculations, notes, and reports originated or prepared by the CITY, or a third party hired by CITY, the ownership of which shall vest with, and remain the property of, the CITY, whether the property is tangible or intangible.

15.1 PARTICIPATION IN DEFENSE

In CONSULTANT's defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement Action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272, and 273 thereof.

ARTICLE 16 – NONDISCRIMINATION, EQUAL EMPLOYMENT PRACTICES AND AFFIRMATIVE ACTION

Nondiscrimination, Equal Employment Practices, and Affirmative Action is attached hereto as Exhibit G and incorporated herein by this reference. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this AGREEMENT, the CONSULTANT 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. The CONSULTANT shall comply with the provisions of the Los Angeles Administrative Code Sections 10.8 through 10.13, to the extent applicable hereto. The CONSULTANT shall also comply with all rules, regulations, and policies of the CITY'S Board of Public Works, Office of Contract Compliance relating to nondiscrimination and affirmative action, including the filing of all forms required by said Office. Any subconsultant entered into by the CONSULTANT, relating to the AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of this paragraph. Failure of the CONSULTANT to comply with this requirement or to obtain compliance of its subconsultants with such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

**ARTICLE 17 – MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE
SUBCONTRACTOR OUTREACH PROGRAM**

The CONSULTANT has stipulated that it does not engage any subcontractor to perform the work described in this AGREEMENT and that all services described herein are performed by employees of CONSULTANT or of its VENTYX PARTNERS. The BOARD has been advised of this stipulation and a waiver has been obtained from the Mayor's Office which is attached hereto as **Exhibit B**.

ARTICLE 18 – SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 32.

ARTICLE 19 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION

All notices shall be made in writing and may be given by personal delivery or by mail. Such notices sent by mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

To The CITY:

Contact Person: Anita Fernandez
Address: Information and Control Systems Division
2714 Media Center Drive, M/S 911
Los Angeles, California, 90065

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To CONSULTANT:

Contact Person: CFO with copy to General Counsel

Ventyx Inc.

400 Perimeter Center Terrace, Suite 500

Atlanta, GA 30346

ARTICLE 20 – FORCE MAJEURE

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.

ARTICLE 21 – SEVERABILITY

Should any portion of this AGREEMENT be determined to be void or unenforceable, such shall be severed from the whole and the AGREEMENT will continue as modified.

ARTICLE 22 – DISPUTES

Should a dispute or controversy arise concerning provisions of this AGREEMENT or the performance of work hereunder, the parties may elect to submit such to a court of competent jurisdiction.

ARTICLE 23 – ENTIRE AGREEMENT

This AGREEMENT contains all of the agreements, representations, and understandings of the parties hereto and supersedes and/or incorporates any previous understandings, proposals, commitments, or agreements, whether oral or written, and may be modified or amended only as herein provided.

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ARTICLE 24 – 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 AGREEMENT shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

In any action arising out of this AGREEMENT, CONSULTANT 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 AGREEMENT shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this AGREEMENT, the validity of the remaining parts, terms or provisions of the AGREEMENT shall not be affected thereby.

ARTICLE 25 –LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE

The Business Tax Registration Certificate is attached hereto as **EXHIBIT J** and incorporated herein by this reference.

If applicable, the CONSULTANT represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the CITY's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 and following, of the Los Angeles Municipal Code). For the term covered by this AGREEMENT, the CONSULTANT 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. Should any such certificate(s) become suspended or revoked, it is the CONSULTANT'S responsibility to report the matter immediately to the PROJECT MANAGER.

ARTICLE 26 – 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 Los Angeles Municipal Code Sections 11.47 through 11.56.

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

This AGREEMENT is subject to 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, CONSULTANT will fully comply with all

applicable State and Federal employment reporting requirements for CONSULTANT's employees. CONSULTANT shall also certify (1) that the principal owner (s) of CONSULTANT are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONSULTANT will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230, *et seq.* and (3) that CONSULTANT will maintain such compliance throughout the term of this AGREEMENT.

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

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

The CONSULTANT 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.

ARTICLE 28 – LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

A. Unless otherwise exempt, this AGREEMENT 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, which is attached hereto as **Exhibit H** and incorporated herein by this reference, 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. The CONSULTANT 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. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its Subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such Subconsultant to the CITY within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each Subcontractor shall fully discharge the obligation of the CONSULTANT with respect to such pledges and fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such Federal law.

3. The CONSULTANT, 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. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY.

4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.
 5. The CONSULTANT 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 Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONSULTANT 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 the CONSULTANT 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 the CONSULTANT in accordance with the following procedures. Impoundment shall mean that from monies due the CONSULTANT, the CITY may deduct the amount determined to be due and owing by the CONSULTANT 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 the CONSULTANT is to continue work following an impoundment shall remain in the sole discretion of the CITY. The CONSULTANT 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. The CONSULTANT shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). The CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 – AMERICANS WITH DISABILITIES ACT

The CONSULTANT hereby certifies that it will comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 *et seq.* and its implementing regulations. The CONSULTANT 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. The CONSULTANT 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 the CONSULTANT, relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

ARTICLE 30 – EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this AGREEMENT 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, which is attached hereto as **Exhibit D** and incorporated herein by this reference.

1. During the performance of the AGREEMENT, the CONSULTANT certifies and represents that the CONSULTANT will comply with the EBO.
2. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of the AGREEMENT by the CITY.
3. If the CONSULTANT fails to comply with the EBO the CITY may cancel, terminate or suspend the AGREEMENT, in whole or in part, and all monies due or to become due under the AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
4. Failure to comply with the EBO may be used as evidence against the CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

5. If the CITY's Designated Administrative Agency determines that a CONSULTANT has set up or used its Contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against the CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

The CONSULTANT 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 CONSULTANT provide equal benefits to 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 Bureau of Contract Administration, Office of Contract Compliance at (213) 847-2625."

ARTICLE 31 – WAIVER

A waiver of a default of any part, term or provision of this AGREEMENT 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.

ARTICLE 32 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

The CONSULTANT may not, unless it has first obtained the written permission of the CITY:

- a) Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
- b) Delegate, subcontract, or otherwise transfer any of its duties under this AGREEMENT.

ARTICLE 33 – PERMITS

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

ARTICLE 34 – DISCOUNTS

CONSULTANT agrees to offer the CITY discounts for CONSULTANT Professional Services work only (not including maintenance) as follows:

1. After the CITY has paid CONSULTANT \$250,000 in professional services fees (not including maintenance fees) under this Agreement, a 5% discount off of CONSULTANT's standard rates will be applied to each subsequent SOS under this Agreement until the CITY has paid CONSULTANT \$500,000 in professional services fees (not including maintenance fees) under this Agreement.
2. After the CITY has paid CONSULTANT \$500,000 in professional services fees (not including maintenance fees) under this Agreement, a 10% discount off of CONSULTANT's standard rates will be applied to each subsequent SOS under this Agreement until the CITY has paid CONSULTANT \$750,000 in professional services fees (not including maintenance fees) under this Agreement.
3. After the CITY has paid CONSULTANT \$750,000 in professional services fees (not including maintenance fees) under this Agreement, a 15% discount off of CONSULTANT's standard rates will be applied to each subsequent SOS under this Agreement.

The aforementioned Discounts are not cumulative.

ARTICLE 35 – CONTRACTOR RESPONSIBILITY ORDINANCE

Contractor Responsibility Ordinance is attached hereto as Exhibit I and incorporated herein by this reference. Unless otherwise exempt, this AGREEMENT 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 CONSULTANT to update its responses to the responsibility questionnaire within thirty (30) calendar days after any change to the responses previously provided if such change would affect CONSULTANT's fitness and ability to continue performing the AGREEMENT.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. The CONSULTANT further agrees to:

1. Notify the CITY within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT;

2. Notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that the CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance;
3. Unless exempt, ensure that its subconsultant(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and
4. Unless exempt, ensure that its subconsultant(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 (30) calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subconsultant has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

ARTICLE 36 – BREACH

Except for force majeure, or as otherwise expressly limited herein, 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.

ARTICLE 37 – SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this AGREEMENT is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time, which is attached hereto as **Exhibit E** and incorporated herein by this reference. CONSULTANT 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 AGREEMENT.

ARTICLE 38 – CONTRACTOR PERFORMANCE EVALUATION ORDINANCE

At the end of this AGREEMENT, the CITY will conduct an evaluation of the CONSULTANT's performance. The CITY may also conduct evaluations of the CONSULTANT's performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONSULTANT assigns to the AGREEMENT. A Consultant who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed 14 calendar days to respond. The CITY will use the final CITY evaluation, and any response from the CONSULTANT, to evaluate proposals and to conduct reference checks when awarding other service contracts.

ARTICLE 39 - CLAIMS FOR LABOR AND MATERIALS

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

ARTICLE 40 – MUNICIPAL LOBBYING ORDINANCE

Any consultant for the CITY shall submit a certification, on a form prescribed by the City Ethics Commission, that the CONSULTANT acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, **Exhibit N**, if the CONSULTANT qualifies as a lobbying entity under the Ordinance. The exemptions contained in Los Angeles Administrative Code Section 10.40.4 shall not apply to this subsection.

ARTICLE 41 – FIRST HIRING SOURCE 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.

1. 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.
2. 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 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 CONSULTANT interviewed and the reasons by referred individuals were not hired.
3. Any subcontract entered into by the CONSULTANT relating to this agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. 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 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 CONSULTANT'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 CONSULTANT has violated provisions of the FSHO.

This contract is exempted from the requirements of the First Source Hiring Ordinance because the contract services are proprietary and therefore available from only a single source. A copy of the approved FSHO Exemption is attached hereto as Exhibit O.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year written below.

CITY OF LOS ANGELES

VENTYX INC.

By: _____

By: _____

Title: President, Board of Public Works

Title: James FitzGibbons
Chief Financial Officer

Date: _____

Date: 12/2/11

APPROVED AS TO FORM:

Carmen Trutanich, City Attorney

By: _____

John Carvalho

Title: Deputy City Attorney

Date: 12/20/11



Stephen Carpenter
Director

11-22-11

ATTEST

June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

EXHIBIT A

PROJECT SERVICES COST ESTIMATE

(SAMPLE)

EXHIBIT A - PROJECT SERVICES COST ESTIMATE

The City of Los Angeles
Bridge Improvement Program
Cost proposal

COST PROPOSAL WORKSHEET				
COMPANY:	SCOPE OF WORK Project Summary	DATE:	REV:	
Task Order		MILESTONE/PHASE/ PROJECT SUMMARY: Project Summary		
Direct labor				
Personnel	Function	Hours	Rate	Amount
		@		\$
		@		\$
		@		\$
		@		\$
		@		\$
TOTAL HOURS			TOTAL DIRECT LABOR	\$
MULTIPLERS				
ESCALATION @%		(Rate)		
OVERHEAD @		(of Total Direct Labor + Escalation)		
PAYROLL ADDITIVES @		151.17% (of Total Direct Labor + Escalation)		
TOTAL MULTIPLIERS				\$
OTHER DIRECT EXPENSES *** Billed at Actual Cost***				
ITEM	QUANTITY	UNIT	UNIT COST	AMOUNT
		@		\$
		@		\$
		@		\$
		@		\$
		@		\$
TOTAL OTHER DIRECT EXPENSES				\$
OUTSIDE SERVICES (w/o fee)				
COMPANY	LABOR	MULTIPLIER	EXPENSES	TOTAL
				\$
				\$
				\$
TOTAL OUTSIDE SERVICES				\$
FEES				
%				\$
				\$
Total Fees				\$
TOTAL COST				\$

EXHIBIT B

GOOD FAITH EFFORT WAIVER

GOOD FAITH EFFORT WAIVER REQUEST FORM

DEPARTMENT: PW/SAN

DIVISION/UNIT: ICSD

DATE: 8/27/2008

TO: LA OPS, MAYOR'S OFFICE OF ECONOMIC DEVELOPMENT
ATTN: LINDA SMITH GATLIN, DIRECTOR

FROM: Yelena Altshuler, Bureau of Sanitation, ICSD

Phone: 323-342-6281 Fax: 323-342-6111

SUBJECT: WAIVE MBE/WBE/OBE GOOD FAITH EFFORT REQUIREMENTS FOR CONTRACT NO. _____
In compliance with Executive Directive No. 2001-26, City of Los Angeles Minority, Women and Other Business Enterprise (MBE/WBE/OBE) Program, please fill out the following.

- 1 Title of Project: Maintenance Services Agreement Between City of LA and Ventyx
- 2 This project will be advertised as: Sole Source Contract _____ RFP _____ RFQ _____
- 3 Type of Contract: _____ Procurement Personal Services
_____ Construction _____ Other _____
- 4. Projected total amount of the contract: \$2,000,000 Estimated duration of project: 6 years

5. Significant Dates:
 Estimated date of pre-bid or job walk meeting: N/A
 Estimated date that bids or proposals are due: N/A

6. Recommendation:
 MBE/WBE/OBE encouragement

Justify why encouragement:
 Technical Requirement _____ Lack of available subcontractors _____ Emergency Response
 Lack of available subcontract sub-supply opportunities One product single point of distribution

Other: Ventyx bought Indus International and replaced Indus as sole source provider for EMPAC software maintenance. Ventyx does not subcontract or license any firm to perform the required highly technical services on it's software. As a single source for this service, this contract amendment provides no available opportunity for MBE/WBE/OBE participation.

7 Is this a. _____ New Contract Renewal _____ Other Amendment _____

8 Name of previous contractor: Indus International Length of previous: 3 years Value of previous: _____

TO: ATTN: Yelena Altshuler

FROM: LA OPS, MAYOR'S OFFICE OF ECONOMIC DEVELOPMENT

SUBJECT: RESPONSE TO ABOVE REQUEST

Recommendation Approved [Signature] Initials
 Recommendation Disapproved _____ Initials

Comment: _____

By: [Signature] Date: 10/7/08 Tel. No. 213/978-0665
 Linda Smith - LA Mayor's Office of Economic Development Director

*TECHNICAL REQUIREMENT
ONE PRODUCT SINGLE POINT OF DISTRIBUTION*

EXHIBIT C

INSURANCE REQUIREMENTS

Required Insurance and Minimum Limits

Name: Ventyx Incorporated

Date: 02/17/2011

Agreement/Reference: Software maintenance of Enterprise Maintenance, Planning and Control (EMPAC)

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	<u>Statutory</u>
<input checked="" type="checkbox"/> Waiver of Subrogation in favor of City	EL	<u>\$1,000,000</u>
<input type="checkbox"/> Longshore & Harbor Workers		
<input type="checkbox"/> Jones Act		

General Liability \$1,000,000

<input checked="" type="checkbox"/> Products/Completed Operations	<input type="checkbox"/> Sexual Misconduct
<input type="checkbox"/> Fire Legal Liability	
<input type="checkbox"/>	

Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work) \$1,000,000

Professional Liability (Errors and Omissions) \$2,000,000

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)

<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	<input type="checkbox"/>

Pollution Liability

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

Crime Insurance

Other: Provided to Luz Del Leon

EXHIBIT D

EQUAL BENEFITS ORDINANCE

EBO COMPLIANCE

City of Los Angeles
Department of Public Works
Bureau of Contract Administration
Office of Contract Compliance
1149 S. Broadway, Suite 300, Los Angeles, CA 90015
Phone: (213) 847-2625 - Fax: (213) 847-2777

EQUAL BENEFITS ORDINANCE COMPLIANCE AFFIDAVIT

Your company must certify compliance with Los Angeles Administrative Code Section 10.8.2.1, et seq., Equal Benefits Ordinance (EBO), prior to the execution of a City agreement the value of which exceeds \$5,000.

SECTION 1. CONTACT INFORMATION

Project Name: Software Maintenance of EMPAC BAVN ID #
Company Name: Ventyx Inc.
Company Address: 3301 Windy Ridge Parkway - Suite 200
City: Atlanta State: GA Zip: 30339
Contact Person: Phone: E-mail:
Approximate Number of Employees in the United States: 1,019
Approximate Number of Employees in the City of Los Angeles: 0

SECTION 2. EBO REQUIREMENTS

The EBO requires City Contractors who provide benefits to employees with spouses provide the same benefits to employees with domestic partners. Domestic Partner means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration or with an internal registry maintained by the employer of at least one of the domestic partners.

Unless otherwise exempt, the contractor is subject to and shall comply with the EBO as follows:

- A. A contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the City Contract.
B. A contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the contractor's presence at or on the property is connected to a Contract with the City.
C. The Contractor's employees located elsewhere in the United States, but outside of the City Limits if those employees are performing work on the City Contract.

A Contractor must post a copy of 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."

EBO COMPLIANCE

SECTION 3. COMPLIANCE OPTIONS

I have read and understand the provisions of the Equal Benefits Ordinance and Rules and Regulations and have determined that compliance shall be effectuated as indicated below:

- I have previously contracted with the City of Los Angeles, been determined to be in compliance with the EBO, and have NOT altered my benefits programs as they relate to providing equal coverage to an employee's spouse/domestic partner.
I have no employees.
I provide no benefits.
I provide benefits to employees only. Employees are prohibited from enrolling their spouse or domestic partner.
I provide equal benefits in accordance with the City of Los Angeles EBO.
I provide employees a "Cash Equivalent" in accordance with EBO Regulation #4.
All or some employees are covered by a collective bargaining agreement (CBA) or union trust fund. Consequently, I will provide Equal Benefits to all non-union represented employees, subject to the EBO, and will propose to the affected unions that they incorporate the requirements of the EBO into their CBA upon amendment, extension, or other modification of the CBA (Refer to Regulation #4).
Health benefits currently provided do not comply with the EBO. However, I will make the necessary changes to provide Equal Benefits upon my next Open Enrollment period which begins (Date) _____.

SECTION 4. DECLARATION UNDER PENALTY OF PERJURY

I understand that I am required to permit the City of Los Angeles access to and upon request, must provide certified copies of all company records pertaining to benefits, policies and practices for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance. Furthermore, I understand that failure to comply may be deemed a material breach of any City contract by the Awarding Authority; the Awarding Authority may cancel, terminate or suspend in whole or in part, the contract; monies due or to become due under a contract may be retained by the City until compliance is achieved. The City may also pursue any and all other remedies at law or in equity for any breach. The City may use the failure to comply with the Equal Benefits Ordinance as evidence against the Contractor in actions taken pursuant to the provisions of the Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

Ventyx Inc. will comply with the Equal Benefits Ordinance requirements
Company Name

as indicated above prior to executing a contract with the City of Los Angeles and will comply for the entire duration of the contract(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this 12 day of January, in the year 2012, at Atlanta, GA
(City) (State)

Signature

James FitzGibbons
Name of Signatory (please print)

CFO
Title

3301 Windy Ridge Parkway, Suite 200
Mailing Address

Atlanta, GA 30339
City, State, Zip Code

94-3273443
EIN/TIN

C. L. Warrington
Chris Warrington
President of the Americas

EXHIBIT E

SLAVERY DISCLOSURE ORDINANCE

CITY OF LOS ANGELES - SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt from the Slavery Disclosure Ordinance (SDO), a Company entering into a Contract with the City must complete an Affidavit disclosing any and all records of Participation or Investment in, or Profits derived from Slavery, including Slaveholder Insurance Policies, during the Slavery Era. The Company must complete and submit the Affidavit and any attachments to the Awarding Authority. This is required only of the Company actually selected for award of a Contract. It must be done before the Contract or Contract amendment can be executed. Questions regarding the Affidavit may be directed to the Department of Public Works, Office of Contract Compliance located at 1149 S. Broadway Street, 3rd Floor, Los Angeles, California 90015. Phone: (213) 847-1922; Fax: (213) 847-2777.

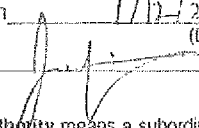
City Department Awarding Agreement Bureau of Sanitation Department Contact Person Anita Fernandez

AFFIDAVIT DISCLOSING SLAVERY ERA PARTICIPATION, INVESTMENTS, OR PROFITS

- I, James FitzGibbons, am authorized to bind contractually the Company identified below.
- Information about the Company entering into a Contract with the City is as follows:

<u>Ventyx Inc.</u>	<u>770-952-8444</u>	<u>94-3273443</u>
Company Name	Phone	Federal ID #
<u>3301 Windy Ridge Parkway</u>	<u>Atlanta</u>	<u>GA 30339</u>
Street Address	City	State Zip
- Has the Company submitted the SDO Affidavit previously? NO YES Date of prior submission: _____
If "NO," complete Section 4, 5, and 6. If "YES," list the date of prior submission and skip to Section 6 and execute the form.
- The Company came into existence in 1997 (year).
- The Company has searched its records and those of any Predecessor Companies for information relating to Participation or Investments in, or Profits derived from Slavery or Slaveholder Insurance Policies. Based on that research, the Company represents that:
 The Company found no records that the Company or any of its Predecessor Companies had any Participation or investments in, or derived Profits from, Slavery or Slaveholder Insurance Policies during the Slavery Era.
 The Company found records that the Company or its Predecessor Companies Participated or Invested in, or derived Profits from Slavery during the Slavery Era. The nature of that Participation, Investment, or Profit is described on the attachment to this Affidavit and incorporated herein.
 The Company found records that the Company or its Predecessor Companies bought, sold, or derived Profits from Slaveholder Insurance Policies during the Slavery Era. The names of any Enslaved Persons or Slaveholders under the Policies are listed on the attachment to this Affidavit and incorporated herein.
- I declare under penalty of perjury under the laws of the State of California that the representations made herein are true and correct to the best of my knowledge.

Executed on 1/17/2017 at Atlanta, GA
(Date) (City) (State)

Signature:  Title: Chief Financial Officer
(City) (State)

DEFINITIONS

Awarding Authority means a subordinate or component entity or person of the City, such as a City Department or Board of Commissioners, that has the authority to enter into a Contract or agreement for the provision of goods or services on behalf of the City of Los Angeles.	Participation means having been a Slaveholder during the Slavery Era.
Company means any person, firm, corporation, partnership or combination of these.	Predecessor Company means an entity whose ownership, title and interest, including all rights, benefits, duties and liabilities were acquired in an uninterrupted chain of succession by the Company.
Contract means any agreement, franchise, lease or concession including an agreement for any occasional professional or technical personal services, the performance of any work or service, the provision of any materials or supplies or rendering of any service to the City of Los Angeles or the public, which is let, awarded or entered into with or on behalf of the City of Los Angeles or any Awarding Authority of the City.	Profits means any economic advantage or financial benefit derived from the use of Enslaved Persons.
Designated Administrative Agency (DAA) means the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance.	Slavery means the practice of owning Enslaved Persons.
Enslaved Person means any person who was wholly subject to the will of another and whose person and services were wholly under the control of another and who was in a state of enforced compulsory service to another during the Slavery Era.	Slavery Era means that period of time in the United States of America prior to 1865.
Investment means to make use of an Enslaved Person for future benefits or advantages.	Slaveholder means holders of Enslaved Persons, owners of business enterprises using Enslaved Persons, owners of vessels carrying Enslaved Persons or other means of transporting Enslaved Persons, merchants or financiers dealing in the purchase, sale or financing of the business of Enslaved Persons.
	Slaveholder Insurance Policies means policies issued to or for the benefit of Slaveholders to insure them against the death of, or injury to, Enslaved Persons.
	Affidavit means the form developed by the DAA and may be updated from time to time. The Affidavit need not be notarized but must be signed under penalty of perjury.


 Chris Warrington
 President of the Americas

EXHIBIT F

HOURLY BILLING RATES

2012 Ventyx PSO Rates

Consulting Services Role	Asset Suite / EMPAC Hourly Rate (USD)
	Asset Suite
Senior Management	\$250
Principal Consultant	\$225
Project Manager	\$225
Tech Consultant	\$205
Business Consultant	\$205
Developer	\$205
Travel Time	\$100
Training	\$2,500/day

EXHIBIT G

NONDISCRIMINATION, EQUAL EMPLOYMENT,
AFFIRMATIVE ACTION

CITY OF LOS ANGELES

NONDISCRIMINATION • EQUAL EMPLOYMENT PRACTICES CONSTRUCTION & NON-CONSTRUCTION CONTRACTOR

Los Angeles Administrative Code (LAAC), Division 10, Chapter 1, Article 1, Section 10.8 stipulates that the City of Los Angeles, in letting and awarding contracts for the provision to it or on its behalf of goods or services of any kind or nature, intends to deal only with those contractors that comply with the non-discrimination and Affirmative Action provisions of the laws of the United States of America, the State of California and the City of Los Angeles. The City and each of its awarding authorities shall therefore require that any person, firm, corporation, partnership or combination thereof, that contracts with the City for services, materials or supplies, shall not discriminate in any of its hiring or employment practices, shall comply with all provisions pertaining to nondiscrimination in hiring and employment, and shall require Affirmative Action Programs in contracts in accordance with the provisions of the LAAC. The awarding authority and/or Office of Contract Compliance of the Department of Public Works shall monitor and inspect the activities of each such contractor to determine that they are in compliance with the provisions of this chapter.

I. Los Angeles Administrative Code Section 10.8.2 All Contracts: Non-discrimination Clause

Notwithstanding any other provision of any ordinance of the City of Los Angeles to the contrary, every contract which is let, awarded or entered into with or on behalf of the City of Los Angeles, shall contain by insertion therein a provision obligating the contractor in the performance of such contract not to discriminate in his or her employment practices against any employee or applicant for employment because of the applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition. All contractors who enter into such contracts with the City shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with 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.

II. Los Angeles Administrative Code Section 10.8.3. Equal Employment Practices Provisions

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$1,000 or more, and every construction contract for which the consideration is \$1,000 or more, shall contain the following provisions, which shall be designated as the EQUAL EMPLOYMENT PRACTICES provision of such contract:

A. During the performance of this contract, the contractor agrees and represents that it will provide equal employment practices and the 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. The contractor agrees to post a copy of Paragraph A herof in conspicuous places at its place of business available to employees and applicants for employment.

B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the 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, the 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. The 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 the 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 the contractor.

F. Upon a finding duly made that the 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 of Los Angeles. 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 said 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, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until the contractor shall establish and carry out a program in conformance with the provisions hereof.

G. Notwithstanding any other provision of this contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.

H. The Board of Public Works shall promulgate rules and regulations through the Office of Contract Compliance, and provide necessary forms and required language to the awarding authorities to be included in City Request for Bids or Request for Proposal packages or in supplier registration requirements for the implementation of the Equal Employment Practices provisions of this contract, and such rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish the contract compliance program.

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, the 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. 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.

Equal Employment Practices Provisions Certification - The Contractor by its signature affixed hereto declares under penalty of perjury that:

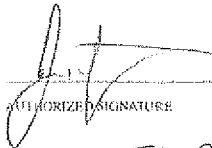
1. The Contractor has read the Nondiscrimination Clause in Section I above and certifies that it will adhere to the practices in the performance of all contracts.
2. The Contractor has read the Equal Employment Practices Provisions as contained in Section II above and certifies that it will adhere to the practices in the performance of any construction contract or non-construction contract of \$1,000 or more.

Ventyx Inc

COMPANY NAME
3301 Windy Ridge Parkway Ste 200

ADDRESS
Atlanta, Fulton, GA 30339

CITY, COUNTY, STATE, ZIP



AUTHORIZED SIGNATURE
Chris Warrington
James FitzGibbons, CFO President of the Americas

NAME AND TITLE (TYPE OR PRINT)
770-952-8444

TELEPHONE/EMAIL

CITY OF LOS ANGELES AFFIRMATIVE ACTION PLAN

The LAAC provides that the requirements of the program shall, as far as practicable, be similar to those adopted in applicable Federal Executive Orders. Such requirements are codified in the Code of Federal Regulations, Title 41, Chapter 60 and Executive Order 11246.

Purpose - An affirmative action program is a management tool designed to ensure equal employment opportunity. A central premise underlying affirmative action is that, absent discrimination, over time a contractor's workforce, generally, will reflect the gender, racial and ethnic profile of the labor pools from which the contractor recruits and selects. Affirmative action programs contain a diagnostic component which includes a number of quantitative analyses designed to evaluate the composition of the workforce of the contractor and compare it to the composition of the relevant labor pools. Affirmative action programs also include action-oriented programs. If women and minorities are not being employed at a rate to be expected given their availability in the relevant labor pool, the contractor's affirmative action program includes specific practical steps designed to address this underutilization. Effective affirmative action programs also include internal auditing and reporting systems as a means of measuring the contractor's progress toward achieving the workforce that would be expected in the absence of discrimination.

An affirmative action program also ensures equal employment opportunity by institutionalizing the contractor's commitment to equality in every aspect of the employment process. Therefore, as part of its affirmative action program, a contractor monitors and examines its employment decisions and compensation systems to evaluate the impact of those systems on women and minorities.

An affirmative action program is, thus, more than a paperwork exercise. An affirmative action program includes those policies, practices, and procedures that the contractor implements to ensure that all qualified applicants and employees are receiving an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with employment. Affirmative action, ideally, is a part of the way the contractor regularly conducts its business. OFCCP has found that when an affirmative action program is approached from this perspective, as a powerful management tool, there is a positive correlation between the presence of affirmative action and the absence of discrimination.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the **AFFIRMATIVE ACTION PROGRAM** provisions as required by the Los Angeles Administrative Code (LAAC) Section 10.8.4 et. seq. of such contract:

Per LAAC Section 10.8.4(K)(2), a 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.

As provided by LAAC Section 10.8.4(K), this document sets forth the City of Los Angeles Affirmative Action Plan approved by the Office of Contract Compliance. In accordance with LAAC Section 10.8.4(M) the Affirmative Action Plan required to be submitted 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.

CITY OF LOS ANGELES AFFIRMATIVE ACTION PLAN

In pursuit of accomplishing the intent of the City's Affirmative Action Program, the Affirmative Action Plan shall also consist of the following:

1. The contractor certifies and agrees to immediately implement good faith efforts, measures to recruit and employ minority, women, and other potential staff in a nondiscriminatory manner including, but not limited to, the following actions. The contractor shall:
 - (a) Recruit and make efforts to obtain such employees through:
 1. Advertising employment opportunities in minority and other community news media.
 2. Notifying minority, women and other community organizations of employment opportunities.
 3. Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.
 4. Encouraging present minority, women and other employees to refer their friends and relatives.
 5. Promoting after school and vacation employment opportunities for minority, women and other youth.
 6. Validating all job specifications, selection requirements, tests, etc.
 7. Maintaining a file of the names and addresses of each worker referred to the contractor and what action was taken concerning such worker.
 8. Notifying the appropriate awarding authority of the City and the Office of Contract Compliance in writing when a union with whom the contractor has a collective bargaining agreement has failed to refer a minority, woman or other worker.
 - (b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a nondiscriminatory manner so as to achieve and maintain a diverse work force.
 - (c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in such training programs to enhance their skills and advancement.
 - (d) Secure cooperation or compliance from the labor referral agency to the contractor's contractual affirmative action obligations.
 - (e) Establish a person at the management level of the contracting entity to be the Equal Employment Opportunity Officer; such individual to have the authority to disseminate and enforce the company's Equal Employment and Affirmative Action Policies.
 - (f) Maintain such records as are necessary to determine compliance with equal employment and affirmative action obligations, and making such records available to City, State and Federal authorities upon request.
2. The contractor shall make a good faith effort with respect to apprenticeship and training programs to:

CITY OF LOS ANGELES AFFIRMATIVE ACTION PLAN

- (a) Recruit and refer minority, women and other employees to such programs;
 - (b) Establish training programs within the company and/or its association that will prepare minority, women and other employees for advancement opportunities.
 - (c) Abide by the requirements of the Labor Code of the State of California with respect to the provision of apprenticeship job opportunities.
3. The contractor shall establish written company policies, rules, and procedures which shall be encompassed in a company-wide Affirmative Action Plan for all its operations and contracts. Said policies shall be provided to all employees, subcontractors, vendors, unions and all others with whom the contractor may become involved in fulfilling any of its contracts. The company's Affirmative Action Plan shall encompass the requirements contained herein as a minimum and shall be submitted with its bid to the appropriate awarding authority of the City and to the Office of Contract Compliance of the City.

LAAC Section 10.13. Mandatory Provisions Pertaining to Nondiscrimination in Employment and Affirmative Action in Hiring Employees in the Performance of Work on Certain City Construction Contracts. The items 4, 5 and 6 below are provided to serve as a guide for satisfying the reporting requirements of Section 10.13. Construction Contractors are subject to all provisions contained in LAAC Section 10.13 et. seq.

4. **Construction Contracts Included.** The contractor shall not be eligible for an award of a City Construction Contract in excess of \$5,000, unless the contractor has submitted as part of the bid a written Affirmative Action Plan embodying both (1) anticipated levels of minority*, women and all other staffing utilization, and (2) specific affirmative action steps directed at applying good faith efforts in a nondiscriminatory manner to recruit and employ minority, women and all other potential staff or is deemed to have submitted such a program pursuant to Subsection 3 of this section. Both the anticipated levels and the affirmative action steps must be taken and applied in good faith and in a nondiscriminatory manner to attempt to meet the requirements of this section for all trades which are to be utilized on the project, whether subcontracted or not.

* "Minority" is defined as the term "minority person" is defined in Subsection (f) of section 2000 of the California Public Contract Code.

5. **Anticipated Utilization.** The plan must set forth anticipated minority, women, and all other staffing utilization by the contractor and all subcontractors on each project constructed by the City using those trades within the area of jurisdiction of the Los Angeles Building and Construction Trades Council within the City of Los Angeles in each work class and at all levels in terms of staff hours. The anticipated levels of minority, women and other staffing utilization shall be the levels at which each of those groups are represented in the relevant workforce in the Greater Los Angeles Area as determined by the U.S. Bureau of the Census and made available by the Office of Contract Compliance.¹ Attainment of the anticipated levels of utilization may only be used as an indicia of whether the contractor has complied with the requirements of this section and has applied its Affirmative Action Plan in good faith and in a nondiscriminatory manner. Failure to attain the anticipated levels of utilization shall not, by itself, disqualify the contractor for award of a contract or subject the contractor to any sanctions or penalties.

¹ The anticipated levels of minority, women and other staffing utilization can be obtained by visiting the Bureau of Contract Administration at <http://bca.lacounty.gov>

CITY OF LOS ANGELES AFFIRMATIVE ACTION PLAN

6. Construction Contractors are required to complete and submit the Anticipated Employment Utilization Levels Form to report anticipated utilization of Minority, Women and Other Staffing and establish a person at the management level of the contracting entity to be the Equal Employment Opportunity Officer; such individual to have the authority to disseminate and enforce the company's Equal Employment and Affirmative Action Policies.

Equal Employment Opportunity Officer:

Please be advised that Tom Coffey VP Administration
hereby designated NAME OF DESIGNEE TITLE

as the Company's Equal Employment Opportunity Officer. The Officer has been given the authority to establish, disseminate and enforce the Equal Employment and Affirmative Action Policies of this firm to ensure nondiscrimination in all of its employment practices. The Officer may be contacted at:

WORK ADDRESS (IF DIFFERENT THAN COMPANY ADDRESS) () 770-952-8444 tom.coffey@ebb.ventyx.com
TELEPHONE E-MAIL

In no event may a contractor utilize the requirements of this section in such a manner as to cause or result in discrimination against any person on account of race, color, religion, ancestry, age, disability, medical condition, marital status, sex, sexual orientation, or national origin.

By its execution hereof, the contractor accepts and submits the foregoing as its Affirmative Action Plan. I certify under penalty of perjury under the laws of the State of California that I have read and understood the foregoing requirements of LAAC Section 10.8 et. seq. and agree to comply with them while under contract as set forth therein.

Executed this 12 day of JANUARY, in the year 2012, at Atlanta, GA
(City) (State)

Ventyx Inc.
COMPANY NAME

3301 WindyRidge Parkway Ste 200
ADDRESS

Atlanta, Fulton County, GA 30339
CITY, COUNTY, STATE, ZIP

[Signature] C. L. Warrington
AUTHORIZED SIGNATURE
James FitzGibbons, CFO Chris Warrington
NAME AND TITLE (TYPE OR PRINT) President of the Americas

770-952-8444
TELEPHONE/E-MAIL

Notes:

The above Pre-Approved Affirmative Action Plan will be effective for 12 months from the date it is uploaded onto the BAVN system. If the Affirmative Action Plan is 30 days or less from expiration, the contractor must upload a new Plan onto the BAVN System and that Plan must be approved (verified by the Office of Contract Compliance) before the contract is awarded.

Construction contractors must submit an Anticipated Employment Utilization Report with each new bid for purposes of effectuating the Plan for the specific project.

EXHIBIT H

LIVING WAGE ORDINANCE

CITY OF LOS ANGELES - DEPARTMENT OF PUBLIC WORKS
BUREAU OF CONTRACT ADMINISTRATION
OFFICE OF CONTRACT COMPLIANCE

1149 S. Broadway Street, 3rd Floor
Los Angeles, CA 90015
Phone: (213) 847-1922 - Fax: (213) 847-2777

EMPLOYEE INFORMATION FORM

Contract No.: _____

Awarding City Department: _____

Name of Company: VENTYX INC.

Company Phone Number: (770) 952-8444 Prime Contractor: Yes No

If no, state the name of the Prime Contractor: _____

Number of employees working on this City Contract and listed on the attached payrolls: _____

The Living Wage Ordinance requires that subject employers provide to employees: (1) as of July 1, 2006 a wage of at least \$9.39 per hour with health benefits of \$1.25 per hour, or \$10.64 per hour without health benefits (to be adjusted annually); (2) at least 12 compensated days off per year for sick leave, vacation, or personal necessity at the employee's request (pro-rated for part-time employees); and (3) at least 10 additional days off per year of uncompensated time off for sick leave (pro-rated for part-time employees). Refer to the LWO Rules and Regulations, available from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC) website, for details regarding the wage and benefit requirements of the Ordinance.

EMPLOYEE INFORMATION

A contractor is required to provide to the OCC the following information within 10 days of contract execution:

- A copy of your most recent payroll. Attach it to this form and indicate on the payroll which employees are working on this City contract.
- If health benefits (such as medical, dental, vision, mental health, and disability insurance) are provided to employees, submit a copy of the most recent health benefit premium statement(s) showing which employees receive health benefits. Indicate how much, if any, employees pay for co-premiums.
- A copy of your company's current paid and unpaid time off policy for the employees working on the City contract.

Failure to comply with these requirements will result in withholding of payments by the City Controller, or a recommendation to the awarding authority for contract termination. All information submitted is subject to verification, and false information may result in contract termination.

NOTE: Payrolls and health benefits information need not be submitted if all employees working on this City agreement earn an hourly wage of at least \$15 per hour. If so, check the box below and sign as requested.

I certify under penalty of perjury that I do not have any employees earning less than \$15 per hour working on this City contract.

I understand that the employee information provided herein is confidential and will be used by the City of Los Angeles, Office of Contract Compliance for the purpose of monitoring the Living Wage Ordinance.

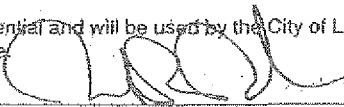
BRET R. BOLIN

Print Name of Person Completing This Form

EVP AND CFD

Title

Form OCC/LW-6, Rev. 06/06



Signature of Person Completing This Form

APRIL 17, 2008

Date

City of Los Angeles
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

**NOTICE TO EMPLOYEES
LIVING WAGE ORDINANCE**

This employer is a contractor with the City of Los Angeles. This contract is subject to the Living Wage Ordinance (LWO).

THESE ARE YOUR RIGHTS...

1. Minimum hourly compensation:

- ✓ \$9.39/hour plus at least \$1.25 an hour in health benefits, OR
- ✓ \$10.64/hour without health benefits.

- The wage rate is adjusted annually. Changes are effective July 1 of each year. These rates are effective July 1, 2006.

2. Minimum days off:

- ✓ 12 compensated days off per year (including holidays) for sick leave, vacation or personal necessity at the employee's request.

- A full-time employee should accrue one day per month.
- Unused compensated time off must be carried over for at least one year.

AND

- ✓ 10 additional uncompensated days off per year for family or personal illness.

- Time off must be available to employees after 6 months of employment.

3. Tax Credit:

- ✓ Employees earning less than \$12/hour may be eligible to apply for the Federal Earned Income Tax Credit (EITC).

- Application forms are available from your employer. For additional information about the EITC and obtaining forms, contact the Earned Income Tax Credit Hotline: 1-800-601-5552.

FOR ADDITIONAL INFORMATION OR ASSISTANCE, CALL:

City of Los Angeles
Department of Public Works
Office of Contract Compliance
1149 S. Broadway Street, 3rd Floor
Los Angeles, CA 90015

Phone: (213) 847-1922 - Fax: (213) 847-2777

CITY OF LOS ANGELES

Department of Public Works - Bureau of Contract Administration - Office of Contract Compliance
 1149 S. Broadway Street, 3rd Floor, Los Angeles, CA 90015
 Phone: (213) 847-1922 - Fax: (213) 847-2777

Name of Contractor: VENTYX INC.

Contact Person: IAN WRAY Phone Number: 770.952.8444

Awarding City Department: BUREAU OF SANITATION Contract Number: _____

A contractor must provide to the Office of Contract Compliance (OCC) a list of all subcontractors working under the agreement within 10 days of execution. Attach additional sheets as needed.

I have no subcontractors working on this City contract. (Sign at the bottom of page 2)

SUBCONTRACTOR INFORMATION FORM

Subcontractor Name:	Phone Number:
Address:	Start Date: End Date:
Contact person:	Total Amount of Subcontract: \$
Purpose of Subcontract:	
Is this subcontractor organized as a non-profit under IRS section 501(c)(3)?	Yes _____ No _____
Is this subcontractor a one-person contractor, employing no workers?	Yes _____ No _____

Subcontractor Name:	Phone Number:
Address:	Start Date: End Date:
Contact person:	Total Amount of Subcontract: \$
Purpose of Subcontract:	
Is this subcontractor organized as a non-profit under IRS section 501(c)(3)?	Yes _____ No _____
Is this subcontractor a one-person contractor, employing no workers?	Yes _____ No _____

Subcontractor Name:	Phone Number:
Address:	Start Date: End Date:
Contact person:	Total Amount of Subcontract: \$
Purpose of Subcontract:	
Is this subcontractor organized as a non-profit under IRS section 501(c)(3)?	Yes _____ No _____
Is this subcontractor a one-person contractor, employing no workers?	Yes _____ No _____

SUBCONTRACTOR INFORMATION (cont.)

Contractor Name: _____ Contract No.: _____ City Department: _____

Subcontractor Name:	Phone Number:
Address:	Start Date: End Date:
Contact person:	Total Amount of Subcontract: \$
Purpose of Subcontract:	
Is this subcontractor organized as a non-profit under IRS section 501(c)(3)?	Yes _____ No _____
Is this subcontractor a one-person contractor, employing no workers?	Yes _____ No _____

Subcontractor Name:	Phone Number:
Address:	Start Date: End Date:
Contact person:	Total Amount of Subcontract: \$
Purpose of Subcontract:	
Is this subcontractor organized as a non-profit under IRS section 501(c)(3)?	Yes _____ No _____
Is this subcontractor a one-person contractor, employing no workers?	Yes _____ No _____

Subcontractor Name:	Phone Number:
Address:	Start Date: End Date:
Contact person:	Total Amount of Subcontract: \$
Purpose of Subcontract:	
Is this subcontractor organized as a non-profit under IRS section 501(c)(3)?	Yes _____ No _____
Is this subcontractor a one-person contractor, employing no workers?	Yes _____ No _____

Subcontractor Name:	Phone Number:
Address:	Start Date: End Date:
Contact person:	Total Amount of Subcontract: \$
Purpose of Subcontract:	
Is this subcontractor organized as a non-profit under IRS section 501(c)(3)?	Yes _____ No _____
Is this subcontractor a one-person contractor, employing no workers?	Yes _____ No _____

Print Name of Person Completing This Form _____

Signature of Person Completing This Form _____

Date _____

Title _____

EXHIBIT I

CONTRACTOR RESPONSIBILITY

ORDINANCE

CITY OF LOS ANGELES
CONTRACTOR RESPONSIBILITY ORDINANCE

CRO QUESTIONNAIRE RECEIPT VERIFICATION FORM

To verify the Contractor Responsibility Ordinance's (CRO) compliance, this form must be completed by the Awarding Authority and submitted to the appropriate Designated Administrative Agency (DAA) along with the Responsibility Questionnaires. Upon receipt of the Questionnaires, the DAA will return this signed form to the Awarding Authority. The Awarding Authority must attach the certified form to each draft contract for review by the Office of the City Attorney. No contract may be executed unless a certified Receipt Verification Form indicates that the CRO requirement has been met.

1. Information Regarding Proposed Contract

Project Name/Description: SOFTWARE MAINTENANCE RENEWAL

RFB/RFO/RFP # (if any): _____ Date RFB/RFO/RFP Released: _____
Procuring Dept.: _____ Mail Stop #: _____
Name of Dept. Contact: LUZ DELEON Phone: 213 485 2842

2. Questionnaires Are Submitted for the Following Bidders/Proposers/Proposed Contractors:

Company Name: VENTYX INC.

Company Address: 3301 WINDY RIDGE PARKWAY, SUITE 200

City: ATLANTA State: GA Zip: 30339

Company Name: _____

Company Address: _____

City: _____ State: _____ Zip: _____

Company Name: _____

Company Address: _____

City: _____ State: _____ Zip: _____

Company Name: _____

Company Address: _____

City: _____ State: _____ Zip: _____

FOR DAA USE ONLY - VERIFICATION REGARDING RECEIPT

The Responsibility Questionnaires for the bidders/proposers/proposed contractors listed above were received on (date) _____.

The Questionnaires were processed by:

Dept. of Public Works for Construction Contracts and ~~Service~~ Contracts
 Dept. of General Services for Procurement Contracts

Authorized DAA Representative (Print Name) Seffy Wiles Phone (213) 847-2408

DAA Representative Signature _____ Date _____

EXHIBIT J

BUSINESS TAX REGISTRATION

CERTIFICATE



CITY OF LOS ANGELES
 OFFICE OF FINANCE
 P.O. BOX 53200
 LOS ANGELES CA 90053-0200

10 100-000230 0810 1

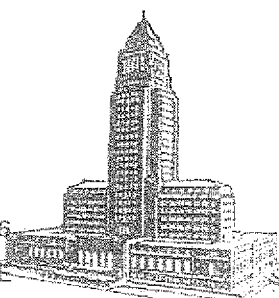
VENTYX INC
 STEVAUGHN OWENS
 3301 WINDY RIDGE PKWY SE
 ATLANTA GA 30339-5623

60 SPEAR STREET
 SAN FRANCISCO, CA 94105-1506

THIS CERTIFICATE MUST BE POSTED AT PLACE OF BUSINESS

CITY OF LOS ANGELES TAX REGISTRATION CERTIFICATE				
THIS CERTIFICATE IS GOOD UNTIL SUSPENDED OR CANCELLED				
BUSINESS TAX				ISSUED: 10/14/2008
ACCOUNT NO.	FUND/CLASS	DESCRIPTION	STARTED	STATUS
0000273212-0001-5	L049	Professions/Occupations	12/05/1995	Active

VENTYX INC
 STEVAUGHN OWENS
 60 SPEAR STREET
 SAN FRANCISCO, CA 94105-1506
 3301 WINDY RIDGE PARKWAY SE
 ATLANTA, GA 30339-5618



ISSUED BY:
Christina D. Christaule
 DIRECTOR OF FINANCE

EXHIBIT K

RESIDENCE INFORMATION

LOS ANGELES RESIDENCE INFORMATION

The City Council in consideration of the importance of preserving and enhancing the economic base and well-being of the city encourages businesses to locate or remain within the City of Los Angeles. This is important because of the jobs businesses generate and for the business taxes they remit. The City Council, on January 7, 1992, adopted a motion that requires proposers to state their headquarter address as well as the percentage of their workforce residing in the City of Los Angeles.

Organization: Ventyx, Inc.

I. Corporate or Main Office Address:

3301 Windy Ridge Parkway

Suite 200

Atlanta, GA 30339

II. Total Number of Employees in Organization: 843

Number and Percentage of Employees in Organization who are Los Angeles City Residents:

0 and 0 %

EXHIBIT L

NON-COLLUSION

NON-COLLUSION AFFIDAVIT

The appropriate, authorized operator's designate must sign and affix the corporate seal (see space below).

I, BRET R BOLIN, depose and say that I am EVP AND CFO of VENTYX INC.
("President", Vice President", etc.) (Insert Name and Address of Organization)

who submits this proposal to the City of Los Angeles Personnel Department, and hereby declare that this proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named and the proposer had not directly induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from submitting a proposal, and that the proposer has not in any manner sought by collusion to secure for him/herself an advantage over any other proposer.

Date: APRIL 17, 2008 at ATLANTA, GA
(Month, Day, Year) (City, State)

(Corporate Seal)

I certify or declare under penalty of perjury that the foregoing is correct.

(Signature)

STATE OF GEORGIA
COUNTY OF CHEROKEE

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 17th DAY OF APRIL, 2008.

Linda S Gardner
NOTARY PUBLIC

EXHIBIT M

CONTRACT HISTORY

CITY OF LOS ANGELES CONTRACT HISTORY

The City Council passed a resolution on July 21, 1998 requiring that all proposed vendors supply in their proposal or bid, a list of all City of Los Angeles contracts held by the bidder or any affiliated entity during the preceding 10 years. Use the space below to list all such contracts. Include the dates of the contract, the services or goods provided, the amount of the contract, and the contract number. If the bidder or any affiliated entity has held no City of Los Angeles contracts during the preceding 10 years, state so in the space below. Use the back of the page and additional pages as needed.

MASTER SOFTWARE LICENSE/SERVICES AGREEMENT
dated DECEMBER 14, 1998.

VENTYX INC.

Name of Organization



Signature

BRET R BOLIN

Print Name

EVP AND CFO

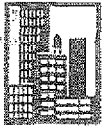
Title

APRIL 17, 2008

Date

EXHIBIT N

MUNICIPAL LOBBYING ORDINANCE



City Ethics Commission
 200 N Spring Street
 City Hall — 24th Floor
 Los Angeles, CA 90012
 Mail Stop 129
 (213) 978-1960

Bidder Certification CEC Form 50

Bid/Contract Number:	Department:
----------------------	-------------

Name of Bidder: VENTYX INC	Phone: (770) 952-8444
-------------------------------	--------------------------

Address:
3301 WINDY RIDGE PARKWAY, STE 200, ATLANTA, GA

Email:
Bret.Bolin@ventyx.com

CERTIFICATION

I certify the following on my own behalf or on behalf of the entity named above, which I am authorized to represent:

- A. I am a person or entity that is applying for a contract with the City of Los Angeles.
- B. The contract for which I am applying is an agreement for one of the following:
 - 1. The performance of work or service to the City or the public;
 - 2. The provision of goods, equipment, materials, or supplies;
 - 3. Receipt of a grant of City financial assistance for economic development or job growth, as further described in Los Angeles Administrative Code § 10.40.1(h) [see reverse]; or
 - 4. A public lease or license of City property where both of the following apply, as further described in Los Angeles Administrative Code § 10.37.1(i) [see reverse]:
 - a. I provide services on the City property through employees, sublessees, sublicensees, contractors, or subcontractors, and those services:
 - i. Are provided on premises that are visited frequently by substantial numbers of the public; or
 - ii. Could be provided by City employees if the awarding authority had the resources; or
 - iii. Further the proprietary interests of the City, as determined in writing by the awarding authority.
 - b. I am not eligible for exemption from the City's living wage ordinance, as eligibility is described in Los Angeles Administrative Code § 10.37(i)(b).
- C. The value and duration of the contract for which I am applying is one of the following:
 - 1. For goods or services contracts—a value of more than \$25,000 and a term of at least three months;
 - 2. For financial assistance contracts—a value of at least \$100,000 and a term of any duration; or
 - 3. For construction contracts, public leases, or licenses—any value and duration.
- D. I acknowledge and agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if I qualify as a lobbying entity under Los Angeles Municipal Code § 48.02.

Date: APRIL 17, 2008 Signature:
 Name: BRET R. BOLIN
 Title: EVP AND CFO

Under Los Angeles Municipal Code § 48.09(f), this form must be submitted to the awarding authority with your bid or proposal on the contract noted above.

Los Angeles Administrative Code § 10.40.1(h)

- (h) "City Financial Assistance Recipient" means any person who receives from the City discrete financial assistance in the amount of One Hundred Thousand Dollars (\$100,000.00) or more for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation.


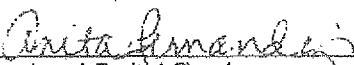

Categories of such assistance shall include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

Los Angeles Administrative Code § 10.37.1(i)

- (i) "Public lease or license".
- (a) Except as provided in (i)(b), "Public lease or license" means a lease or license of City property on which services are rendered by employees of the public lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies:
- (1) The services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities); or
 - (2) Any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources; or
 - (3) The DAA has determined in writing that coverage would further the proprietary interests of the City.
- (b) A public lessee or licensee will be exempt from the requirements of this article subject to the following limitations:
- (1) The lessee or licensee has annual gross revenues of less than the annual gross revenue threshold, three hundred fifty thousand dollars (\$350,000), from business conducted on City property;
 - (2) The lessee or licensee employs no more than seven (7) people total in the company on and off City property;
 - (3) To qualify for this exemption, the lessee or licensee must provide proof of its gross revenues and number of people it employs in the company's entire workforce to the awarding authority as required by regulation;
 - (4) Whether annual gross revenues are less than three hundred fifty thousand dollars (\$350,000) shall be determined based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation;
 - (5) The annual gross revenue threshold shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 10.37.2 (a);
 - (6) A lessee or licensee shall be deemed to employ no more than seven (7) people if the company's entire workforce worked an average of no more than one thousand two-hundred fourteen (1,214) hours per month for at least three-fourths (3/4) of the time period that the revenue limitation is measured;
 - (7) Public leases and licenses shall be deemed to include public subleases and sublicensees;
 - (8) If a public lease or license has a term of more than two (2) years, the exemption granted pursuant to this section shall expire after two (2) years but shall be renewable in two-year increments upon meeting the requirements therefor at the time of the renewal application or such period established by regulation.

EXHIBIT 0

FIRST SOURCE HIRING ORDINANCE

FIRST SOURCE HIRING ORDINANCE (FSHO)			FORM: FSHO-X
Departmental Application for Exemption		CITY OF LOS ANGELES	
Awarding Departments: Please fill and submit this form to Attn: EEOE, VIA FAX at (213) 847-2777 or SCAN/EMAIL to becky.balbuena@lacity.org for review and approval.			
SECTION I: AWARDING DEPARTMENT/BID INFORMATION			
Dept: PW-BOS Contact Person: Anita Fernandez		Phone#: 323-342-6288	Email: Anita.Fernandez@lacity.org
Project Title (as listed in bid): SOFTWARE MAINTENANCE OF ENTERPRISE MAINTENANCE, PLANNING AND CONTROL AND RELATED PRODUCTS AND INTEGRATIONS ID# TBD (in process)			
SECTION II: CONTRACTOR INFORMATION			
Name of Contractor: Ventyx, Inc.		Contractor Phone#: 770-989-4027	
Designated Contractor Contact Person: Gaye Chase, Account Management Email: gaye.chase@ventyx.com			
Street Address: 3301 Windy Ridge Pkwy., Suite 200			
City: Atlanta	State: GA	Zip: 30339	Federal ID (FEIN)#: 94-3273443
SECTION III: EXEMPTION INFORMATION			
I am applying for this type of exemption (please use the same description you checked off on FSHO-D) then continue to Section IV.			
Description			
Contracts where the services are available only from a single source.			
SECTION IV: EXPLANATION FOR EXEMPTION REQUEST			
Please provide a detailed explanation of why this contract should be exempt from the FSHO. Attach additional sheets if necessary, then continue to Section V. You may also attach an Interdepartmental Memo in lieu of filling Section IV. BCA may require additional documentation to supplement this form.			
<p>Please authorize exemption from First Source Hiring Ordinance (FSHO) for the sole source contract with Ventyx, Inc. This contract is necessary to provide software maintenance and support for Sanitation's maintenance management system, Enterprise Maintenance, Planning and Control (EMPAC) and its interfaces with Supply Management System (SMS) and Field Automation for Sanitation Trucks (FAST) system. Included with this form is a letter from Ventyx confirming their sole source status.</p> <p>EMPAC is a commercial off-the-shelf application developed by Ventyx (formerly Indus International). Ventyx also provided implementation services and developed the interfaces to the citywide procurement system, SMS, and the mobile system for wastewater and storm water collection systems maintenance, FAST. EMPAC is a proprietary product of Ventyx, and maintenance is available solely through this vendor.</p> <p>This sole source contract is needed to provide software maintenance, consulting expertise, and support services for EMPAC and its interfaces. Failure to keep this application operating properly would severely impact operations of four wastewater treatment plants and Wastewater Collection Systems Division that rely on EMPAC to perform daily operations.</p>			
SECTION V: SIGNATURE AND SUBMIT			
Submit this request for exemption and all supporting documentation to the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC). The OCC will make a determination within seven (7) working days of receipt of a request for exemption and all supporting documentation.			
 Department Contact Signature		7-29-2010 Date	
An approved exemption is valid only for the contract for which it was requested. It is not valid for any other contracts the contractor may have with the City.			
SECTION VI: BCA INFORMATION			
<input type="checkbox"/> NOT APPROVED (see attached memorandum for explanation). <input checked="" type="checkbox"/> APPROVED based on Code Sections: L.A.C. 10.44.9 (f) Sole Source			
 OCC Analyst Signature		8-2-10 Date	

Required Insurance and Minimum Limits

Name: _____

Date: 9/24/2012

Agreement/Reference: Ventyx inc

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>\$1,000,000.00</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	\$1,000,000.00
<input checked="" type="checkbox"/> Products/Completed Operations	
<input type="checkbox"/> Fire Legal Liability	
<input type="checkbox"/> _____	
<input type="checkbox"/> Sexual Misconduct	
<hr/>	
<input type="checkbox"/> Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)	_____
<hr/>	
<input type="checkbox"/> Professional Liability (Errors and Omissions)	_____
Discovery Period _____	
<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"/> Flood	
<input type="checkbox"/> Earthquake	
<input type="checkbox"/> Boiler and Machinery	
<input type="checkbox"/> Builder's Risk	
<input type="checkbox"/> _____	
<hr/>	
<input type="checkbox"/> Pollution Liability	_____
<input type="checkbox"/> _____	
<hr/>	
<input type="checkbox"/> Surety Bonds - Performance and Payment (Labor and Materials) Bonds	100% of the contract price
<input type="checkbox"/> Crime Insurance	_____

Other: General Notes:

- 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://lacity.org/cao/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.

Ventyx

Company Information	
ID	33715
Name:	Ventyx
Address:	400 Perimeter Center Terrace Suite 500 Atlanta, GA 30345

File Name	Date Uploaded	Status	Date Verified	EEOE Verification
Affirmative Action				
City of Los Angeles Affirmative Action Plan_12Jan12	01/20/2012	Verified	01/23/2012	
Equal Benefits Ordinance				
City of Los Angeles EDO Compliance Affidavit_12Jan12	01/20/2012	Verified	01/23/2012	
First Source Hiring Ordinance				
Not Uploaded				
Non-discrimination/Equal Employment Practices Provisions				
City of Los Angeles EEPP Certification_12Jan12	01/20/2012	Verified	01/23/2012	
Slavery Disclosure Ordinance				
City of Los Angeles Slavery Disclosure Ordinance_12Jan12	01/20/2012	Verified	01/23/2012	

LA BAVN is NOT responsible for the timeliness or accuracy of this data. If in doubt, please contact the opportunity's agency of record for additional information.
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CITY OF LOS ANGELES

CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

April 6, 2012

OFFICE OF THE BOARD OF PUBLIC WORKS

200 NORTH SPRING STREET
ROOM 361, CITY HALL
LOS ANGELES, CA 90012
(213) 978-0261
(213) 978-0278 Fax

ARLEEN P. TAYLOR
EXECUTIVE OFFICER

<http://www.bpw.lacity.org>

2012 APR 10 PM 3:30

CITY ADMINISTRATIVE OFFICER

BOARD OF PUBLIC WORKS MEMBERS

ANDREA A. ALARCÓN
PRESIDENT

JERILYN LÓPEZ MENDOZA
VICE PRESIDENT

JOHN J. CHOI
PRESIDENT PRO TEMPORE

STEVEN T. NUTTER
COMMISSIONER

VALERIE LYNNE SHAW
COMMISSIONER

#1 BOS/BCA

Mayor Antonio R. Villaraigosa
Room No. 305
City Hall
Attn: Mandy Morales


Subject: AUTHORITY TO EXECUTE A SOLE SOURCE AGREEMENT WITH VENTYX, INC. AN ABB COMPANY FOR THE SOFTWARE MAINTENANCE OF ENTERPRISE MAINTENANCE, PLANNING, CONTROL AND RELATED PRODUCTS AND INTEGRATION

As recommended in the accompanying report of the Directors of the Bureaus of Sanitation and Contract Administration, which this Board has adopted, the Board of Public Works requests approval and forwarding to the City Council for approval and authorization to execute a sole source agreement with Ventyx, Inc. an ABB Company for the software maintenance of Enterprise Maintenance, Planning and Control, its interfaces to the Supply Management System, the Field Automation for Sanitation Trucks System and other related products that may be used by the Bureau of Sanitation. The estimated total cost of this contract is not to exceed \$2,000,000 over a six year term.

FISCAL IMPACT

Financing for the sole source agreement with Ventyx, Inc. will be requested through the Information and Control Systems Division budget. There will be no impact to the General Fund. This Agreement will be funded by the Sewer Construction and Maintenance Fund.

Respectfully submitted,


Arleen P. Taylor, Executive Officer
Board of Public Works

APT:mp



DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
April 6, 2012

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California
AND REFERRED TO THE MAYOR
APR - 6 2012


Executive Officer

CD: ALL

AUTHORITY TO EXECUTE A SOLE SOURCE AGREEMENT WITH VENTYX, INC.
FOR THE SOFTWARE MAINTENANCE OF ENTERPRISE MAINTENANCE,
PLANNING, CONTROL (EMPAC) AND RELATED PRODUCTS AND INTEGRATION

RECOMMENDATIONS

1. Approve and forward this report with transmittals to the Mayor and City Council with the request that the Board of Public Works (Board) be authorized to execute a sole source agreement with Ventyx, an ABB Company (Ventyx) for the software maintenance of Enterprise Maintenance, Planning and Control (EMPAC), its interfaces to the Supply Management System (SMS), the Field Automation for Sanitation Trucks (FAST) System and other related products that may be used by the Bureau of Sanitation (Bureau). The estimated total cost of this contract is not to exceed \$2,000,000 over a six (6) year term.
2. Upon authorization by the Mayor and City Council, the President or two members of the Board will execute the contract; and
3. Upon execution, contact the Bureau of Sanitation, Board Report Section, at 213-485-4246 for pick up and further processing.

TRANSMITTALS

1. Copy of the adopted Bureau of Sanitation and Bureau of Contract Administration Joint Board Report No. 1, dated December 17, 2008, authorizing the negotiation of a sole source agreement with Ventyx.
2. Copy of the proposed sole source agreement between the City of Los Angeles and Ventyx. Originals will be delivered to the Board Office when the Board Report Section at (213)485-4246 is notified that the contract is ready for execution.
3. Copy of the October 8, 2008 approved waiver of the MBE/WBE/OBE Good Faith Effort requirement obtained from the Mayor's Office of Economic Development.

FISCAL IMPACT STATEMENT

Financing for the sole source agreement with Ventyx will be requested through the Information and Control Systems Division budget. There will be no impact to the General Fund. This Agreement will be funded by the Sewer Construction and Maintenance Fund.

PAGE 2

DISCUSSION

Background

EMPAC, the Bureau's Computerized Maintenance Management System (CMMS), is used to manage maintenance programs for all four (4) wastewater treatment plants and wastewater and stormwater collection systems. EMPAC has been in production for the Bureau since July 9, 2001. Ventyx, formerly Indus International, developed this commercial software and provided implementation services for the Bureau.

EMPAC is used by over eight hundred (800) Bureau employees for managing over 350,000 treatment plant and collection system assets such as pumps, centrifuges, scrubbers, and pipelines. The system generates over 30,000 preventive maintenance work orders each month, assists with the management of 40,000 warehouse items, and processes over \$20 million in purchases each year.

EMPAC is integrated with the PeopleSoft based citywide procurement system, owned by the Department of General Services and otherwise known as the Supply Management System (SMS). The EMPAC/SMS integration, developed by Ventyx, allows EMPAC users to request the purchase of spare parts necessary for performing preventive and emergency maintenance.

EMPAC is also integrated with the Field Automation for Sanitation Trucks (FAST) system, based on NaviGate software from Gatekeeper Systems. FAST provides access to EMPAC work orders, maps, and vehicle locations for three hundred (300) field users. Crew leads enter work order closures and timekeeping information into FAST using laptop computers mounted in trucks. The information is automatically updated in EMPAC via the real-time EMPAC/FAST integration. This real-time interface provides current status and up-to-date data for management and Collection System Settlement Agreement (CSSA) reporting. EMPAC/FAST integration was developed by Ventyx.

PeopleSoft, Gatekeeper, and Ventyx, like many other software vendors, fix problems and enhance functionality of the software through upgrades. Each implementation of newly released software upgrade of EMPAC, SMS or FAST may require changes to the integration. The proper functioning of EMPAC and the integrations with SMS and FAST are critical to the operations of the wastewater treatment plants and wastewater collection systems.

However, since the effects of the software upgrades are unpredictable, significant discretionary funds are requested in this agreement. The previous sole source contract, C-108094, between the Bureau and Ventyx for EMPAC maintenance and support expired on May 2, 2008. Nearly \$1,000,000 of the \$1,525,000 ceiling amount remained unused at the end of the contract.

PAGE 3

On December 17, 2008 the Board of Public Works authorized the Bureau to negotiate a six year sole-source contract with Ventyx Inc., which provides software maintenance support for EMPAC and its integrations. Since the contract expired February 28, 2010, the Bureau has been processing a one-time purchase order to cover the EMPAC maintenance

Sole Source Contract

Ventyx, as the software manufacturer and author, is the only company authorized and capable of providing software maintenance and support for the EMPAC system and its integrations to other applications. Ventyx retains the staff and technical expertise to provide maintenance on these systems. Furthermore, Ventyx has a historical relationship with the Bureau due to the installation and maintenance of the EMPAC system and its integrations. Ventyx's engineers and project managers also have specific technical expertise of the Bureau's system installations, data, and functionality. This expertise is critical during emergency situations, when it is essential to restore the proper operation and function of the EMPAC system as quickly as possible.

Failure to execute a maintenance agreement with Ventyx will put the Bureau's wastewater maintenance program at risk; for example, routine software upgrades will not be performed, timely software patches will not be obtained, software upgrades by PeopleSoft and Gatekeeper would be affected due to integration issues, and there will be no guaranteed response by service personnel in the event of a system failure. Therefore, the Bureau is requesting to retain the contractual relationship with Ventyx by executing this sole source agreement.

Project Scope

The project scope will include services to provide the required expertise necessary for the software maintenance of EMPAC and its integrations. The services will include but not be limited to the following:

- Annual Software maintenance and support services for EMPAC, including but not limited to:
 - Software upgrades
 - Defect corrections
 - Technical support

The following services will only be provided on an "as needed" basis only as authorized by the City. There is no minimum amount of work guaranteed to the Consultant from the City.

PAGE 4

- Software maintenance and support services for EMPAC/PeopleSoft (SMS) Integration, including but not limited to:
 - Software upgrades
 - Defect corrections
 - Technical support
- On-call Professional services to provide consultation, assessment, analysis and recommendations on implementation activities.
- Professional services for Mobile Computing Integration, including but not limited to:
 - Software upgrades
 - Defect corrections
 - Technical support
- Software Licensing to provide additional licenses for add-on software that the Bureau may choose to acquire from Ventyx and Ventyx Partners.

MBE/WBE/OBE Subcontractor Outreach Program/BIP Outreach Program

The Mayor's Office of Economic Development waived the MBE/WBE/OBE Subcontractor Outreach Program requirement for this project on October 8, 2008 (Transmittal #3). During the negotiation period, the MBE/WBE/OBE Subcontractor Outreach Program was replaced by the Business Inclusion Program (BIP). BIP allows departments to waive the BIP outreach. Ventyx does not subcontract to or otherwise license any firm to perform maintenance services for EMPAC proprietary software. Therefore, this contract provides no opportunities for subcontractor participation, and Ventyx does not hold any of the certifications acknowledged by the BIP.

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10 of the City of Los Angeles Administrative Code, the appropriate City personnel responsible for the quality control of this sole source agreement shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration (Department of Public Works) upon completion of this contract.

Contract Responsibility Ordinance

On August 18, 2009 the Bureau of Contract Administration (BCA), the Designated Administrative Agency (DAA) for the Contractor Responsibility Ordinance (CRO) approved the request of Sanitation for an Exemption from the CRO for VENTYX< INC> due to its sole source justification.

Proposed Cost and Term of Agreement

The estimated cost of the software maintenance services provided under this proposed contract is not to exceed \$900,000 over six (6) years. Discretionary funds in the amount of \$ 1,100,000 are also being requested for the professional services itemized below. The total cost of this proposed contract is estimated to be \$2,000,000 over the six (6) year period covered by this agreement. The breakdown of the cost estimate is illustrated as follows.

ITEM	ESTIMATED COST
Annual Maintenance for six-year period	\$900,000
EMPAC/SMS Integration	\$300,000*
On-call Professional Services	\$300,000*
Mobile Computing Integration	\$100,000*
Additional Software Licensing	\$400,000*
TOTAL	\$2,000,000

*Discretionary Funds

Other City Requirements

Ventyx will comply with the following requirements prior to contract execution:

- Affirmative Action Plan/Non-Discrimination/Equal Employment Opportunity
- Child Support Obligation Ordinance
- Business Tax Registration Certificate
- Equal Benefits Ordinance
- Insurance
- Non-Collusion Affidavit
- Americans with Disabilities Act
- Slavery Disclosure Ordinance
- Living Wage and Service Contractor Worker Retention Ordinances
- Municipal Lobbying Ordinance
- First Source Hiring Ordinance
- Los Angeles Residence Information
- City of Los Angeles Contract History

Charter Section 1022

This agreement is exempt from City Charter Section 1022 due to the proprietary nature of the software and the use of specially trained persons needed to maintain and service the system.

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
April 6, 2012

PAGE 6

Notice of Intent to Contract

The "Notification of Intent to Contract" form was filed with the CAO (City Administrative Office) Clearinghouse on August 28, 2008.

Headquarters Address and Workforce Information

Ventyx is headquartered in 3301 Windy Ridge Parkway, Suite 200, Atlanta, GA 30339. Currently, there are 843 employees in the organization and none live in the City of Los Angeles.

Contract Administration

Responsibility for administration of this agreement will be with the Information and Control Systems Division of the Bureau of Sanitation.

City Attorney Review

The City Attorney's Office reviewed the attached agreement and approved it as to form.

STATEMENT AS TO FUNDING

The total cost estimate for the maintenance and professional services required under this proposed agreement is \$2,000,000. Funding for the first year costs of \$330,000 is available in Fund 760, Dept. 50, Account 50HO82, Object 304, titled "Contractual Services". The remaining balance of \$1,670,000 will be funded through the normal budgetary process.

This contract includes a "Financial Liability Clause" which states that the City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract.

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
April 6, 2012

PAGE 7

Hannah Choi
HANNAH CHOI, Program Manager
Office of Contract Compliance
Bureau of Contract Administration

APPROVED AS TO FUNDS:

Victoria A. Santiago
VICTORIA A. SANTIAGO, Director
Office of Accounting

Date: _____

3/30/12

Prepared by:
Anita Fernandez, ICSD
(323) 342-6288

Respectfully submitted,

Enrique C. Zaldivar
ENRIQUE C. ZALDIVAR, Director
Bureau of Sanitation

John L. Reamer, Jr.
JOHN L. REAMER, JR., Director
Bureau of Contract Administration

TRANSMITTAL 1

DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION
BUREAU OF CONTRACT ADMINISTRATION
JOINT BOARD REPORT NO. 1
December 17, 2008

DEPARTMENT OF PUBLIC WORKS
CITY OF LOS ANGELES, CALIFORNIA

DEC 17 2008

[Signature]
Secretary

CD: All

AUTHORITY TO NEGOTIATE A SOLE SOURCE PERSONAL SERVICES CONTRACT WITH VENTYX INC. TO PROVIDE SOFTWARE MAINTENANCE AND SUPPORT FOR ENTERPRISE MAINTENANCE PLANNING AND CONTROL (EMPAC)

RECOMMENDATIONS

1. Authorize the Director of the Bureau of Sanitation (Sanitation) to negotiate a sole source contract with Ventyx Inc. to provide software maintenance and support services for EMPAC and its integrations to other applications used by Sanitation. The estimated annual cost of this contract is three hundred thirty thousand dollars (\$330,000.00) with a maximum contract ceiling of two million dollars (\$2,000,000). The term of the contract is for six (6) years.
2. Return to the Board of Public Works for authority to execute the contract (s).

TRANSMITTAL

Copy of the MBE/WBE/OBE Subcontractor Outreach Program waiver, issued by the Mayor's Office of Economic Development on October 8, 2008.

DISCUSSION

Background

EMPAC, Sanitation's Computerized Maintenance Management System (CMMS), is used to manage maintenance programs for all four wastewater treatment plants and wastewater and stormwater collection systems. EMPAC has been in production since July 9, 2001. Ventyx Inc., formerly Indus International, developed this commercial software and provided implementation services for Sanitation.

EMPAC is used by over 800 Sanitation employees for managing over 350,000 treatment plants and collection system assets, such as pumps, centrifuges, scrubbers, pipelines, etc. The system generates over 30,000 preventive maintenance work orders each month, assists with the management of 40,000 warehouse items, and processes over \$20 million in purchasing each year.

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EMPAC is integrated with Supply Management System (SMS); the PeopleSoft based citywide procurement system, owned by the Department of General Services. EMPAC/SMS integration was developed by Ventyx Inc. and allows EMPAC users to request purchasing of spare parts necessary for performing preventive and emergency maintenance.

EMPAC is also integrated with Field Automation for Sanitation Trucks (FAST) system, based on NaviGate software from Gatekeeper Systems. FAST provides access to EMPAC work orders, maps, and vehicle locations for 300 field users. Crew leads enter work order closure and timekeeping information into FAST by using laptop computers mounted in trucks as they complete their work in the field. The information is automatically updated in EMPAC via EMPAC/FAST integration, providing current status and up-to-date data for management and Collection System Settlement Agreement (CSSA) reporting. EMPAC/FAST integration was developed by Ventyx Inc.

PeopleSoft, Gatekeeper, and Ventyx Inc., like many other software vendors, fix problems and enhance functionality of the software through upgrades. Each implementation of a new release of EMPAC, SMS or FAST may require changes to the integration. The proper functioning of EMPAC and the integrations with SMS and FAST are critical to the operations of the wastewater treatment plants and wastewater collection systems.

However, since the effect of the software upgrades are unpredictable, significant discretionary funds are requested in this agreement. The previous sole source contract, C-108094, between Sanitation and Ventyx Inc. for EMPAC maintenance and support expired on May 2, 2008. Nearly \$1,000,000 of the \$1,525,000 ceiling amount remained unused at the end of the contract. These remaining funds will be used as discretionary funds for this project.

Sole Source Contract

Ventyx Inc., as the software manufacturer and author, is the only company capable of providing software maintenance support for the EMPAC system and its integrations to other applications. Only Ventyx Inc., as the author of the EMPAC software, the integration software between EMPAC and PeopleSoft, and the integration between EMPAC and FAST, retains the staff and expertise to provide maintenance on these systems. Furthermore, as Ventyx Inc. has had a historical relationship with Sanitation for the installation and maintenance of the EMPAC system and its integrations, its engineers and project managers have specific knowledge and understanding of Sanitation's system installations, data, and functionality. This expertise is especially critical during emergency situations when it is essential to restore the proper operation and function of the system as quickly as possible.

Failure to negotiate a maintenance agreement with Ventyx Inc. will put Sanitation's wastewater maintenance program at risk; routine software upgrades will not be performed, timely software patches will not be obtained, software upgrades by PeopleSoft and Gatekeeper would be affected due to integration issues, and there will be no guaranteed response by service personnel in the event of a systems failure. Therefore, the Bureau of Sanitation is requesting the Board authorize negotiation of this sole source contract with Ventyx Inc.

On November 13, 2008, the Bureau of Contract Administration (BCA), the Designated Administrative Agency (DAA) for the Contractor Responsibility Ordinance (CRO) approved the request of Sanitation for an Exemption from the CRO for VENTYX< INC. due to its sole source justification.

Project Scope

The project scope will include services of Ventyx Inc. to provide required expertise necessary for the software maintenance of EMPAC and its integrations. The services will include but not be limited to the following:

- Software maintenance and support services for EMPAC, including but not limited to:
 - Software upgrades
 - Defect corrections
 - Technical support
- Software maintenance and support services for EMPAC/PeopleSoft Integration, including but not limited to:
 - Software upgrades
 - Defect corrections
 - Technical support
- Professional services for EMPAC/FAST Integration
- Professional services to assist with data migration to a new CMMS
- Professional services for asset data reconciliation with other systems
- Allow access to user groups and best practices exchanges
- On-call professional services for consultation and assessment

Compliance with Mayor's Executive Directive 2001-26

Ventyx Inc. does not subcontract to or otherwise license any firm to perform maintenance services for EMPAC proprietary software. Therefore, this contract provides no opportunities for Subcontractor participation. The Mayor's Office of Economic Development waived the MBE/WBE/OBE Subcontractor Outreach Program requirement for this project on October 8, 2008.

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10 of the City of Los Angeles Administrative Code, the appropriate City personnel responsible for the quality control of this sole source Agreement shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration (Department of Public Works) upon completion of this contract.

Contract Responsibility Ordinance

Bureau of Contract Administration approved the Exemption from the CRO for VENTYX, INC. due to its sole source justification.

Cost

The estimated cost of the software maintenance services provided under this contract is not to exceed \$900,000 over six years. Discretionary funds in the amount of \$ 1,100,000 are being requested for professional services itemized below. The total cost of this contract is estimated to be \$2,000,000 over the six-year period covered by this agreement. The breakdown of the cost estimate is illustrated as follows.

ITEM	ESTIMATED COST
Annual Maintenance for six-year period	\$900,000
EMPAC/SMS Integration	\$300,000
On-call Professional Services	\$300,000
Mobile Computing Integration	\$100,000
Additional Software Licensing	\$400,000
TOTAL	\$2,000,000

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City Requirements

Ventyx Inc. will comply with the following requirements prior to contract execution:

- Affirmative Action Plan/Non-Discrimination/Equal Employment Opportunity
- Child Support Obligation Ordinance
- Business Tax Registration Certificate
- Equal Benefits Ordinance
- Insurance
- Non-Collusion Affidavit
- Americans with Disabilities Act
- Slavery Disclosure Ordinance
- Living Wage Ordinance
- Municipal Lobbying Ordinance

Charter Section 1022

This agreement is exempt from City Charter Section 1022 due to the proprietary nature of the software and use of specially trained persons to maintain and service the system.

Notice of Intent to Contract

The "Notification of Intent to Contract" form was filed with the CAO (City Administrative Office) Clearinghouse on August 28, 2008.

Headquarters Address and Workforce Information

Ventyx Inc. is headquartered in 3301 Windy Ridge Parkway, Suite 200, Atlanta, GA 30339. Currently, there are 707 employees in the organization and none lives in the City of Los Angeles.

Contract Administration

Responsibility for administration of this agreement will be with the Information and Control Systems Division of the Bureau of Sanitation.

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STATEMENT AS TO FUNDING

The cost estimate for the maintenance services required from Ventyx Inc. is \$2,000,000. Funding for the first year costs of \$330,000 is available in Fund 760, Dept. 50, Account E282, Object 304, titled "Contractual Services". The remaining balance of \$1,670,000 will be funded through the normal budgetary process of the Information and Control Systems Division.

This contract includes a "Financial Liability Clause" which states that the City's liability under this contract shall only be to the extent of the present City appropriation to fund the contract. However, if the City shall appropriate funds for any succeeding years, the City's liability shall be extended to the extent of such appropriation, subject to the terms and conditions of the contract.

Respectfully submitted,

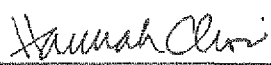


ENRIQUE G. ZALDIVAR, Director
Bureau of Sanitation

COMPLIANCE REVIEW PERFORMED
AND APPROVED BY:



JOHN L. PEAMER, JR., Director
Bureau of Contract Administration



HANNAH CHOI, Program Manager
Office of Contract Compliance
Bureau of Contract Administration

Prepared by:
Yelena Altshuler, ICSD
(323) 342-6281

TRANSMITTAL 2

CONTRACT NO. C-

PERSONAL SERVICES CONTRACT
BETWEEN
THE CITY OF LOS ANGELES
AND
VENTYX INC.
FOR
SOFTWARE MAINTENANCE OF
ENTERPRISE MAINTENANCE, PLANNING AND CONTROL
AND RELATED
PRODUCTS AND INTEGRATIONS

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A G R E E M E N T

This AGREEMENT, made and entered into as of July 1, 2012 ("Effective Date") by and between the City of Los Angeles, a municipal corporation acting by order of and through its Board of Public Works, hereinafter referred to as the "CITY", and "Ventyx Inc." hereinafter referred to as the "CONSULTANT" or "CONTRACTOR", and is set forth as follows:

W I T N E S S E T H

WHEREAS, the CITY had a contract with Ventyx (formerly Indus International) to implement a new computerized maintenance management system with Enterprise Maintenance, Planning and Control (EMPAC) software from Ventyx; and

WHEREAS, four (4) wastewater treatment plants and wastewater and storm water collection systems use EMPAC to manage assets; and

WHEREAS, the CONSULTANT integrated EMPAC with the citywide procurement system, Supply Management System (SMS), for purchasing materials and spare parts for assets maintenance; and

WHEREAS, the CONSULTANT integrated EMPAC with the Field Automation for Sanitation Trucks (FAST) system for work management related to wastewater and storm water collection system assets maintenance; and

WHEREAS, EMPAC is also integrated with the Cohesive Mobile Entry (CME) for mobile stores management and barcode functions used at the Hyperion Treatment Plant Warehouse; and

WHEREAS, the CITY relies heavily on EMPAC and its integration with SMS, FAST, and CME for all aspects of asset management in the Wastewater Program; and

WHEREAS, the EMPAC implementation and support contract (C-108094) between the CITY and the CONSULTANT expired on May 3, 2008; and

WHEREAS, the CITY issued Purchase Orders to the CONSULTANT to cover maintenance through June 30, 2012 to ensure uninterrupted coverage; and

WHEREAS, the General Services Department (GSD) currently has a contract with PeopleSoft USA, Inc. for the SMS implementation; and

WHEREAS, the contract with PeopleSoft USA, Inc. does not provide technical consulting services for the integration with EMPAC; and

WHEREAS, the CITY does not have the necessary resources or expertise to provide software support of EMPAC and its integration with SMS, FAST and CME; and

WHEREAS, the CONSULTANT is the author of EMPAC and its integrations with SMS and FAST which qualifies CONSULTANT to provide these technical services; and

WHEREAS, the services required for the necessary software migration, integration, and implementation of the necessary additional software features are professional, expert, and technical in nature, and the related tasks are temporary and occasional in character; and

WHEREAS, the CITY recognizes that the CONSULTANT is the only firm with the expertise, knowledge, and sufficient personnel to perform the technical functions as detailed in the Scope of Services below; and

WHEREAS, the CONSULTANT has agreed to perform the above referenced tasks in a professionally sound manner in accordance with all applicable laws, rules, regulations and other requirements of local, state, and federal governments for a minimum of six (6) years from the Effective Date of this AGREEMENT;

NOW, THEREFORE, in consideration of the foregoing and of the benefits which will accrue to the parties hereto in carrying out the terms and conditions of this AGREEMENT, it is understood and agreed by and between the parties hereto as follows:

ARTICLE 1 – SECTION HEADINGS AND CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, and/or section headings appearing herein have been inserted for convenience and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning, intent or construction of any of the terms or provisions hereof. The language of this AGREEMENT shall be construed according to its fair meaning and not strictly for or against the CITY or the CONSULTANT. The word "CONTRACTOR" AND "CONSULTANT" herein in this Agreement includes the party or parties identified in the Agreement. The singular shall include the plural; if there is more than one CONSULTANT 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.

ARTICLE 2 – DEFINITIONS

It is understood that the following words and phrases are used herein; each shall have the meaning set forth opposite the same:

AGREEMENT

This contractual agreement between the CITY and

	Ventyx.
BOARD	The Board of Public Works of the City of Los Angeles.
BUREAU	Bureau of Sanitation, Department of Public Works, City of Los Angeles.
CITY	The City of Los Angeles, Board of Public Works, or its subordinate Bureaus. The term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles, or who is authorized to represent the City of Los Angeles in matters concerning this AGREEMENT. CITY includes all persons employed or authorized by the CITY.
CONSULTANT/CONTRACTOR	Ventyx, Inc.
CPI	United States Consumer Price Index for all items.
EMPAC	Enterprise Maintenance Planning and Control
FAST	Field Automation for Sanitation Trucks
GSD	General Services Department
LICENSED PROGRAM	An off-the-shelf computer program or program module that is licensed to the CITY by CONSULTANT.
PROJECT	The maintenance and support of the LICENSED PROGRAMS.

PROJECT MANAGER	The CITY's representative in all matters within the scope of the AGREEMENT.
VENTYX PARTNERS	<p><u>Solution Partner</u> - A partner who directly offers complementary products that are an essential part of the end-to-end solutions.</p> <p><u>Service Partner</u> - A Ventyx Inc. approved company that provides systems integration and consulting services in partnership with Ventyx Inc.</p> <p><u>Platform Partner</u> - A hardware or software partner offering products that form part of the Ventyx solution offerings.</p>

ARTICLE 3 – PROJECT DESCRIPTION

On December 14, 1998, the BOARD approved the execution of a contract (C-97798) between Indus International (now Ventyx Inc.) and the BUREAU for the implementation of a new computerized maintenance management system for the Wastewater Program with Enterprise Maintenance Planning And Control (EMPAC) software. The four (4) Wastewater Treatment Plants and Wastewater Collections division use EMPAC for asset, maintenance and inventory management activities. The CONSULTANT developed the EMPAC interface with the new customized Citywide Supply Management System (SMS), a procurement system

implemented by the Department of General Services (GSD) using PeopleSoft software.

In September 2003, the BUREAU implemented Field Automation for Sanitation Trucks (FAST) application for use in wastewater collection maintenance trucks to enable crews to enter maintenance activity data from the field into EMPAC. FAST uses the NaviGate software from Gatekeeper Systems, Inc. The CONSULTANT worked with Gatekeeper Systems, Inc. to develop the EMPAC to FAST electronic interface. The FAST application has been deployed for sewer and storm water maintenance crews at all wastewater collection yards.

Cohesive Mobile Entry (CME) is an off-the-shelf product with a built-in interface to EMPAC. CME uses a mobile wireless device to communicate with EMPAC which allows warehouse personnel to perform routine EMPAC Stores functions on the spot in real-time.

Since the integration of EMPAC to SMS, FAST, and CME may require upgrades and modifications, the BUREAU needs this sole source contract with the CONSULTANT for as-needed consulting expertise and assistance concerning the EMPAC system and its interfaces with SMS, FAST and CME. Each implementation of a new release of EMPAC, SMS and FAST may require software modifications and affect the integration between the systems.

Because the EMPAC to SMS and FAST integrations are unique to the CITY's implementation, specific expertise from the CONSULTANT is necessary for keeping all of the systems operating properly. Failure to secure this sole source contract with the CONSULTANT will adversely affect the maintenance program for all four (4) Wastewater Treatment Plants and Sewer and Stormwater Collection Systems.

ARTICLE 4 – RESPONSIBILITIES OF AND SERVICES TO BE PERFORMED BY THE CONSULTANT

The services required under this AGREEMENT include CONSULTANT technical support as deemed necessary by the PROJECT MANAGER for the successful software maintenance of EMPAC and its integrations to other applications as set forth herein and in any applicable Statement of Service (SOS). The CONSULTANT shall provide appropriate staff as required by the CITY to perform specified tasks. When the CITY desires the CONSULTANT staff for work not customarily included in the software maintenance support in Section 4.4.1, the PROJECT MANAGER shall issue a task order, detailing the tasks and deliverables. Once the task order is issued, the CONSULTANT shall provide a SOS, specifying details of the work to be performed, time schedule and cost for the completion of each task. Once the SOS is received and reviewed, if the PROJECT MANAGER agrees with the cost and schedule of the SOS, he/she shall sign the SOS. If the PROJECT MANAGER does not agree with the cost or schedule proposed by the CONSULTANT, the PROJECT MANAGER and the CONSULTANT shall negotiate the SOS costs and schedule until both parties agree or until the CITY abandons the work. No work shall be performed under this AGREEMENT unless both parties have signed off on the SOS. Once the SOS is approved, the CITY PROJECT MANAGER will issue a notice to proceed. Services shall include, but not be limited to the following:

- 4.1 The CONSULTANT shall perform the services described in Article 4.4. and any other services as specified in each SOS. The CONSULTANT shall perform such work with a degree of skill and diligence normally employed by professional analysts or consultants performing the same or similar services.

4.2 The CONSULTANT warrants that the services will be performed in a manner consistent with generally accepted industry standards. CITY's sole remedy and CONSULTANT's sole obligation in the event of a breach of the warranty contained herein is, at CONSULTANT's option and upon agreement with the CITY: (i) to re-perform the services, or (ii) to refund the amounts paid by CITY for the services which were not as warranted, provided CONSULTANT has received notice from CITY within sixty (60) days of the completion of the services which CITY alleges were not performed consistent with the warranty in Section 10.

4.3 Maintenance of Records

The CONSULTANT shall maintain all records, including records of financial transactions, pertaining to the performance of this AGREEMENT, 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 (3) years following final payment made by the CITY hereunder or the expiration date of this AGREEMENT, 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 AGREEMENT or within the three (3) years, following final payment made by the CITY hereunder or the expiration date of this AGREEMENT, whichever occurs last. The CONSULTANT shall provide any reports requested by the CITY regarding performance of this AGREEMENT. Any subagreement entered into by CONSULTANT to the extent allowed hereunder, shall include a like provision for work to be performed under this AGREEMENT.

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4.4 Scope of Services

4.4.1 Annual Maintenance Fee for Asset Suite, InSiteEE , EMPAC and Service Suite

Software for a maximum of six (6) years which will be paid annually. The rate for Annual Maintenance and support will be \$121,242 for the first year. The rate for each subsequent year will be the previous year's amount plus the current CPI rate for all items at the time the renewal is due, or 3%, whichever is less, for each year the CITY chooses to renew the Annual Maintenance and Support Services. The CONSULTANT shall provide the necessary staff and/or resources to work directly with the CITY and other consultants in support of the EMPAC application.

The support includes, but is not limited to the following:

- π access to Ventyx Client Services, eService, the latest EMPAC software updates
- π defect corrections, troubleshooting and fixing
- π remote diagnostics support pursuant to the CITY's Maintenance Agreement

As part of the Annual Maintenance Fee, CONSULTANT shall provide one (1) free Mindshare pass to the CITY for each Conference that convenes during the term of this agreement.

4.4.2 EMPAC/SMS Integration Support (estimated at \$350,000 over 6 years) -

The CONSULTANT shall provide the necessary staff and/or resources to work directly with the CITY and other consultants in supporting EMPAC/SMS

integration. The support includes, but is not limited to telephone support, documentation, software configuration, tuning, software modification, project management and testing. The cost for the EMPAC/SMS integration Support is only an estimate. The CONSULTANT shall provide EMPAC/SMS Integration Support services on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONSULTANT from the CITY. The CONSULTANT shall not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

4.4.3 On-call Professional Services (estimated at \$300,000 over 6 years) -

The CONSULTANT shall provide consultation, assessment, analysis, and recommendations on implementation activities for the LICENSED PROGRAMS. The services provided include, but are not limited to telephone support, documentation, planning activities, project management, migration activities, data reconciliation, and new software integration and implementation with the BUREAU licensed software. The cost for these services is only an estimate. The CONSULTANT shall provide On-call Professional Services on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONSULTANT from the CITY. The CONSULTANT shall not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

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4.4.4 Mobile Computing Integration (estimated at \$200,000 over 6 years)

The CONSULTANT shall provide the necessary staff and/or resources to work directly with the CITY and other consultants in the support of the integration between the LICENSED PROGRAMS and the BUREAU's mobile applications.

The support provided includes, but is not limited to, telephone support, documentation, software modification, software configuration, tuning, testing, project management and implementation of new integration functionality. The cost for the Mobile Computing Integration is only an estimate. The CONSULTANT shall provide Mobile Computing Integration on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONSULTANT from the CITY. The CONSULTANT shall not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

4.4.5 Software Licensing (estimated at \$400,000 over 6 years) -

The CONSULTANT shall provide additional licenses and/or licenses for add-on software for the BUREAU licensed applications from Ventyx and VENTYX PARTNERS. The cost for this licensing is only an estimate. The CONSULTANT shall provide Software Licensing on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONSULTANT from the CITY. The CONSULTANT shall not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

4.5 Consultant Schedule of Services and Costs

4.5.1 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule of services and subsequent revisions and reports, the CONSULTANT shall prepare the schedule and submit it to the PROJECT MANAGER within fifteen (15) calendar days of the Notice to Proceed. This schedule shall be submitted electronically in Microsoft Project format. The CONSULTANT shall perform the work in accordance with the signed SOS and prepare revisions and updates in a timely manner.

4.5.2 The CONSULTANT's schedule referenced in Article 4.5.1 shall show the start and finish dates of each part or division of work and shall show all submittals associated with each work activity. The CONSULTANT shall allow a minimum of fifteen (15) calendar days from the date of submittal for the PROJECT MANAGER to review each submittal, unless a longer period of time is specified in this AGREEMENT. The work activities in the schedule shall be of sufficient detail to document that adequate planning has been done for proper execution of the work and such that it provides an appropriate basis for monitoring and evaluating the progress of the work. The schedule shall show all major work items, points of interface with the CITY and milestone submittals. The PROJECT MANAGER will review the CONSULTANT's schedules and provide comments on overall compliance with the requirements.

4.5.3 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule and the subsequent revisions and reports, the CONSULTANT shall submit an updated schedule to the PROJECT MANAGER at least five (5) working days prior to the submittal of the CONSULTANT's monthly payment request. The updated CONSULTANT's schedule shall accurately reflect the status of work and incorporate all changes into the schedule. Updated schedules shall also be submitted at the request of the PROJECT MANAGER. Upon approval of an amended schedule, the approved changes shall be reflected in the next scheduled update submittal by the CONSULTANT, or other update submittal approved by the PROJECT MANAGER.

4.5.4 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule and the subsequent revisions and reports, the CONSULTANT shall submit a monthly progress report. This shall consist of a monthly narrative progress report due no later than the 10th day of the following month, the purpose of which is to provide a brief description of the status of work and to address any problems and issues that may delay timely completion.

4.5.5 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule and the subsequent revisions and reports, the CONSULTANT shall participate in Progress meetings with the PROJECT MANAGER. The frequency of these meetings shall be at the discretion of the PROJECT MANAGER. The CONSULTANT shall document all meetings and distribute any related documents to attendees.

ARTICLE 5 – KEY CONSULTANT PERSONNEL

- 5.1 The CONSULTANT designates the following person to represent CONSULTANT in all matters pertaining to this AGREEMENT:

Mr. Ian Wray, Ventyx

3301 Windy Ridge Parkway, Suite 200,

Atlanta, GA 30339

P: 770-989-4026

C: 678-596-2335

Ian.Wray@Ventyx.com

Additional technical specialists may be assigned subject to the PROJECT MANAGER's approval.

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

shall not use subconsultants to assist in performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this AGREEMENT. The CITY has the right to approve CONSULTANT'S subconsultants, and the CITY reserves the right to request replacement of subconsultants. The CITY does not have any obligation to pay CONSULTANT'S subconsultants, and nothing herein creates any privity between the CITY and the subconsultants.

ARTICLE 6 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

The CITY designates Anita Fernandez as its PROJECT MANAGER to represent the CITY in all matters within the scope of the AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term "approval of CITY," "consult with CITY," "confer with CITY," or similar terms are used, they shall refer to the PROJECT MANAGER. The PROJECT MANAGER may designate an assistant to act in her stead. The CITY may designate another CITY employee to succeed Anita Fernandez as the PROJECT MANAGER. The CONSULTANT will be notified in writing in such event.

The CITY shall furnish, without charge, facilities and resources available to the CONSULTANT as deemed reasonably necessary and appropriate by the CITY.

ARTICLE 7 – TERM OF AGREEMENT

Unless otherwise provided, the term of this AGREEMENT shall begin on July 1, 2012 and shall be in effect until June 30, 2018 unless terminated as provided under Article 8 or extended by amendment or change order to this AGREEMENT and signed by both parties.

ARTICLE 8 – TERMINATION

- 8.1 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- 8.2 This AGREEMENT may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONSULTANT is given (1) not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination. Upon receipt of said written notice, CONSULTANT shall immediately take action not to incur any additional obligations, cost or expense,

except as may be reasonably necessary to terminate its activities.

- 8.3 This AGREEMENT may be immediately terminated in writing by the CITY if (1) a federal or state proceeding for relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT makes an assignment for the benefit of creditors or (2) CONSULTANT engages in any dishonest conduct related to the performance or administration of this AGREEMENT or violates the CITY'S lobbying policies.

If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this AGREEMENT shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the CONSULTANT at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONSULTANT'S default.

If termination for default is effected by the CONSULTANT or if termination for convenience is effected by the CITY, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the CONSULTANT for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the CONSULTANT relating to written commitments that were executed prior to the termination. Thereafter, CONSULTANT shall have no further claims against the CITY under this AGREEMENT.

- 8.4 Upon receipt of a termination action under Articles 8.1, 8.2 or 8.3 above, the CONSULTANT shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY all finished or unfinished documents and materials produced or procured under this AGREEMENT.
- 8.5 Upon termination under Articles 8.1, 8.2 or 8.3 above, the CITY may take over the work and may award another party an AGREEMENT to complete the work under this AGREEMENT.
- 8.6 If, after the termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the AGREEMENT price shall be made as provided in Article 8.4 of this article.
- 8.7 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 AGREEMENT.
- 8.8 The foregoing notwithstanding the licensing terms of any LICENSED PROGRAM acquired by the CITY hereunder shall survive any termination or expiration of the AGREEMENT and the CITY shall have the right to continue to use said LICENSED

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PROGRAMS under those terms unless and until one of the parties terminates said license as provided herein.

ARTICLE 9 – SUBCONTRACT APPROVAL

If the need to subcontract should arise, the CONSULTANT shall obtain prior written approval from the CITY and submit a copy of all subcontracts to the CITY with the subconsultant's name and dollar amount of each subcontract. Wholly owned subsidiaries of CONSULTANT shall not be considered subconsultants.

ARTICLE 10 - COMPENSATION, INVOICING, AND PAYMENT

10.1 Definitions

"Cost" as used herein is defined as the sum of: (1) Billing Salary Rates; (2) Other Direct Cost with no markup; (3) Profit and (4) Subcontract Expenses as defined below.

10.1.1 "Billing Salary Rates" shall be at the rates approved by the PROJECT MANAGER, to be charged by CONSULTANT for employees' time directly chargeable to their performance of the project work. Billing Salary Rate increases are limited to once per year, per employee, on the anniversary date

of the CONSULTANT's AGREEMENT execution, and are subject to the approval of the CITY.

Any adjustment to the subconsultants' salaries and Hourly Billing Rates shall be reviewed and approved by the PROJECT MANAGER prior to invoicing. Adjustments to subconsultants' salaries and Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONSULTANT's AGREEMENT execution. Any such increases shall be in accordance with established BUREAU policy at the time the adjustment is approved.

10.1.2 "Other Direct Cost" includes those costs of CONSULTANT directly identifiable to or incurred in the performance of services hereunder, including but not limited to reproduction, freight, messenger service, travel (in accordance with established CITY policies), equipment owned or rented by CONSULTANT (any equipment purchased and paid for under this PROJECT shall become the property of the CITY), auto mileage charges (based on IRS allowable amounts), and supplies used in the work. Communication expenses, cost of office space, equipment, and supplies furnished to CITY personnel at CONSULTANT's location shall be paid by the CITY. The CITY shall receive the full benefit of any free travel, frequent flyer mileage, discounts and/or any other advantages which are acquired by the CONSULTANT as a result of CITY sponsored travel.

10.1.3 Costs incurred by the CONSULTANT prior to the actual date of full execution of this AGREEMENT shall only be payable to CONSULTANT if said costs were

incurred in completing any task specifically authorized by this AGREEMENT and said costs are reviewed and approved by the CITY and said approval for payment occurs after this AGREEMENT is fully executed.

10.1.4 **Exhibit A**, Project Services Cost Estimate, attached hereto and incorporated herein by this reference, shall be the format used for the estimated total cost by task for each Statement of Services (SOS). For a SOS specifying a Lump Sum compensation method, the Project Services Cost Estimate shall set forth the total project cost and the appropriate payment milestones.

10.1.5 Hourly Billing Rate is a method of compensation whereby CONSULTANT is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in **Exhibit F**. The hourly billing rates shall be approved by the PROJECT MANAGER for CONSULTANT employees' time directly chargeable to their performance of the project work and includes salary, fringe benefits, overhead, profit, and all other expenses incurred by CONSULTANT. Payments shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Statement of Services (SOS).

10.1.6 The CITY will not pay for CONSULTANT's nor subconsultant's personnel for invoice preparation. The CITY will not pay for CONSULTANT's nor subconsultant's communication expenses and computer time charges.

10.2 Compensation

The CONSULTANT shall perform the work specified in Article 4.4, and the CITY shall compensate CONSULTANT either on a Lump Sum basis, or an Hourly Billing Rate

basis upon mutual written agreement. The CITY shall designate the compensation method in the Statement of Services (SOS) to be issued under this AGREEMENT. If the SOS specified the compensation as being on a Cost Reimbursement Plus Profit or Hourly Billing Rate basis, payment shall be made in accordance with the Task Cost Estimates to be provided for CITY approval prior to issuance of SOS for any task under this AGREEMENT. Hourly rates, subconsultant fees and other direct/indirect charges shall be in accordance with rates set herein. Individuals who CONSULTANT wishes to add to the project must have their compensation rate approved by the PROJECT MANAGER, and a revised Scope of Services must be prepared as evidence of this addition. The total cost ceiling shall be stated in the SOS.

In the event the SOS specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or milestones as set forth in the SOS. The total cost ceiling shall be stated in the SOS.

The total cost ceiling for this AGREEMENT is \$2,000,000.00.

10.3 Invoicing and Payment

10.3.1 For a SOS specifying a Cost Reimbursement Plus Profit method of payment, the CONSULTANT shall, once each month, submit to CITY an original and three (3) copies of an invoice in a format acceptable to the CITY which will include all costs and a proportionate amount of profit due the CONSULTANT for services provided during the preceding month. CITY shall review the CONSULTANT's invoice and notify the CONSULTANT of exceptions or disputed

items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved for payment by the CITY. Invoices shall be prepared in a format that is acceptable to the CITY and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be reasonably required by the CITY to establish the amount of such invoices as allowable expenses. All invoices shall be subject to audit.

10.3.2 The CITY shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the Project Services Cost Estimate set forth. The CONSULTANT shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or otherwise incur costs in excess of the Project Services Cost Estimate unless and until the CITY shall have notified the CONSULTANT in writing that such Project Services Cost Estimate has been increased and shall have specified in such notice an estimated Project Services Cost Estimate, which shall thereupon constitute the cost performance of this AGREEMENT. In the absence of the specified notice, the CITY shall not be obligated to reimburse the CONSULTANT for any costs in excess of the Project Services Cost Estimate set forth, whether those costs were incurred during the course of the AGREEMENT or as a result of termination.

10.3.3 When and to the extent that the Project Services Cost Estimate has been increased, any costs incurred by the CONSULTANT in excess of the Project

Services Cost Estimate for any SOS, prior to such increase, shall be allowable to the same extent as if such costs had been incurred after the increase.

- 10.3.4 The CITY's liability under this AGREEMENT shall only be to the extent of the present appropriation to fund the AGREEMENT. No action, statement, or omission of any officer, agent, or employee of the CITY shall impose any obligation upon CITY, such officer, agent, or employee, except to the extent the CITY has appropriated funds and otherwise in accordance with the terms of this AGREEMENT.

The CONSULTANT and the CITY agree that no indebtedness for work performed which results in costs under this AGREEMENT shall arise against the CITY until and unless there is an appropriation of funds to pay for such work. However, if the CITY shall appropriate funds for any successive fiscal years, the CITY's liability shall be extended to the extent of such appropriation subject to the terms and conditions of this AGREEMENT.

- 10.3.5 For SOS specifying a Lump Sum method of payment or the Hourly Billing Rate method, the CONSULTANT shall submit to the CITY, upon the satisfactory completion of each task/milestone, an original and three (3) copies of an invoice in a format acceptable to the CITY. The CITY shall review the CONSULTANT's invoice and notify the CONSULTANT of exceptions or disputed items and their dollar amount. The total invoice amount, less any exceptions or disputed items shall be considered approved by the CITY.

10.3.6 The CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the California 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.

ARTICLE 11 - AMENDMENTS, CHANGES, OR MODIFICATIONS

Amendments, changes or modifications in the terms of this AGREEMENT may be made at any time by mutual written AGREEMENT between the parties hereto and shall be signed by the persons authorized to bind the parties thereto.

ARTICLE 12 – INDEMNIFICATION AND INSURANCE

12.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONSULTANT undertakes and agrees to defend, indemnify and hold harmless 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), damage or liability of any nature whatsoever, for death or injury to any person, including CONSULTANT'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 to the extent of the negligent acts, errors, omissions or willful misconduct incident to the performance of this AGREEMENT on the part of the CONSULTANT or its subconsultants of any tier. Rights and remedies available to the CITY under provision are cumulative of those provided for elsewhere in this AGREEMENT and those allowed under the laws of the United States, the State of California, and the CITY. The CITY shall provide CONSULTANT written notice of such claim, information, and assist in the defense of such action. Upon written agreement from CITY, CONSULTANT shall assume sole authority to defend or settle such claim consistent with Los Angeles City Charter Sections 271, et .seq. The provisions of this paragraph survive termination or expiration of this AGREEMENT.

12.1.1 Intellectual Property Infringement Indemnification

CONSULTANT shall and hereby does defend, indemnify and hold CITY harmless from and against any and all claims, liabilities, damages and expenses, including legal costs and reasonable attorneys' fees (in-house and outside counsel), arising out of any allegation that any portion of the Work Product or Services (a) infringes a United States patent, copyright or trademark, or (b) misappropriates any third party trade secret (collectively, an "Infringement Claim"); provided, however, that (i) CITY gives

CONSULTANT notification in writing of any such Infringement Claim and provide assistance, at CONSULTANT's expense, in the defense of such Infringement Claim; and (ii) upon written agreement from CITY, CONSULTANT shall have the authority to defend or settle such Infringement Claim, consistent with the Los Angeles City Charter Sections 271 et, seq.

12.1.2 Indemnification Limitations

CONSULTANT shall have no obligation for any Infringement Claim arising out of or relating to: (a) a modification to any of the Work Products created by CITY or a third party hired by CITY, (b) use of the Work Product or Services other than in accordance with the Documentation or the terms of this Agreement; (c) any Third-Party Software not supplied by CONSULTANT; or (d) use of the Work Product or Services in combination with any other hardware, software or other materials, other than in accordance with the Documentation or the terms of this Agreement, where absent such combination, the Work Product or Services would not be the subject of the Infringement Claim. These limitations related to (a) – (c) shall not apply where the modifications adjustment, change, adoption or use is done for the CITY to enjoy the intended benefits of the Work Products under this AGREEMENT. In addition to the foregoing, to the extent that any Third Party Software licensor has agreed to indemnify CONSULTANT with respect to any Infringement Claim arising out of or relating to Third Party Software, CONSULTANT shall pass through and assign the benefit of such infringement indemnity to CITY to the extent CONSULTANT is able to do so. Such third-

party indemnification, if any, shall not replace or diminish any of CONSULTANT's obligation to defend and indemnify under this AGREEMENT.

12.1.3 Effect of Infringement Claim

If an Infringement Claim is or, in CONSULTANT's reasonable belief, is likely to be asserted, (a) CONSULTANT will, at its option after consultation with CITY, either (i) promptly procure for CITY the right to use and exercise its rights with respect to the Work Product or Services as provided in this Agreement; or (ii) promptly replace, at a time mutually convenient to CITY and CONSULTANT, the CONSULTANT Work Product or Services or affected part thereof with other non-infringing products or services or modify the Work Product or Services or affected part thereof to make it not infringing while retaining substantially similar functionality. If the remedies set forth in clauses (a)(i) and (a)(ii) are not commercially feasible, as determined by CONSULTANT in its reasonable discretion, the CONSULTANT may negotiate with the CITY to discontinue using the alleged infringed Work Product, and the licenses granted pursuant to it, and pay to the City a full refund of the license and maintenance service fees paid by CITY for the alleged infringing Work Product or Services. Under no circumstances would CITY be liable for any license fees of the allegedly infringed Work Products or Service, after the CITY has ceased use of such allegedly infringing, except the alleged infringement is cured by CONSULTANT according to (a) (i) or (a) (ii) above. This Subsection 12.1.3 shall not negate, replace, alleviate or diminish any of CONSULTANT's liabilities under this Section or elsewhere in this AGREEMENT.

12.1.4 Exclusive Remedy

The provisions of this section 12 state the sole, exclusive, and entire liability of CONSULTANT to CITY, and is CITY's sole remedy with respect to, any claim of infringement or misappropriation or alleged infringement or misappropriation of any third-party patent, copyright, trademark, trade secret or other intellectual property right.

12.2 INSURANCE

During the term of this AGREEMENT and without limiting the CONSULTANT'S indemnification of the CITY, the CONSULTANT shall provide and maintain at its own expense during the term of this AGREEMENT a program of insurance having the coverage and limits listed on the Insurance Requirements Sheet (Form Gen 146/IR), as amended, in EXHIBIT C hereto, covering its operations hereunder. Such insurance shall conform to CITY requirements established by charter, ordinance or policy, and shall comply with the instructions set forth in EXHIBIT C, as amended and in the form Instructions and Information on Complying with City Insurance Requirements, rev10/09, and shall otherwise be in a form acceptable to the City Administrative Officer, Risk Management. The CONSULTANT shall comply with all Insurance Contractual Requirements shown on EXHIBIT C hereto, as amended. Such EXHIBIT C is hereby incorporated by reference and made a part of this AGREEMENT.

ARTICLE 13 – INDEPENDENT CONTRACTORS

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

ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT

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

4.1.1 CONSULTANT will work continuously on Priority 1 issues until they are resolved. CONSULTANT shall provide response times based on their Platinum level targets. The chart below shows the expected response times based on priority for Platinum Level Support:

Priority	Severity	Platinum Level Service Request Response Target (hours)
1 - Critical/Urgent	Unable to work	1
2 - Major/High	System is up, but there is/are major problem(s).	2
3 - Medium	System is up, but there is/are moderate problem(s). Work-around is possible	4
4 - Low	Nuisance and/or minor.	8

14.2 The CONSULTANT shall provide professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the CONSULTANT under this AGREEMENT. The CONSULTANT shall, at no additional cost to CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, reports, calculations, and other services.

14.3 CITY's sole remedy and CONSULTANT's sole obligation in the event of a breach of the warranty contained herein is, at CONSULTANT's option and upon agreement with the CITY: (i) to re-perform the Services, or (ii) to refund the amounts paid by CITY for the

Services which were not as warranted, provided CONSULTANT has received notice from CITY within sixty (60) days of the completion of the Services which CITY alleges were not performed consistent with the warranty in Section 14.

- 14.4 The CONSULTANT shall exhibit proper professional judgment in the use of information furnished by the CITY in Article 6. In the event that said information is not delivered timely or that it is discovered to be incorrect or misleading, the CONSULTANT shall notify the CITY in a reasonable manner after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.
- 14.5 The CONSULTANT shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT.
- 14.6 Except as specified in Article 12 and as otherwise provided in this AGREEMENT, the CONSULTANT shall be and shall remain liable, in accordance with applicable law, for all damages to CITY caused by the CONSULTANT'S negligent performance of any of the services furnished under this AGREEMENT, except for errors, omissions, or other deficiencies to the extent attributable to CITY, CITY-furnished data, or any third party, which damages shall not exceed 2 times the amounts paid or payable for the particular service, as set forth at Section 4.4 "Scope of Services," giving rise to the

liability. With the exception of intellectual property infringement indemnification and breach of confidentiality obligations, CONSULTANT shall not be liable for any special damages, however arising, even if it has been advised of the possibility of such damages.

ARTICLE 15 – OWNERSHIP OF WORK PRODUCTS

"Work Product" means any of the CONSULTANT's written expression, in all media and formats, of the CONSULTANT's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, modifications, interfaces, source and object code, software, and other technical information that the CONSULTANT has already created, possessed or owned before commencing any work under this AGREEMENT or that the CONSULTANT will be creating or acquiring under this AGREEMENT. All Work Product is the property of the CONSULTANT and is licensed perpetually and nonexclusively to the CITY, at no additional license fee, pursuant to the terms of the license for software contained in the License Agreement between the parties and subject to the terms hereof, with the License Agreement being subordinate to this AGREEMENT in case of conflict of terms. Use, disclosure and distribution of CITY information or data is subject to CITY's prior written approval. To the extent the CITY acquires any rights in the Work Product, the CITY hereby assigns those rights to CONSULTANT.

Work Product shall not include any documents, material, data, drawings, plans,

specifications, requirements, modifications, screen displays, interfaces, computer data files, basis for calculations, notes, and reports originated or prepared by the CITY, or a third party hired by CITY, the ownership of which shall vest with, and remain the property of, the CITY, whether the property is tangible or intangible.

15.1 PARTICIPATION IN DEFENSE

In CONSULTANT's defense of the CITY Defendants, negotiation, compromise, and settlement of any such infringement Action, the Los Angeles City Attorney's Office shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272, and 273 thereof.

ARTICLE 16 – NONDISCRIMINATION, EQUAL EMPLOYMENT PRACTICES AND AFFIRMATIVE ACTION

Nondiscrimination, Equal Employment Practices, and Affirmative Action is attached hereto as Exhibit G and incorporated herein by this reference. The CONSULTANT shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this AGREEMENT, the CONSULTANT 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. The CONSULTANT shall comply with the provisions of the Los Angeles Administrative Code Sections 10.8 through 10.13, to the extent applicable hereto. The CONSULTANT shall also comply with all rules, regulations, and policies of the CITY'S Board of Public Works, Office of Contract Compliance relating to nondiscrimination and affirmative action, including the filing of all forms required by said Office. Any subconsultant entered into by the CONSULTANT, relating to the AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of this paragraph. Failure of the CONSULTANT to comply with this requirement or to obtain compliance of its subconsultants with such obligations shall subject the CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONSULTANT'S AGREEMENT with the CITY.

ARTICLE 17 – MINORITY, WOMEN, AND OTHER BUSINESS ENTERPRISE SUBCONTRACTOR OUTREACH PROGRAM

The CONSULTANT has stipulated that it does not engage any subcontractor to perform the work described in this AGREEMENT and that all services described herein are performed by employees of CONSULTANT or of its VENTYX PARTNERS. The BOARD has been advised of this stipulation and a waiver has been obtained from the Mayor's Office which is attached hereto as **Exhibit B**.

ARTICLE 18 – SUCCESSORS AND ASSIGNS

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 32.

ARTICLE 19 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION

All notices shall be made in writing and may be given by personal delivery or by mail. Such notices sent by mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

To The CITY:

Contact Person: Anita Fernandez
Address: Information and Control Systems Division
2714 Media Center Drive, M/S 911
Los Angeles, California, 90065

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To CONSULTANT:

Contact Person: CFO with copy to General Counsel

Ventyx Inc.

3301 Windy Ridge Parkway, Suite 200,

Atlanta, GA 30339

ARTICLE 20 – FORCE MAJEURE

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.

ARTICLE 21 – SEVERABILITY

Should any portion of this AGREEMENT be determined to be void or unenforceable, such shall be severed from the whole and the AGREEMENT will continue as modified.

ARTICLE 22 – DISPUTES

Should a dispute or controversy arise concerning provisions of this AGREEMENT or the performance of work hereunder, the parties may elect to submit such to a court of competent jurisdiction.

ARTICLE 23 – ENTIRE AGREEMENT

This AGREEMENT contains all of the agreements, representations, and understandings of the parties hereto and supersedes and/or incorporates any previous understandings, proposals, commitments, or agreements, whether oral or written, and may be modified or amended only as herein provided.

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ARTICLE 24 – 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 AGREEMENT shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

In any action arising out of this AGREEMENT, CONSULTANT 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 AGREEMENT shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this AGREEMENT, the validity of the remaining parts, terms or provisions of the AGREEMENT shall not be affected thereby.

ARTICLE 25 –LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE

The Business Tax Registration Certificate is attached hereto as **EXHIBIT J** and incorporated herein by this reference.

If applicable, the CONSULTANT represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the CITY's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 and following, of the Los Angeles Municipal Code). For the term covered by this AGREEMENT, the CONSULTANT 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. Should any such certificate(s) become suspended or revoked, it is the CONSULTANT'S responsibility to report the matter immediately to the PROJECT MANAGER.

ARTICLE 26 – 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 Los Angeles Municipal Code Sections 11.47 through 11.56.

ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS

This AGREEMENT is subject to 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, CONSULTANT will fully comply with all

applicable State and Federal employment reporting requirements for CONSULTANT's employees. CONSULTANT shall also certify (1) that the principal owner (s) of CONSULTANT are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONSULTANT will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230, *et seq.* and (3) that CONSULTANT will maintain such compliance throughout the term of this AGREEMENT.

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

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

The CONSULTANT 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.

ARTICLE 28 – LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR WORKER RETENTION ORDINANCE

A. Unless otherwise exempt, this AGREEMENT 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, which is attached hereto as **Exhibit H** and incorporated herein by this reference, 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. The CONSULTANT 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. The CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the LWO. CONSULTANT shall require each of its Subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such Subconsultant to the CITY within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each Subcontractor shall fully discharge the obligation of the CONSULTANT with respect to such pledges and fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such Federal law.

3. The CONSULTANT, 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. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the CITY.

4. Any Subcontract entered into by the CONSULTANT relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and the SCWRO.
 5. The CONSULTANT 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 Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this AGREEMENT and otherwise pursue legal remedies that may be available if the CITY determines that the subject CONSULTANT 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 the CONSULTANT 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 the CONSULTANT in accordance with the following procedures. Impoundment shall mean that from monies due the CONSULTANT, the CITY may deduct the amount determined to be due and owing by the CONSULTANT 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 the CONSULTANT is to continue work following an impoundment shall remain in the sole discretion of the CITY. The CONSULTANT 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. The CONSULTANT shall inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC). The CONSULTANT shall also make available to employees the forms informing them about the EIC and forms required to secure advance EIC payments from CONSULTANT.

ARTICLE 29 – AMERICANS WITH DISABILITIES ACT

The CONSULTANT hereby certifies that it will comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 *et seq.* and its implementing regulations. The CONSULTANT 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. The CONSULTANT 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 the CONSULTANT, relating to this AGREEMENT, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

ARTICLE 30 – EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this AGREEMENT 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, which is attached hereto as **Exhibit D** and incorporated herein by this reference.

1. During the performance of the AGREEMENT, the CONSULTANT certifies and represents that the CONSULTANT will comply with the EBO.
2. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of the AGREEMENT by the CITY.
3. If the CONSULTANT fails to comply with the EBO the CITY may cancel, terminate or suspend the AGREEMENT, in whole or in part, and all monies due or to become due under the AGREEMENT may be retained by the CITY. The CITY may also pursue any and all other remedies at law or in equity for any breach.
4. Failure to comply with the EBO may be used as evidence against the CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

5. If the CITY's Designated Administrative Agency determines that a CONSULTANT has set up or used its Contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the AGREEMENT. Violation of this provision may be used as evidence against the CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 *et seq.*, Contractor Responsibility Ordinance.

The CONSULTANT 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 CONSULTANT provide equal benefits to 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 Bureau of Contract Administration, Office of Contract Compliance at (213) 847-2625."

ARTICLE 31 – WAIVER

A waiver of a default of any part, term or provision of this AGREEMENT 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.

ARTICLE 32 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION

The CONSULTANT may not, unless it has first obtained the written permission of the CITY:

- a) Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
- b) Delegate, subcontract, or otherwise transfer any of its duties under this AGREEMENT.

ARTICLE 33 – PERMITS

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

ARTICLE 34 – DISCOUNTS

CONSULTANT agrees to offer the CITY discounts for CONSULTANT Professional Services work only (not including maintenance) as follows:

1. After the CITY has paid CONSULTANT \$250,000 in professional services fees (not including maintenance fees) under this Agreement, a 5% discount off of CONSULTANT's standard rates will be applied to each subsequent SOS under this Agreement until the CITY has paid CONSULTANT \$500,000 in professional services fees (not including maintenance fees) under this Agreement.
2. After the CITY has paid CONSULTANT \$500,000 in professional services fees (not including maintenance fees) under this Agreement, a 10% discount off of CONSULTANT's standard rates will be applied to each subsequent SOS under this Agreement until the CITY has paid CONSULTANT \$750,000 in professional services fees (not including maintenance fees) under this Agreement.
3. After the CITY has paid CONSULTANT \$750,000 in professional services fees (not including maintenance fees) under this Agreement, a 15% discount off of CONSULTANT's standard rates will be applied to each subsequent SOS under this Agreement.

The aforementioned Discounts are not cumulative.

ARTICLE 35 – CONTRACTOR RESPONSIBILITY ORDINANCE

Contractor Responsibility Ordinance is attached hereto as Exhibit I and incorporated herein by this reference. Unless otherwise exempt, this AGREEMENT 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 CONSULTANT to update its responses to the responsibility questionnaire within thirty (30) calendar days after any change to the responses previously provided if such change would affect CONSULTANT's fitness and ability to continue performing the AGREEMENT.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this AGREEMENT, CONSULTANT pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this AGREEMENT, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. The CONSULTANT further agrees to:

1. Notify the CITY within thirty (30) calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this AGREEMENT;

2. Notify the CITY within thirty (30) calendar days of all findings by a government agency or court of competent jurisdiction that the CONSULTANT has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance;
3. Unless exempt, ensure that its subconsultant(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and
4. Unless exempt, ensure that its subconsultant(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 (30) calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subconsultant has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

ARTICLE 36 – BREACH

Fydf qulqpslqpsdf ln bk vsf -lpslbt lpu f sx jt f !f yqsf t t rnljm juf eli f sf jo-ljgboz!qbsuz!qjrt!up!
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ARTICLE 37 – SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this AGREEMENT is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time, which is attached hereto as **Exhibit E** and incorporated herein by this reference. CONSULTANT 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 AGREEMENT.

ARTICLE 38 – CONTRACTOR PERFORMANCE EVALUATION ORDINANCE

At the end of this AGREEMENT, the CITY will conduct an evaluation of the CONSULTANT's performance. The CITY may also conduct evaluations of the CONSULTANT's performance during the term of the AGREEMENT. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed, the timeliness of performance, financial issues, and the expertise of personnel that the CONSULTANT assigns to the AGREEMENT. A Consultant who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final CITY evaluation and allowed 14 calendar days to respond. The CITY will use the final CITY evaluation, and any response from the CONSULTANT, to evaluate proposals and to conduct reference checks when awarding other service contracts.

ARTICLE 39 - CLAIMS FOR LABOR AND MATERIALS

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

ARTICLE 40 – MUNICIPAL LOBBYING ORDINANCE

Any consultant for the CITY shall submit a certification, on a form prescribed by the City Ethics Commission, that the CONSULTANT acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, **Exhibit N**, if the CONSULTANT qualifies as a lobbying entity under the Ordinance. The exemptions contained in Los Angeles Administrative Code Section 10.40.4 shall not apply to this subsection.

ARTICLE 41 – FIRST HIRING SOURCE 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.

1. 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.
2. 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 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 CONSULTANT interviewed and the reasons by referred individuals were not hired.
3. Any subcontract entered into by the CONSULTANT relating to this agreement, to the extent allowed hereunder, shall be subject to the provisions of FSHO, and shall incorporate the FSHO.
4. 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 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 CONSULTANT'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 CONSULTANT has violated provisions of the FSHO.

This contract is exempted from the requirements of the First Source Hiring Ordinance because the contract services are proprietary and therefore available from only a single source. A copy of the approved FSHO Exemption is attached hereto as Exhibit O.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the day and year written below.

CITY OF LOS ANGELES

VENTYX INC.

By: _____

By: _____

Title: President, Board of Public Works

Title: General Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

Carmen Trutanich, City Attorney

By: _____

John Carvalho

Title: Deputy City Attorney

Date: _____

ATTEST

June Lagmay, City Clerk

By: _____

Title: Deputy City Clerk

Date: _____

GOOD FAITH EFFORT WAIVER REQUEST FORM

DEPARTMENT: PW/SAN

DIVISION/UNIT: ICSD

DATE: 8/27/2008

TO: LA OPS, MAYOR'S OFFICE OF ECONOMIC DEVELOPMENT
ATTN: LINDA SMITH GATLIN, DIRECTOR

FROM: Yelena Altshuler, Bureau of Sanitation, ICSD

Phone: 323-342-6281 Fax: 323-342-6111

SUBJECT: WAIVE MBE/WBE/OBE GOOD FAITH EFFORT REQUIREMENTS FOR CONTRACT NO. _____
In compliance with Executive Directive No. 2001-26, City of Los Angeles Minority, Women and Other Business Enterprise (MBE/WBE/OBE) Program, please fill out the following.

- 1 Title of Project: Maintenance Services Agreement Between City of LA and Ventyx
- 2 This project will be advertised as: Sole Source Contract _____ RFP _____ RFQ _____
- 3 Type of Contract: _____ Procurement Personal Services
_____ Construction _____ Other _____
- 4. Projected total amount of the contract: \$2,000,000 Estimated duration of project: 6 years
- 5. Significant Dates:
Estimated date of pre-bid or job walk meeting: N/A
Estimated date that bids or proposals are due: N/A
- 6. Recommendation:
 MBE/WBE/OBE encouragement

Justify why encouragement:

- Technical Requirement _____ Lack of available subcontractors _____ Emergency Response
- Lack of available subcontract sub-supply opportunities One product single point of distribution

Other: Ventyx bought Indus International and replaced Indus as sole source provider for EMPAC software maintenance. Ventyx does not subcontract or license any firm to perform the required highly technical services on it's software. As a single source for this service, this contract amendment provides no available opportunity for MBE/WBE/OBE participation.

7 Is this a: _____ New Contract Renewal _____ Other Amendment

8 Name of previous contractor: Indus International Length of previous: 3 years Value of previous: \$2,000,000

TO: ATTN: Yelena Altshuler

FROM: LA OPS, MAYOR'S OFFICE OF ECONOMIC DEVELOPMENT

SUBJECT: RESPONSE TO ABOVE REQUEST

Recommendation Approved _____ Initials
 Recommendation Disapproved _____ Initials

Comment: _____

By: *[Signature]* Date: 10/8/08 Tel. No.: 213/978-0665
L. SMITH - LA OPS
Executive Director

*TELM + BMO
ENCLOSURE*