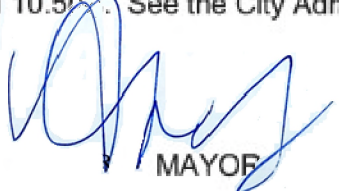


<b>TRANSMITTAL</b>		0150-09752-0001
TO The Council	DATE  8/23/17	COUNCIL FILE NO.
FROM The Mayor		COUNCIL DISTRICT
<p style="text-align: center;"><b>First Amendment to Contract No. 122152 with ABB Enterprise Software, Inc. (Formerly Known as Ventyx, Inc.) for the Maintenance of the Enterprise Maintenance, Planning, and Control (EMPAC) System for the Clean Water Program.</b></p> <p>Approved and transmitted for your consideration. The Council has 60 days from the date of the receipt to act, otherwise the contract will be deemed approved pursuant to Los Angeles Administrative Code Section 10.5. See the City Administrative Officer report attached.</p> <div style="text-align: center;">         MAYOR     </div> <p style="text-align: right;">(Ana Guerrero)</p>		
RHL:WKP:06180007f		

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

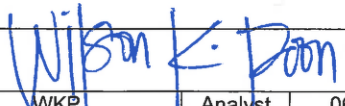
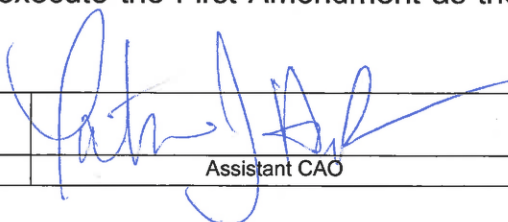
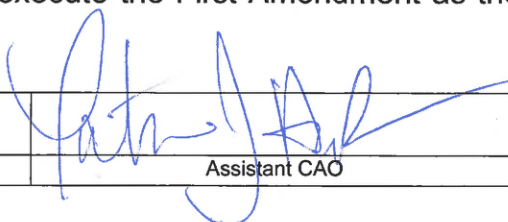
To: The Mayor	Date: 08-23-17	C.D. No.	CAO File No.: 0150-09752-0001
Contracting Department/Bureau: Public Works/Sanitation		Contact: Dan Seto, (323) 342-6288	
Reference: Transmittal from the Board of Public Works dated July 19, 2017; referred for report on July 19, 2017.			
Purpose of Contract: Sole source contract to provide software maintenance of the Enterprise Maintenance, Planning, and Control (EMPAC) System for the Bureau's Clean Water Program.			
Type of Contract: ( ) New contract (X) Amendment		Contract Term Dates: Original Contract Term: Six years, from July 1, 2012 through June 30, 2018 and First Amendment Term: Three years, from July 1, 2018 through June 30, 2021.	
Contract/Amendment Amount: \$4,425,000			
Proposed amount \$4,425,000 + Prior award(s) \$2,000,000 = Total \$6,425,000			
Source of funds: Sewer Construction and Maintenance Fund No. 760			
Name of Contractor: ABB Enterprise Software, Inc. (formerly known as Ventyx, Inc.)			
Address: 400 Perimeter Center Terrace, Suite 500, Atlanta, GA 30346			
	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%			
8. Contractor has complied with:			
	Yes	No	N/A*
a. Equal Employment Opportunity/Affirmative Action	X		
b. Good Faith Effort Outreach**			X
c. Equal Benefits Ordinance	X		
d. Contractor Responsibility Ordinance	X		
e. Slavery Disclosure Ordinance	X		
f. Bidder Certification CEC Form 50	X		
*N/A = not applicable ** Contracts over \$100,000			

**RECOMMENDATION**

That the Council authorize the Board of Public Works, on behalf of the Bureau of Sanitation, to execute the First Amendment to Contract No. 122152 with ABB Enterprise Software, Inc. (formerly known as Ventyx, Inc.) to provide software maintenance and support services for the Enterprise Maintenance, Planning, and Control (EMPAC) system for an additional three years, from July 1, 2018 through June 30, 2021, at a cost not to exceed \$4,425,000.

**COMMENTS**

In accordance with Executive Directive No. 3, the Board of Public Works (Board), on behalf of the Bureau of Sanitation (Bureau) requests authority to execute the First Amendment to Contract No. 122152 with ABB Enterprise Software, Inc. (ABB) to extend the term for an additional three years, from July 1, 2018 through June 30, 2021, and increase the cost ceiling by \$4,425,000, from \$2,000,000 to \$6,425,000. In accordance with Los Angeles Administrative Code Section 10.5(a), Council approval is required to execute the First Amendment as the cumulative term of the contract exceeds three years.

 WKP	 Analyst	 Assistant CAO	 City Administrative Officer
--	---	---	--

On March 6, 2013, Council (C.F. 12-1762) authorized the Bureau to execute a sole source contract with Ventyx, Inc. for maintenance and support for the Bureau's EMPAC system for a term of six years at a cost not to exceed \$2 million. Effective February 23, 2015, Ventyx changed its name to ABB Enterprise Software, Inc. ABB developed the EMPAC software and performed all the implementation for the Bureau. The system was implemented in July 2001 and has been serviced exclusively by ABB through sole source agreements. The EMPAC system manages the maintenance programs for all four water reclamation facilities and the wastewater and stormwater collection system networks. EMPAC assists in identifying and reducing asset failure, optimizing operational processes, and managing preventative work plans by tracking and logging preventative and reactive maintenance activities, asset history, labor and material usage and deployment, and inventory and procurement services. The system manages over 390,000 assets such as pumps, centrifuges, scrubbers, and pipelines. In addition, the system generates over 30,000 preventative maintenance work orders each month, manages over 40,000 warehouse items, and facilitates over \$20 million in purchases each year.

The EMPAC system has reached its useful life expectancy and is being upgraded to Ellipse, ABB's newest version of EMPAC. Ellipse is scheduled to go live in the summer of 2017 and the new version will provide improved functionality and enhancements with the flexibility to integrate to external systems, such as a customer service system. Currently, EMPAC is integrated with the citywide procurement system owned by the General Services Department (GSD), known as the Supply Management System (SMS), and the Bureau's Field Automation for Sanitation Trucks (FAST) system. The EMPAC/SMS integration allows Sanitation users to request the purchase of materials necessary for performing preventative and emergency maintenance. The SMS system will be replaced with the new Financial Management System (FMS) 2.0, which is also scheduled to go live in the summer of 2017. The First Amendment is required to authorize ABB to finalize the new Ellipse system integration with the new FMS 2.0 system. In addition, EMPAC is integrated with the Bureau's FAST system, which provides field crews with maps, work order information, and vehicle locations. Sanitation field crews can close out work orders and fill in timekeeping information using laptop computers mounted in trucks. The First Amendment will allow ABB to integrate the new Ellipse system with the FAST system. The Ellipse system and its integrations with the FMS 2.0 and FAST systems are critical to the ongoing operations of the City's water reclamation facilities and collection systems.

### Scope of Services and Compensation

The First Amendment will not change the scope of work in the original contract. The maintenance fee is the only ongoing cost in this contract. All other services in the following table are provided on an as-needed basis and the City guarantees no minimum amount of work for as-needed services:

Service	Original Contract	2018	2019	2020	2021	TOTAL
Annual Maintenance Fee for Ellipse	\$ 750,000	\$ 212,500	\$212,500	\$212,500	\$212,500	\$1,600,000
EMPAC/SMS/FMS 2.0 Integration	350,000	625,000	--	--	--	975,000
On-Call Professional Services	300,000	1,450,000	500,000	500,000	--	2,750,000
Mobile Computing Integration	200,000	200,000	--	--	--	400,000
Additional Software Licensing	400,000	100,000	100,000	100,000	--	700,000
<b>TOTAL</b>	<b>\$2,000,000</b>	<b>\$2,587,500</b>	<b>\$812,500</b>	<b>\$812,500</b>	<b>\$212,500</b>	<b>\$6,425,000</b>

\* All estimated funding amounts include contingency funding.

Funding in the amount of \$450,000 is budgeted in the Sewer Construction and Maintenance Fund Contractual Services Schedule for ongoing licensing and maintenance fees and \$813,210 has been requested for reappropriation in the Wastewater Capital Improvement Expenditure Program (CIEP) for the EMPAC Replacement Project. As many of the services are of an on-call and as-needed nature, the Bureau will be required to identify additional funding or receive Project Review Committee approval for capital projects prior to issuing any work orders beyond what is budgeted for 2017-18. In addition, future year funding will be allocated through the City's annual budget process. ABB will invoice the Bureau on a monthly basis and compensation will be made on a lump sum basis or through hourly billing rates, as determined by the Bureau. Generally, the Bureau uses the lump sum method (where payment is made upon receipt of a deliverable) for systems projects that require more complicated programming than expected so that any additional billable hours are incurred by the vendor instead of the City. The Bureau uses the hourly billing method for smaller and less complicated systems projects when it is more economical to use a contractor.

### **City Contracting Requirements**

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 as ABB is the author and owner of EMPAC/Ellipse and its integrations with other City systems, and is the only firm with the expertise, knowledge, and sufficient qualified personnel to perform the work. On October 8, 2008, the Mayor's Office waived the Good Faith Effort Outreach requirements as this contract utilizes proprietary software and provides no opportunities for subcontractor participation. The First Amendment also includes updated contracting provisions that were approved by Council subsequent to the execution of the original contract. This includes compliance with the City's First Source Hiring Ordinance, City Charter Section 470(c)(12) for Measure H/Contractor Contributions/Fundraising, and the Iran Contracting Act of 2010.

### **FISCAL IMPACT STATEMENT**

There is no General Fund impact. Funding for the First Amendment will be provided by the Sewer Construction and Maintenance Fund and \$275,000 has been included in the 2017-18 Budget for the first year costs. Subsequent year funding will be provided by the City's annual budget process and subject to the availability of funds and Mayor and Council approval. The contract includes a Financial Liability Clause which limits the City's annual financial liability to the extent of its annual budget appropriation. The recommendation in this report complies with the City's Financial Policies as ongoing funding will support ongoing expenditures.



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Dr. FERNANDO CAMPOS  
EXECUTIVE OFFICER

200 NORTH SPRING STREET  
ROOM 361, CITY HALL  
LOS ANGELES, CA 90012

GENERAL INFORMATION  
TEL: (213) 978-0261 FAX: (213) 978-0278  
TDD: (213) 978-2310  
<http://bpw.lacity.org>

July 19, 2017

(BPW-2017-0678)  
#1 BOS/BCA

Mayor Eric Garcetti  
Room No. 305  
City Hall  
Attn: Mandy Morales

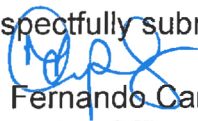
**Subject: AUTHORITY TO EXECUTE AMENDMENT NO. 1 TO THE SOLE-SOURCE AGREEMENT WITH ABB ENTERPRISE SOFTWARE, INC. FORMERLY KNOWN AS VENTYX, INC.**

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 Amendment No. 1 to the sole-source agreement (Contract No. C-122152) with ABB Enterprise Software, Inc. (formerly known as Ventyx, Inc.), 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 LA Sanitation (LASAN). This amendment will extend the contract by three years to a total of nine years and increase the cost ceiling by \$4,425,000 for a total contract ceiling not to exceed \$6,425,000.

**FISCAL IMPACT**

There is no impact to the General Fund. The total funding for this amendment is not to exceed \$4,425,000. Funding for the Fiscal Year 2017/2018 in the amount of \$275,000 is available in the Sewer Operations and Maintenance Fund. Fund No. 760, Appropriation Unit No. 50PX82, Object 304. However, Funds and Appropriations for future fiscal years are not yet identified and existing appropriations may change based on available cash balances. Therefore, Funds and Appropriations, once determined by the Director of the Bureau of Sanitation or designee, will be reviewed and certified by the Director of the Office of Accounting or designee, as to the status and availability of funding.

Respectfully submitted,

  
Dr. Fernando Campos  
Executive Officer  
Board of Public Works

FC:mp



DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION  
BUREAU OF CONTRACT ADMINISTRATION  
JOINT BOARD REPORT NO. 1  
JULY 19, 2017

CD: ALL

AUTHORITY TO EXECUTE AMENDMENT NO. 1 TO THE SOLE-SOURCE AGREEMENT (CONTRACT C-122152) WITH ABB ENTERPRISE SOFTWARE, INC. FORMERLY KNOWN AS VENTYX, INC. FOR THE SOFTWARE MAINTENANCE OF ENTERPRISE MAINTENANCE, PLANNING, CONTROL AND RELATED PRODUCTS AND INTEGRATIONS

---

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 Amendment No. 1 to the sole-source agreement (Contract C-122152) with ABB Enterprise Software Inc. (formerly known as Ventyx, Inc.), 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 LA Sanitation (LASAN). This amendment will extend the contract by three years to a total of nine years and increase the cost ceiling by \$4,425,000 for a total contract ceiling not to exceed \$6,425,000.
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 LASAN, Board Report Section, at (213) 485-3697 for pick up and further processing.

TRANSMITTALS

1. Copy of the adopted LASAN and Bureau of Contract Administration Joint Board Report No. 1, dated April 6, 2012, authorizing LASAN to execute a sole-source agreement with Ventyx, Inc.
2. Copy of the Contract C-122152 between the City of Los Angeles and Ventyx, Inc. for Software Maintenance of Enterprise Maintenance, Planning, Control (EMPAC) and Related Products and Integrations.
3. Letter from ABB Enterprise Software Inc, dated July 9, 2015, notifying LASAN of the change in name from Ventyx, Inc.

PAGE 2

4. Copy of the proposed Amendment No. 1 to the sole-source agreement (Contract C-122152) between the City of Los Angeles and ABB Enterprise Software Inc. Originals will be delivered to the Board Office when the Board Report Section at (213) 485-3697 is notified that the contract amendment is ready for execution.
5. Copy of the October 8, 2008 approved waiver of the Minority Business Enterprise/Women Owned Business Enterprise/Other Business Enterprise Good Faith Effort requirement obtained from the Mayor's Office of Economic Development.

## DISCUSSION

### **Background**

On April 6, 2012, the Board authorized LASAN to execute a sole-source contract (C-122152) with Ventyx, Inc. (currently known as ABB Enterprise Software Inc.), for software maintenance support for EMPAC and its integrations. The current contract term is for six years, with an expiration date of June 30, 2018 (Transmittal No. 2). On July 9, 2015, ABB Enterprise Software Inc. notified LASAN of its company name change from Ventyx, Inc. (Transmittal No. 3)

The current contract provides a mechanism to:

- Perform the necessary upgrade of EMPAC software;
- Build integration to the upgraded Financial Management System (FMS) 2.0;
- Integrate the FAST mobile application to the upgraded version of EMPAC;
- Provide software maintenance and support for an additional three years;
- Provide a contracting mechanism to allow for future enhancements.

EMPAC, the LASAN's Enterprise Asset Management System (EAMS), is a commercial software used since 2001 to manage the assets at all four clean water reclamation facilities and wastewater and stormwater collection systems. ABB Enterprise Software Inc. developed EMPAC and provided its implementation and maintenance. The EMPAC system has reached its end of life and is being upgraded to Ellipse, ABB's newest version of EMPAC. Ellipse is scheduled to go live on July 1, 2017. Ellipse provides improved functionality and enhancements with the flexibility to integrate to external systems, such as a customer service system.

EMPAC provides for the management of over 390,000 clean water reclamation facility and collection system assets such as pumps, centrifuges, scrubbers, and pipelines. The system generates over 30,000 preventive maintenance work orders each month, manages over 40,000 warehouse items, and facilitates over \$20 million in purchases each year.

EMPAC is integrated with the citywide procurement system owned by the Department of General Services, known as the Supply Management System (SMS). The EMPAC/SMS integration, developed by ABB Enterprise Software, allows LASAN users to request the purchase of materials necessary for performing preventive and emergency maintenance. The SMS system has reached its end of life and is being replaced by the CGI-based citywide procurement system, Financial Management System 2.0. Like Ellipse, FMS 2.0 is going live on July 1, 2017.

EMPAC is also integrated with the LASAN's FAST, which provides access to EMPAC work orders, maps, and vehicle locations for three hundred 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 developed by ABB Enterprise. This real-time interface provides current status and up-to-date data for management monitoring and reporting.

Proper functioning of Ellipse and the integrations with FMS 2.0 and FAST are critical to the operations of the water reclamation plants and the collection systems. To accommodate the integration and implementation process, discretionary funds are requested with this amendment.

The current contract ceiling of \$2,000,000 was nearly exhausted during the start of the upgrades and integration. Additional time and funds are needed to continue with the project. With the unpredictability of any software upgrade, discretionary funds are requested in this amendment to account for unexpected costs. The current sole-source contract, C-122152, expires on June 30, 2018. An additional \$4,425,000 for a total cost ceiling of \$6,425,000 is being requested. In addition to the cost ceiling increase, this amendment also extends the contract for an additional three years to June 30, 2021. The extended term is requested to provide for consistent maintenance of the proprietary software. (Transmittal No. 4)

This amendment will effectuate the following changes to the existing contract:

1. Increase the contract ceiling from \$2,000,000 to \$6,425,000.
2. Extend the term of the contract from six years to a total of nine years.
3. Officially recognize the new name of Ventyx, Inc. as ABB Enterprise Software, Inc.

#### **Sole-source Contract**

ABB Enterprise Software, as the software manufacturer and author, is the only company authorized and capable of providing software maintenance and support for the EMPAC/Ellipse



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system and its integrations to other applications. ABB Enterprise Software retains the staff and technical expertise to provide maintenance on these systems. Furthermore, ABB Enterprise Software has a historical relationship with LASAN from the installation of EMPAC to current maintenance of the EMPAC system and its integrations. ABB Enterprise Software's engineers and project managers also have specific technical expertise of the LASAN'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 systems as quickly as possible.

Failure to execute this amendment with ABB Enterprise Software will put the LASAN's asset management program at risk. For example, routine software upgrades will not be performed, timely software patches will not be obtained, software upgrades will be affected due to integration issues, and in the event of a system failure, a guaranteed response by service personnel, will not be available. Therefore, LASAN is requesting to retain the contractual relationship with ABB Enterprise Software by executing this amendment.

#### **MBE/WBE/OBE Subcontractor 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 No. 5). ABB Enterprise Software does not subcontract to or otherwise license with any firm to perform maintenance services for this proprietary software. Therefore, this contract provides no opportunities for subcontractor participation.

#### **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, the Designated Administrative Agency for the Contractor Responsibility Ordinance (CRO) approved the request from LASAN for an Exemption from the CRO for Ventyx, Inc (currently known as ABB Enterprise Software Inc.), due to its sole-source justification.

#### **Proposed Cost Ceiling and Term of Amended Agreement**

The total cost ceiling of the amended contract is \$6,425,000 over the nine year period. The

BUREAU OF SANITATION  
BUREAU OF CONTRACT ADMINISTRATION  
JOINT BOARD REPORT NO. 1  
JULY 19, 2017

PAGE 5

breakdown of the cost ceiling is outlined in the following cost estimates:

ITEM	ESTIMATED COST
Annual Software Maintenance	\$1,600,000
EMPAC/SMS Integration	\$975,000*
On-call Professional Services	\$2,750,000*
Mobile Computing Integration	\$400,000*
Additional Software Licensing	\$700,000*
<b>TOTAL</b>	<b>\$6,425,000</b>

\*Includes Discretionary Funds

### Other City Requirements

ABB Enterprise Software will continue to comply with the following requirements:

- 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
- Contract Bidder Campaign Contribution and Fundraising Restrictions
- First Source Hiring Ordinance
- Los Angeles Residence Information
- Contract History
- City of Los Angeles Contract History
- Fair Chance Initiative for Hiring Ordinance

### 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.

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### **Notice of Intent to Contract**

The "Notification of Intent to Contract" form for this amendment No. 1 was filed with the City Administrative Office Clearinghouse on November 18, 2016.

### **Headquarters Address and Workforce Information**

ABB Enterprise Software is headquartered in 400 Perimeter Center Terrace, Suite 500, Atlanta, GA 30346. Currently, there are 2,025 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 LASAN.

### **City Attorney Review**

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

### **STATEMENT AS TO FUNDING**

There is no impact to the General Fund. The total funding for this amendment is not to exceed \$4,425,000. Funding for the Fiscal Year 2017/18 in the amount of \$275,000 is available in the Sewer Operations and Maintenance Fund, Fund No. 760, Appropriation Unit No. 50PX82, Object 304. However, Funds and Appropriations for future fiscal years are not yet identified and existing appropriations may change based on available cash balances. Therefore, Funds and Appropriations, once determined by the Director of Sanitation or designee, will be reviewed and certified by the Director of the Office of Accounting or designee, as to the status and availability of funding.

The 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 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  
JULY 19, 2017

PAGE 7

COMPLIANCE REVIEW PERFORMED  
AND APPROVED BY:



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

Respectfully submitted,

  
ENRIQUE C. ZALDIVAR, Director  
Bureau of Sanitation

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

APPROVED AS TO FUNDS:

  
VICTORIA A. SANTIAGO, Director  
Office of Accounting

Date: \_\_\_\_\_

Prepared by:  
Dan Seto, ICSD  
(323) 342-6288

7/7/17  
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\$4,425,000. -



DEPARTMENT OF PUBLIC WORKS

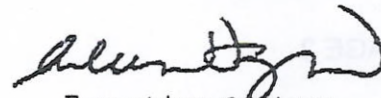
BUREAU OF SANITATION

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.



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

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.



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JOINT BOARD REPORT NO. 1  
April 6, 2012

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- 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.



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**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*
<b>TOTAL</b>	<b>\$2,000,000</b>

\*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.

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JOINT BOARD REPORT NO. 1  
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**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.



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JOINT BOARD REPORT NO. 1  
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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

July 9, 2015

Dan Seto  
City of Los Angeles – Bureau of Sanitation  
Bureau of Sanitation  
City of Los Angeles  
12000 Vista Del Mar (MS 535)  
Playa Del Rey, CA 90293  
Dan.Seto@lacity.org

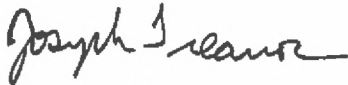
Re: ABB Enterprise Software Inc. f/k/a Ventyx Inc.

Dear Mr. Seto:

This letter is to confirm that Ventyx Inc. has changed its name to ABB Enterprise Software Inc. This name change was made effective February 23, 2015. A copy of the name change certificate, issued by the State of Delaware, is enclosed.

Please contact me if you have any further questions regarding ABB products and services.

Sincerely,



Joseph Treanor  
Regional Counsel – North America  
Joe.treanor@us.abb.com

Enclosure



# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "VENTYX INC.", CHANGING ITS NAME FROM "VENTYX INC." TO "ABB ENTERPRISE SOFTWARE INC.", FILED IN THIS OFFICE ON THE TWENTY-THIRD DAY OF FEBRUARY, A.D. 2015, AT 11:46 O'CLOCK A.M.

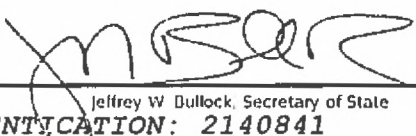
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

2756011 8100

150239945

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 2140841

DATE: 02-23-15

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:09 PM 02/23/2015  
FILED 11:46 AM 02/23/2015  
SRV 150239945 - 2756011 FILE

**STATE OF DELAWARE  
CERTIFICATE OF AMENDMENT  
TO THE  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
VENTYX INC.**

Ventyx Inc., a corporation organized and existing under and by virtue of the Delaware General Corporation Law ("the Corporation"), does hereby certify:

**FIRST:** That on February 9, 2015, the Board of Directors of the Corporation adopted resolutions setting forth a proposed amendment to the Amended and Restated Certificate of Incorporation of the Corporation, declaring said amendment to be advisable and submitting the proposed amendment to the sole stockholder of the Corporation for its considerations and approval. The proposed amendment is as follows:

**NOW THEREFORE BE IT RESOLVED,** that the name of the Company shall be changed to ABB Enterprise Software Inc. effective as of February 23, 2015; and

**FURTHER RESOLVED,** that the Amended and Restated Articles of Incorporation of the Company are hereby amended by deleting Article One in its entirety and replacing it with a new Article One to read as follows:

**"ARTICLE ONE**

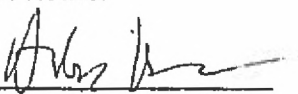
The name of the Company is ABB Enterprise Software Inc. (hereinafter called the "Company".)

**FURTHER RESOLVED,** that the officers of the Company are authorized and directed to do and perform or cause to be done and performed, all such acts, deeds and things, to pay or cause to be paid, all fees, costs and expenses, and to make, execute and deliver or cause to be made, executed and delivered, all such agreements, undertakings, documents, instruments and certificates in the name and on behalf of the Company or otherwise as any such officer deems necessary or desirable in order to effectuate or carry out fully and expeditiously the purpose and intent of each and all of the foregoing resolutions.

**SECOND:** That thereafter on February 9, 2015, said amendment was duly adopted by written consent of the sole stockholder of the Corporation in accordance with the provisions of Sections 228 and 242 of the Delaware General Corporation Law.

**IN WITNESS WHEREOF,** Ventyx Inc. said Corporation has caused this certificate of amendment to be signed this 23rd day of February, 2015.

VENTYX INC.

By:   
Name: Adam Vexler  
Title: Secretary

CONTRACT NO. C- 122152 -1

AMENDMENT NO. 1

TO

PERSONAL SERVICES CONTRACT

BETWEEN

THE CITY OF LOS ANGELES

AND

ABB ENTERPRISE SOFTWARE INC.

FORMERLY KNOWN AS

VENTYX, INC.

FOR

SOFTWARE MAINTENANCE OF

ENTERPRISE MAINTENANCE, PLANNING AND CONTROL

AND RELATED

PRODUCTS AND INTEGRATIONS



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## **EXHIBITS**

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## **A G R E E M E N T**

This AMENDMENT NO. 1, made and entered into 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 ABB ENTERPRISE SOFTWARE INC., also formerly known as VENTYX, INC., hereinafter referred to as the "CONSULTANT", is set forth as follows:

## **W I T N E S S E T H**

WHEREAS, on May 14, 2013, the CITY executed contract C-122152 with Ventyx, Inc. to implement a new computerized maintenance management system with Enterprise Maintenance, Planning and Control (EMPAC), a software from Ventyx, Inc.; and

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

WHEREAS, the CITY relies heavily on EMPAC and its integration with Supply Management System (SMS), Field Automation for Sanitation Trucks (FAST), and Cohesive Mobile Entry (CME) for all aspects of asset management in the Wastewater Program; and

WHEREAS, the EMPAC implementation and support contract (C-122152) between the CITY and the CONSULTANT will expire on May 13, 2019; 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, CONSULTANT has satisfactorily complied with all the contract requirements and the CITY desires to retain the services of CONSULTANT; 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, in a letter dated July 9, 2015, VENTYX, INC. informed the CITY that their company name was changed to ABB ENTERPRISE SOFTWARE INC.; and

WHEREAS, this CONTRACT is being amended with the CONSULTANT, now known as ABB ENTERPRISE SOFTWARE INC., to extend the contract term by an additional three (3) years in order to continue these technical services; and



WHEREAS, the CITY is making system changes moving from General Services Department's Supply Management System to the City Controller's Financial Management System, requiring additional support from the CONSULTANT. This will result in an increase to the original CONTRACT ceiling amount; and

WHEREAS, the contract ceiling will increase by \$4,425,000 for a revised total ceiling of \$6,425,000 to accommodate the growing technical support costs and the additional three (3) year term extension;

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**

No Change to This Article.

## **ARTICLE 2 – DEFINITIONS**

Modify the following definitions in this Article to read as follows:

AGREEMENT/CONTRACT	This contractual agreement between the CITY and ABB ENTERPRISE SOFTWARE INC., formerly known as VENTYX, INC.
--------------------	--

CONSULTANT

ABB Enterprise Software, Inc., formerly known as Ventyx,  
Inc.

**REPLACE VENTYX PARTNERS TERM AND DEFINITION WITH:**

ABB ENTERPRISE PARTNERS     Solution Partner – A partner who directly offers  
complementary products that are an essential part of end-to-  
end solutions

Service Partner – An ABB Enterprise Software, Inc.  
approved company that provides systems integration and  
consulting services in partnership with ABB Enterprise  
Software, Inc.

Platform Partner – A hardware or software partner offering  
products that form part of the ABB Enterprise Software, Inc.  
solution offerings.

The remaining definitions are unchanged.

**ARTICLE 3 – PROJECT DESCRIPTION**

No Change to This Article.

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

4.1     No change to this Sub-Article.

4.2 Modify this Sub-Article to read as follows:

CONSULTANT warrants that the services will be performed 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) business days of the completion of the services which CITY alleges were not performed consistent with the warranty in Section 10.

4.3 No change to this Sub-Article

4.4 Scope of Services

Modify this Sub-Article to read as follows:

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

Software for a maximum of nine (9) 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 ABB Enterprise Software, Inc. 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 two (2) free Mindshare passes to the CITY for each Conference that convenes during the term of this AGREEMENT.

#### 4.4.2 EMPAC/SMS Integration Support (estimated at \$975,000 over 9 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 \$2,000,000 over 9 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 \$400,000 over 9 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 \$550,000 over 9 years) -

The CONSULTANT shall provide additional licenses and/or licenses for add-on software for the BUREAU licensed applications from ABB Enterprise Software, Inc. and ABB ENTERPRISE 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

No change to this Sub-Article.

### **ARTICLE 5 – KEY CONSULTANT PERSONNEL**

Modify this article to read as follows:

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

Allison Ploen, ABB Enterprise Software, Inc.

400 Perimeter Center Terrace Suite 500

Atlanta, GA 30346 Phone: 702-739-4370

Email: [allison.ploen@us.abb.com](mailto:allison.ploen@us.abb.com)

Additional technical specialists may be assigned subject to the PROJECT MANAGER’S approval.



- 5.2 CONSULTANT agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and CONSULTANT shall not change personnel assigned to these positions without the prior written consent and approval of CITY'S PROJECT MANAGER, whose consent shall not be withheld unreasonably.
- 5.3 Unless otherwise provided or approved by the CITY, CONSULTANT shall use its own employees to perform the services described in this CONTRACT. The CITY shall have the right to review and approve any personnel who are assigned to work under this CONTRACT. CONSULTANT agrees to remove personnel from performing work under this CONTRACT if requested to do so in writing by the CITY within thirty (30) business days of the request by the CITY.
- 5.4 CONSULTANT shall not use subcontractors to assist in performance of this CONTRACT without the prior written approval of the CITY. If the CITY permits the use of subconsultants, CONSULTANT shall remain responsible for performing all aspects of this CONTRACT. 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 of contract between the CITY and the subconsultants. The use of subconsultants shall be subject to written approval of the CITY, pursuant to the provisions of Article 9.

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

No Change to This Article.

## **ARTICLE 7 – TERM OF AGREEMENT**

Modify this article to read as follows:

Unless otherwise provided, the term of this entire AGREEMENT including this Amendment No. 1 shall begin on July 1, 2012 and shall be in effect until June 30, 2021 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**

Modify this Article to read as follows:

- 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 not less than thirty (30) calendar days' written notice. 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, excluding attorney's fees, in addition to termination settlement costs reasonably incurred by the CONSULTANT relating to written contracts 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 within thirty (30) business days of said termination action all finished or unfinished documents and materials produced or procured under this CONTRACT, including all intellectual property rights thereto, which shall become CITY property upon date of such termination. CONSULTANT agrees to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY'S ownership of rights provided herein within

thirty (30) business days of said termination.[SK2]

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

## **ARTICLE 9 – SUBCONTRACT APPROVAL**

Modify this Article to read as follows:

All subcontracts shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the PROJECT MANAGER showing the subconsultant's name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONSULTANT shall not be



considered subconsultants. CONTRACTOR shall not substitute subcontractors listed in this AGREEMENT without the prior written approval of the CITY. CONSULTANT shall not add subconsultants to assist in the 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 CONTRACT. 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 of contract between the CITY and the subconsultants.

#### **ARTICLE 10 - COMPENSATION, INVOICING, AND PAYMENT**

10.1 No change to this Sub-Article.

10.2 Compensation

Modify this Sub Article to read as follows:

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 \$6,425,000.

10.3 No change to this Sub-article.

## **ARTICLE 11 - AMENDMENTS, CHANGES, OR MODIFICATIONS**

No Change to This Article.

## **ARTICLE 12 – INDEMNIFICATION AND INSURANCE**

### **12.1 INDEMNIFICATION**

No Change to this Sub-Article.

### **12.2 INSURANCE**

Modify this Sub-Article to read as follows:

During the term of this CONTRACT 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 CONTRACT a program of insurance having the coverage and limits customarily carried and actually arranged by CONSULTANT but not less than the amounts and types listed on the Insurance Requirements Sheet (Form Gen 146/IR), in EXHIBIT C hereto, covering its operations hereunder. Such insurance shall conform to CITY requirements as established by Charter, ordinance, or policy and shall comply with the instructions set forth, in EXHIBIT C, and which can also be found at the Board of

Public Work's website: <http://bpw.lacity.org/InsuranceForms.html>, in the form Instructions and Information on Complying with CITY Insurance Requirements, rev 05/12, 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. EXHIBIT C is hereby incorporated by reference and made a part of this CONTRACT.

### **ARTICLE 13 – INDEPENDENT CONTRACTORS**

No Change to This Article.

### **ARTICLE 14 – WARRANTY AND RESPONSIBILITY OF CONSULTANT**

No Change to This Article.

### **ARTICLE 15 – OWNERSHIP OF WORK PRODUCTS**

No Change to This Article

### **ARTICLE 16 – NONDISCRIMINATION, EQUAL EMPLOYMENT PRACTICES AND AFFIRMATIVE ACTION**

Modify this Article to read as follows:

#### **16.1 Nondiscrimination**

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

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

Failure of CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with such obligations shall subject CONSULTANT to the imposition of any and all sanctions allowed by law, including but not limited to termination of CONSULTANT'S CONTRACT with the CITY. Nothing contained in this CONTRACT shall be construed in any manner so as to require or permit any act which is prohibited by law.

#### 16.2 Equal Employment Practices

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

A. During the performance of this CONTRACT, CONSULTANT agrees and represents that it will provide equal employment practices and CONSULTANT and each subconsultant 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, color, 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. CONSULTANT agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.
- C. At the request of the Awarding Authority or the Designated Administrative Agency (DAA - The Department of Public Works Office of Contract Compliance is the DAA.), CONSULTANT 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition.
- D. CONSULTANT 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 DAA for the purpose of investigation to ascertain compliance with the Equal Employment Practices provisions of CITY contracts. Upon request, CONSULTANT shall provide evidence that he or she has or will comply therewith.
- E. The failure of any CONSULTANT to comply with the Equal Employment Practices provisions of this CONTRACT may be deemed to be a material breach of CITY contracts. The 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 DAA. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard have been given to CONSULTANT.

- F. Upon a finding duly made that CONSULTANT has failed to comply with the Equal Employment Practices provisions of a CITY contract, the CONTRACT may be forthwith canceled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, the failure to comply may be the basis for a determination by the Awarding Authority or the DAA that said CONSULTANT is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of the City of Los Angeles Administrative Code, et seq. In the event of such a determination, CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until CONSULTANT shall establish and carry out a program in conformance with the provisions hereof.
- G. Notwithstanding any other provision of this CONTRACT, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. The Board of Public Works shall promulgate rules and regulations through the DAA, and provide necessary forms and require language to the Awarding Authorities to be included in City Request for Bids or Requests 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. By affixing its signature on a Contract that is subject to this article, the CONSULTANT

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, including, but not limited to:

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 similar 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 subconsultants as are applicable to the CONSULTANT. Subcontracts shall follow the same thresholds specified in Section 10.8.1.1. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all 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 CONTRACT with the CITY.

### 16.3 Affirmative Action Program

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

A. During the performance of a CITY contract, CONSULTANT certifies and represents that

CONSULTANT and each subconsultant hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
  2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
  3. CONSULTANT shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONSULTANT will, in all solicitations or advertisements for employees placed, by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- C. At the request of the Awarding Authority or the DAA, CONSULTANT shall certify on an electronic or hard copy form to be supplied, that CONSULTANT has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, color, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.
- D. CONSULTANT shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the



Awarding Authority or the DAA, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of CITY contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

- E. The failure of any CONSULTANT to comply with the Affirmative Action Program provisions of CITY contracts may be deemed to be a material breach of a CITY contract. The 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 DAA. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONSULTANT.
- F. Upon a finding duly made that CONSULTANT has breached the Affirmative Action Program provisions of a CITY contract, the CONTRACT may be forthwith cancelled, terminated or suspended, in whole or in part, by the Awarding Authority, and all monies due or to become due hereunder may be forwarded to and retained by the CITY. In addition thereto, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the said CONSULTANT is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of the City of Los Angeles Administrative Code, et seq. In the event of such determination, such CONSULTANT shall be disqualified from being awarded a contract with the CITY for a period of two (2) years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONSULTANT has been guilty of willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program

provisions of a CITY contract, there may be deducted from the amount payable to CONSULTANT by the CITY under the contract, a penalty of ten dollars (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a CITY contract.

- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
  - I. The Public Works Board of Commissioners shall promulgate rules and regulations through the DAA and provide to the Awarding Authority electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of CITY contracts, and 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 this contract compliance program.
  - J. Nothing contained in CITY contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
  - K. By affixing its signature to a Contract that is subject to this article, the CONSULTANT shall agree to adhere to the provisions in this article for the duration of the CONTRACT. The Awarding Authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan.
1. The CONSULTANT certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the CONSULTANT's field of work. The CONSULTANT

shall:

- (a) Recruit and make efforts to obtain employees through:
  - (i) Advertising employment opportunities in minority and other community news media or other publications.
  - (ii) Notifying minority, women and other community organizations of employment opportunities.
  - (iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.
  - (iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.
  - (v) Promoting after school and vacation employment opportunities for minority, women and other youth.
  - (vi) Validating all job specifications, selection requirements, tests, etc.
  - (vii) Maintaining a file of the names and addresses of each worker referred to the CONSULTANT and what action was taken concerning the worker.
  - (viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the CONSULTANT 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 non-discriminatory 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 the training programs to enhance their skills and advancement.

- (d) Secure cooperation or compliance from the labor referral agency to the CONSULTANT'S contractual Affirmative Action Program obligations.
  - (e) Establish a person at the management level of the CONSULTANT to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the CONSULTANT'S Equal Employment and Affirmative Action Program policies.
  - (f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.
  - (g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the CONSULTANT may become involved in fulfilling any of its Contracts.
  - (h) Document its good faith efforts to correct any deficiencies when problems are experienced by the CONSULTANT in complying with its obligations pursuant to this article. The CONSULTANT shall state:
    - (i) What steps were taken, how and on what date.
    - (ii) To whom those efforts were directed.
    - (iii) The responses received, from whom and when.
    - (iv) What other steps were taken or will be taken to comply and when.
    - (v) Why the CONSULTANT has been or will be unable to comply.
2. Every contract of \$25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the

requirements of Section [10.13](#) of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Awarding Authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of Contractors, Subcontractors and suppliers of all racial and ethnic groups; provided, however, that any contract subject to this ordinance shall require the CONSULTANT, subconsultant or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the CONSULTANT'S, subconsultant's or supplier's geographical area for such work;
6. The entry of qualified women, minority and all other journeymen into the industry; and
7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

M. Any adjustments which may be made in the CSULTANT'S work force to achieve the requirements of the CITY'S Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.



- N. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by Consultants engaged in the performance of CITY Contracts.
- O. All Consultants subject to the provisions of this section shall include a similar 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 subconsultants as are applicable to the CONSULTANT. Failure of the CONSULTANT to comply with this requirement or to obtain the compliance of its subconsultants with all 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 CONTRACT with the CITY.

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

No Change to This Article.

**ARTICLE 18 – SUCCESSORS AND ASSIGNS**

No Change to This Article.

**ARTICLE 19 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION**

Modify this Article to read as follows:

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: Dan Seto  
Address: Information and Control Systems Division  
2714 Media Center Drive, M/S 911  
Los Angeles, California 90065

To CONSULTANT:

Contact Person: CFO with copy to General Counsel  
Address: ABB Enterprise Software, Inc.  
400 Perimeter Center Terrace Suite 500  
Atlanta, GA 30346

#### **ARTICLE 20 – FORCE MAJEURE**

No Change to This Article.

#### **ARTICLE 21 – SEVERABILITY**

No Change to This Article.

#### **ARTICLE 22 – DISPUTES**

No Change to This Article.

#### **ARTICLE 23 – ENTIRE AGREEMENT**

No Change to This Article.

#### **ARTICLE 24 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT**

Modify this Article to read as follows:

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 and its performance shall be enforced and interpreted

under the laws of the State of California. All causes of action arising directly or indirectly from the business relationship evidenced by this AGREEMENT must be filed in the appropriate state or federal court located in Los Angeles County, California, and each party agrees to be subject to the jurisdiction of the State of California regardless of their residence. CONSULTANT shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this AGREEMENT.

If any part, term or provision of this AGREEMENT is 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**

No Change to This Article.

#### **ARTICLE 26 – BONDS**

No Change to This Article.

#### **ARTICLE 27 – CHILD SUPPORT ASSIGNMENT ORDERS**

No Change to This Article.

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

No Change to This Article.

#### **ARTICLE 29 – AMERICANS WITH DISABILITIES ACT**

No Change to This Article.

**ARTICLE 30 – EQUAL BENEFITS ORDINANCE**

No Change to This Article.

**ARTICLE 31 – WAIVER**

No Change to This Article.

**ARTICLE 32 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION**

No Change to This Article.

**ARTICLE 33 – PERMITS**

No Change to This Article.

**ARTICLE 34 – DISCOUNTS**

No Change to This Article.

**ARTICLE 35 – CONTRACTOR RESPONSIBILITY ORDINANCE**

No Change to this Article.

**ARTICLE 36 – BREACH**

No Change to This Article.

**ARTICLE 37 – SLAVERY DISCLOSURE ORDINANCE**

No Change to This Article.

**ARTICLE 38 – CONTRACTOR PERFORMANCE EVALUATION ORDINANCE**

No Change to This Article.

**ARTICLE 39 - CLAIMS FOR LABOR AND MATERIALS**

No Change to This Article.

**ARTICLE 40 – MUNICIPAL LOBBYING ORDINANCE**

No Change to This Article.

## **ARTICLE 41 – FIRST HIRING SOURCE ORDINANCE**

Modify this Article to read as follows:

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.

CONSULTANT shall, prior to the execution of the CONTRACT, provide to the Designated Administrative Agency (DAA) a list of anticipated employment opportunities that CONSULTANT estimate they will need to fill in order to perform the services under the CONTRACT. The Department of Public Works Office of Contract Compliance is the DAA.

CONSULTANT further pledges that it will, during the term of the CONTRACT, shall a) At least seven (7) business days prior to making an announcement of a specific employment opportunity, provide notifications of that employment opportunity to the Economic Workforce and Development Department (EWDD), which will refer individuals for interview; b) Interview qualified individuals referred by EWDD; 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 why referred individuals were not hired.

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.

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.

**(ADD) ARTICLE 42 - COMPLIANCE WITH LOS ANGELES CITY CHARTER  
SECTION 470(C)(12) FOR MEASURE H/ CONTRACTOR CONTRIBUTIONS/  
FUNDRAISING**

Article 42 is hereby added as follows:

The CONSULTANT, Subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected CITY officials or candidates for elected CITY office if the contract is valued at \$100,000 or more and requires approval of a CITY elected official. Additionally, CONSULTANT is required to provide and update certain information to the CITY as specified by law. Any CONSULTANT subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this CONTRACT:

## Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are subcontractor on City of Los Angeles contract #\_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the City contract is signed. Subcontractor is required to provide to contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to contractor within 5 business days. Failure to comply may result in termination of contract or any other available legal remedies includes fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213/978-1960.

CONSULTANT, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the CITY to terminate this AGREEMENT and pursue any and all legal remedies that may be available.

### **(ADD) ARTICLE 43 - IRAN CONTRACTING ACT OF 2010**

Article 43 is hereby added as follows:

In accordance with California Public Contract Code Sections 2200-2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the Iran Contracting Act of 2010 Compliance Affidavit.

### **(ADD) ARTICLE 44 - RATIFICATION**

Article 44 is hereby added as follows:

If at the CITY's written request CONSULTANT continues performance of the services specified herein prior to the execution of this AGREEMENT, to the extent that such services were performed in accordance with the terms and conditions of the Agreement, the CITY hereby

acknowledges the services previously performed by CONSULTANT and ratifies  
CONSULTANT'S performance of said services.

**(ADD) ARTICLE 45 INTELLECTUAL PROPERTY WARRANTY**

Article 45 is hereby added as follows:

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

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

**CITY OF LOS ANGELES**

**ABB ENTERPRISE SOFTWARE INC.**

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: President, Board of Public Works Title: General Manager

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

Michael N. Feuer, City Attorney

By: \_\_\_\_\_

Adena Hopenstand

Title: Deputy City Attorney

Date: \_\_\_\_\_

**ATTEST**

Holly Wolcott, 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/AEstimated 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 contact

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 meaningful opportunity for MBE/WBE/OBE participation.

7 Is this a: ☐ New Contract ☒ Renewal ☐ Other Amendment8 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 [Signature] Initials☐ Recommendation Disapproved                      Initials

Comment: \_\_\_\_\_

By: [Signature]Date: 10/8/08Tel No. 213-978-0665

L. Smith - LA MISC  
Executive Director

RLM + AM...  
PNE...  
PNE...