



ANTONIO R. VILLARAIGOSA
Mayor

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RONALD O. NICHOLS
General Manager

May 29, 2013

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

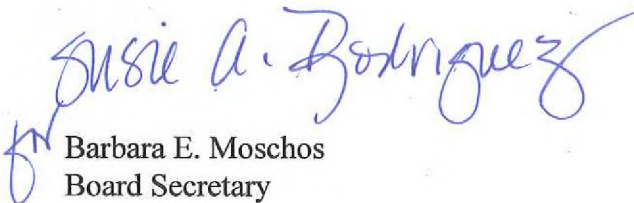
Honorable Members:

Subject: Agreement No. 47183-3 with OSIssoft, LLC

Pursuant to Charter Section 373, enclosed for approval by your Honorable Body is Resolution No. 013 278, adopted by the Board of Water and Power Commissioners (Board) on May 24, 2013, approved as to form and legality by the City Attorney, which authorizes execution of Agreement No. 47183-3 for PI Historian System Maintenance Program with OSIssoft, LLC for a total amount not to exceed \$7,394,900 for a term of three years with two one-year options to renew. As directed by the Board, transmitted to you are supporting documents.

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

Sincerely,


Barbara E. Moschos
Board Secretary

BEM:oja

Enclosures: LADWP Resolution
Board Letter
Agreement No. 47183-3

Water and Power Conservation ... a way of life

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



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

WHEREAS, the Los Angeles Department of Water and Power (LADWP) requires a sole source Agreement with OSIssoft, LLC (OSIssoft), to purchase renewal of software licenses, software maintenance, and proprietary and technical support services for the PI Historian System (PI) Maintenance Program; and

WHEREAS, the PI Maintenance Program is a pivotal component of information for engineering and operation analysis for the Power System; and

WHEREAS, the LADWP proposes to enter into Agreement No. 47183-3 (Agreement) with OSIssoft for a term of three years, with two one-year options to renew, for a maximum expenditure not to exceed an amount of \$7,394,900; and

WHEREAS, OSIssoft has reviewed the services to be provided by OSIssoft incorporated in this Agreement, and represents that it has the qualities, expertise, skills, and abilities to perform such work; and

WHEREAS, the term of this Agreement exceeds the total contract time period set by ordinance, and in accordance with City Charter Section 373, City Council approval is required.

NOW, THEREFORE, BE IT RESOLVED that Agreement No. 47183-3 between LADWP and OSIssoft, is approved as to form and legality by the City Attorney and filed with the Secretary of the Board between LADWP and OSIssoft, be and the same is hereby approved.

BE IT FURTHER RESOLVED that competitive bidding will be undesirable, impossible, or impractical pursuant to City Charter Section 371(e)10.

BE IT FURTHER RESOLVED that pursuant to City Charter Section 1022, the Board finds that the services covered under this Agreement are for expert services and can be performed more feasibly by an independent contractor than by City employees.

BE IT FURTHER RESOLVED that the President or Vice President, or the General Manager, or such person as the President shall designate in writing, and the Secretary, Assistant Secretary, or Acting Secretary of the Board be and they are hereby authorized, empowered, and directed to execute said Agreement No. 47183-3 for and on behalf of LADWP.

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

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

MAY 24 2013


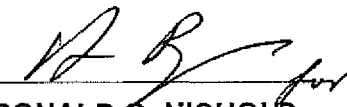
APPROVED AS TO FORM AND LEGALITY
CARMEN A. TRUTANICH, CITY ATTORNEY

MAY 14 2013

bi _____
DIRK BROERSMA
DEPUTY CITY ATTORNEY

Susie A. Rodriguez
ASSISTANT BOARD SECRETARY

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

TO: BOARD OF WATER AND POWER COMMISSIONERS	DATE: May 10, 2013	
<div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  <hr style="width: 80%; margin: 0 auto;"/> ARAM BENYAMIN Senior Assistant General Manager – Power System </div> <div style="text-align: center;">  <hr style="width: 80%; margin: 0 auto;"/> RONALD O. NICHOLS General Manager </div> </div>	SUBJECT: <p align="center"> Agreement No. 47183-3 PI Historian System Maintenance Program Contract With: OSIssoft, LLC San Leandro, CA </p>	
	FOR COMMISSION OFFICE USE: <p align="center">RESOLUTION NO. _____</p>	
CITY COUNCIL APPROVAL REQUIRED: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	IF YES, BY WHICH CITY CHARTER SECTION: 373	

- New Contract
- Replacement Contract
- Amendment to Existing Contract

PURPOSE

Transmitted for approval by your Honorable Board is a Resolution, approved as to form and legality by the City Attorney, recommending to the Los Angeles City Council approval of Agreement No. 47183-3 (Agreement) between LADWP and OSIssoft, LLC (OSIssoft) to purchase renewal of software licenses, software maintenance, and proprietary and technical support services for the PI Historian System (PI) Maintenance Program. The proposed Agreement is to be awarded under Solicitation Letter No. 90095.

The proposed Agreement will provide LADWP with the following services: renewal of software licenses, software maintenance, and proprietary and technical support services for the PI Maintenance Program, proprietary training services that are required for train-the-trainer, end user training, and system implementation, as well as programming training, and transfer-of-knowledge to LADWP personnel. Services will be provided on an as-needed basis, only after it is determined that LADWP resources are unavailable or do not possess the required specialized expertise needed. It is expected that LADWP personnel will be used to support and expand the non-proprietary use of OSIssoft PI Historian System in the future.

COST AND DURATION

The total contract expenditure shall not exceed \$7,394,900.00 for a period of three years with two (2) one-year option to renew. This contract also includes the purchase of \$3.5 million in

additional licenses to extend the software to monitor additional substations and additional generation facilities to provide additional information, to improve management, and to improve maintenance of the Power System.

	Year 1	Year 2	Year 3	Year 4 (Opt.)	Year 5 (Opt.)
Software License Fee	\$1,846,225	\$1,846,225	\$0	\$0	\$0
Maintenance and Training Services	\$738,490	\$738,490	\$738,490	\$738,490	\$738,490
Travel Expenses Allocation*	\$45,000	\$23,000	\$23,000	\$15,000	\$15,000
Contingency Cost** (Maximum up to)				\$150,000	\$150,000
Annual Due	\$2,599,715	2,599.715	\$753,490	\$903,490	\$903,490

*This training and service expenses are calculated according to Exhibit L Software License Agreement, Appendix B (LADWP Travel and Living Expenses) for five weeks periods (25 working days) per year.

** Not to exceed specified amount which covers CPI increases, additional licenses not included under each license, and change in Exhibit L, Appendix A (Initial Licensee Affiliates, Assets and Asset Capacities).

BACKGROUND

LADWP released a Request for Proposal in 2005 to determine a “best-of-breed” product to provide a central data repository for Supervisory Control And Data Acquisition (SCADA), substations, generation, transmission, and other Power System data as required by business needs. A pilot system using OSIsoft PI Historian System was implemented in November 2005, which provided a significant amount of real-time data from LADWP’s SCADA System and Substation Automation Project for reporting and analysis.

A study by the Electric Power Research Institute (EPRI) was commissioned in 2005 to evaluate LADWP’s operation. EPRI strongly recommended that LADWP fully implement the OSIsoft PI Historian System software for the Energy Control System Historical Information System (ECSHIS). The EPRI Study Recommendation No. 13, Capital Improvement for System Reliability, requested the acceleration of the PI installation.

According to the memorandum dated August 7, 2006, from the LADWP General Manager to the Board of Water and Power Commissioners (Board), the Power System is required to continue operating the PI application for improved communication with customers, particularly during crisis situations. From 2006 until 2008, the PI system remained operational while terms of an extended maintenance agreement were being arranged.

On July 1, 2008, sole source maintenance Agreement No. 47725-8 was awarded by the Board and Los Angeles City Council to OSIsoft. This current contract with OSIsoft will expire on June 30, 2013.

The proposed Agreement will be a similar three-year base contract with two (2) one-year options to renew. Due to the proprietary nature of the maintenance services, including source code modifications and licensing, a sole source Agreement is being recommended.

Charter Section 1022

Consistent with City Charter Section 1022, the expert maintenance and support services required by PI are more feasibly performed by outside professional services. Non-proprietary services are anticipated to be temporary and intermittent in nature; therefore, LADWP will be trained to perform such services.

Los Angeles City Council Approval (City Council)

Per Charter Section 373, City Council approval is required when contracts with one vendor exceeds the time period set by ordinance. This Agreement with OSIssoft may result in a five-year contract, therefore, City Council approval is required. Due to time-sensitive operational needs, an Executive Directive No. 4 waiver was granted by the Mayor's Office on May 7, 2013. A City Administrative Officer report will be provided for City Council review prior to final consideration of this item.

M/W/OBE SUBCONTRACTING PARTICIPATION

This sole source Agreement is for procuring proprietary software and maintenance services from OSIssoft. As a result, there are no subcontracting opportunities under this contract.

LOCAL BUSINESS PREFERENCE PROGRAM (LBPP)

This is a sole source procurement for OSIssoft proprietary software and maintenance. Therefore LBPP is not applicable to this Agreement.

METHOD OF SELECTION

Competitive Cooperative Purchase Sole Source Single Source

OSIssoft is the sole provider of LADWP's PI Historian software. OSIssoft provides proprietary services, owns the source code necessary to make changes to the software, ensures that changes are made to the software, and provides proprietary support for enhancements and fixes to the core software and system interfaces. Additionally, OSIssoft licenses the software for LADWP's use. Therefore, pursuant to City Charter Section 371(e)(10), it has been determined that the competitive bidding process is not practical or advantageous for these services.

CONTRACT AND VENDOR HISTORY

Vendor History – OSI					
Contract/ PO No.	Contract Description	Term of Contract	Start Date	Ending Date	Contract Amount
47725-8	PI Historian System Maintenance Program	5 years	July 1, 2008	June 30, 2013	\$4,887,373.75

ENVIRONMENTAL DETERMINATION:

In accordance with the California Environmental Quality Act (CEQA), it has been determined that software, maintenance, and technical support services is exempt pursuant to the General Exemptions described in CEQA Guidelines Section 5061(b)(3), where it can be seen with certainty that there is no possibility that the services provided may have a significant effect on the environment.

RECOMMENDATION

It is recommended that your Honorable Board adopt the attached Resolution authorizing execution of Agreement No. 47183-3 between LADWP and OSISoft regarding procedures related to the usage of this Agreement.

AC:rr/ps

Attachments

e-c/att: Ronald O. Nichols
Richard M. Brown
Aram Benyamin
James B. McDaniel
Philip Leiber
Gary Wong
Marvin D. Moon
Aram Chavdarian

PROFESSIONAL SERVICES AGREEMENT

Consultant: *OSIsoft, LLC*

Subject: *PI Historian Maintenance Program*

Agreement Number: *47183-3*

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PI HISTORIAN MAINTENANCE PROGRAM

THIS AGREEMENT FOR PI HISTORIAN MAINTENANCE PROGRAM ("*Agreement*"), is entered into this ___ day of May, 2013 by and between the LOS ANGELES DEPARTMENT OF WATER AND POWER (the "*LADWP*"), acting by and through the BOARD OF WATER AND POWER COMMISSIONERS ("*Board*"), and OSISOFT, LLC, a Delaware corporation with a principal place of business at 777 Davis Street, Suite 250, San Leandro, California 94577 ("*Contractor*").

WHEREAS, Contractor is in the business of developing and licensing software (including the Real-time Performance Management (RtPM) Platform); and

WHEREAS, the parties intend for this Agreement to serve as a Master Agreement for the Term (defined in Section 13 below); and

WHEREAS, the parties desire to amend the Prior Order and to have the terms and conditions of this Agreement replace the terms and conditions of the Prior Order in their entirety.

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

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

a) **“Authorized Subcontractor”** shall mean a subcontractor or service provider of Contractor who has been approved by the LADWP beforehand and in writing to carry out any part of Contractor’s obligations under this Agreement.

b) **“Background Technology”** shall have the meaning assigned to it in Subsection 17(b) (“Background Technology and Inventions”).

c) **“Board”** shall mean Board of Water and Power Commissioners.

d) **“Change Order”** shall have the meaning assigned to it in Section 3 (“CHANGE ORDER PROCESS”).

e) **“Confidential Information”** shall have the meaning assigned to it in Subsection 18(a) (“Protection”).

f) **“Contract Administrator”** shall mean the LADWP’s representative who has been identified as such from time to time by the LADWP, and who shall have authority to act for the LADWP under this Agreement.

g) **“Contractor’s Quality Assurance Program”** shall mean that program, if any, described as such in EXHIBIT D (“CONTRACTOR’S QUALITY ASSURANCE PROGRAM”).

h) **“Covered Services”** shall mean services Contractor provides as part of its standard Software maintenance and support services and standard training services, as shown in Exhibits J, L and N. The term “Covered Services” does not include “Services.”

i) **“Deliverables”** shall mean the Services pursuant to a Statement of Work if mutually agreed to by the parties. The term “Deliverables” will be limited to the providing of installation services, configuration services and custom training services by Contractor to the LADWP. The term “Deliverables” will not be construed to include, cover or apply to any Existing Software or Updates to such software or to the Covered Services.

j) **“LADWP Work Product”** (Section Intentionally Deleted.)

k) **“Developed Software”** (Section Intentionally Deleted.)

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

m) **“Documentation”** shall mean Contractor’s standard product documentation for the Existing Software, which is loaded onto a compact disc, and including without limitation all updates of Documentation, and that Contractor makes available to its customers free of charge.

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

o) **“Error”** shall mean a failure of any Deliverable to conform with the

specifications mutually agreed to by the parties or a failure of the Licensed Software to comply with Contractor's accompanying documentation in all material respects.

p) "**Escrow Agent**" shall have the meaning assigned to it in **Subsection 18(f)** ("**Escrow**").

q) "**Escrow Agreement**" shall mean the Master Preferred Escrow Agreement, dated December 1, 2000 that Contractor has entered into with Escrow Agent, a copy of which is attached as **EXHIBIT C** ("**ESCROW AGREEMENT**").

r) "**Escrow Materials**" shall mean the software and other materials that Contractor has previously deposited with the Escrow Agent under the Escrow Agreement.

s) "**Existing Software**" shall mean all Software, of Contractor, which exists as of the Effective Date, and to which pursuant to this Agreement, LADWP desires to obtain license rights to certain of such software as specified herein. Such Existing Software will be identified herein or in an Order (as defined in Section 3) submitted by LADWP and accepted by Contractor. The term "Existing Software" will also be extended to include the subject matter covered by the Prior Order and such extension shall be effective as of the Prior Order Date (defined above in the recitals).

t) "**Fees**" shall mean those amounts to be paid to Contractor hereunder, and which are described as such in a Statement of Work.

u) "**Force Majeure**" shall have the meaning assigned to it in **SECTION 11** ("**FORCE MAJEURE**").

v) "**Hardware**" (Section Intentionally Deleted.)

w) "**Hardware Maintenance**" (Section Intentionally Deleted.)

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

y) "**Invention**" shall mean any and all trade secrets, inventions, mask works, ideas, processes, formulae, Source Codes, Object Codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques coming into existence after the Effective Date which do not relate to the Existing Software and which Contractor develops for the LADWP pursuant to a mutually agreed upon Statement of Work.

z) "**Invoice**" shall have the meaning assigned to it in **Subsection 12 (c)** ("**Protection**").

aa) "**Job Cost Report**" (Section Intentionally Deleted.)

bb) "**Maintenance**" shall mean **Software Maintenance**.

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

dd) "**Prior Work Product**" shall have the meaning assigned to it in **Subsection 17 (a)** ("**Disclosure of Work Product**").

ee) "**Project Plan**" shall mean that portion of the SOW specifying the

Deliverables and the Schedule (including without limitation all start and end dates for all Tasks).

ff) **"Proprietary Rights"** (Section Intentionally Deleted.)

gg) **"Receiving Party"** shall have the meaning assigned to it in **Subsection 18 (a)** (**"Invoices"**).

hh) **"Response"** shall mean Contractor's written response to the SL in **EXHIBIT F ("RESPONSE")**.

ii) **"RFP"** shall mean the LADWP's "Request for Proposal", number [____], or "Request for Bid", number [____].

jj) **"Schedule"** shall mean the schedule of Deliverables, dates and Fees described in a Statement of Work as mutually agreed to by the parties.

kk) **"Services"** shall mean collectively, the Tasks described in each Statement of Work, if mutually agreed to by the parties. The term "Services" will not include the Covered Services.

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

mm) **"Software"** shall mean the Existing Software and all Documentation.

nn) **"Software Maintenance"** shall have the meaning assigned to it in **Subsection 20(b)** (**"Software Maintenance"**).

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

pp) **"Specifications"** shall mean collectively all operational, functional or other specifications with respect to any Deliverables, and those specifications described as such in a Statement of Work and the Response, each of which as mutually agreed to by the parties. The term "Specifications" shall not include any Documentation.

qq) **"Statement of Work"** shall mean the description of the Tasks to be carried out by Contractor (if any), the Deliverables to be provided by Contractor (if any), the Schedule to be met by Contractor, and the Fees to be paid, all as mutually agreed to by the parties, and in the format described in **EXHIBIT A ("STATEMENT OF WORK")**.

rr) **"Task Assignment"** shall mean a written description of work activity provided by the LADWP and mutually agreed to by the parties describing work to be carried out by Contractor, and consisting of at least one (1) Task and an associated Fee.

ss) **"Tasks"** shall mean the smallest units of work activity described under each Statement of Work.

tt) **"Update"** shall mean a modification of or addition to the Licensed Software as specified in **EXHIBIT J**.

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

vv) **“Work Product”** shall have the meaning assigned to it in **Subsection 17** (**“RIGHTS IN WORK PRODUCT AND LICENSES”**).

2. DELIVERABLES.

a) **Services.** If the parties desire for Contractor to perform Services, for LADWP (other than the Covered Services), the parties will enter into a separate agreement or a Statement of Work governing the providing of such Services.

b) **Hardware.** Contractor will not be delivering any hardware to LADWP.

c) **Software.**

i) **Existing Software.**

Contractor shall provide Existing Software according to the Statement of Work and the terms and conditions of the Software License and Services Agreement attached hereto as EXHIBIT A (Statement of Work) and EXHIBIT L (Software License Agreement), respectively. Any Existing Software received by LADWP via FTP or other electronic delivery method will be governed by this Agreement even if no reference to this Agreement is made in connection with such electronic delivery. Any “click-wrap” or other terms or conditions which are presented to LADWP’s users during the FTP or other electronic delivery process will be superseded by this Agreement, unless such software is designated as trial, test or beta software. All Existing Software will be delivered ex works or FOB Contractor. The rights granted in this Agreement and all risk of loss will transfer to LADWP upon shipment or transmission of the Existing

Software. Contractor will replace copies of Existing Software that are lost or damaged in transit without additional charge.

ii) **Developed Software.**

(Section Intentionally Deleted)

d) **Documentation.** Contractor shall prepare and deliver to the LADWP reasonable number of copies of the Documentation.

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

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

g) **Permits.** If applicable, if any permits or licenses are necessary for Contractor’s performance hereunder and shall pay any third party fees required therefor, the

LADWP shall inform Contractor about such permits or licenses and the parties shall mutually agree in writing on which party shall bear the cost to obtain such permits and licenses.

3. CHANGE ORDER PROCESS.

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

b) **No Obligation.** EXCEPT AS PROVIDED IN THIS SECTION 3, IF THE PARTIES DESIRE FOR CONTRACTOR TO PERFORM SERVICES FOR THE LADWP AND HAVE ENTERED INTO A STATEMENT OF WORK, THE LADWP SHALL HAVE NO OBLIGATION TO PAY, AND SHALL NOT PAY, ANY

INCREASE IN FEES FOR THE PERFORMANCE OF SUCH SERVICES REGARDLESS OF ANY ADDITIONAL WORK CARRIED OUT UNDER SUCH STATEMENT OF WORK BEYOND THAT WHICH IS EXPRESSLY DESCRIBED IN SUCH STATEMENT OF WORK.

4. PACKING AND SHIPMENT.

a) **Packing.** If the parties mutually agree to delivery of the Existing Software in tangible form, Contractor agrees to pack the Existing Software to be shipped hereunder in suitable containers for protection in shipment and storage. If applicable, each container of a multiple container shipment shall be identified so as to:

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

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

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

b) **Packing Sheets.** All shipments of Deliverables by Contractor or its Authorized Subcontractors must include written packing sheets identifying (as applicable): the Agreement number, the purchase order, item number; quantity and unit of measure; part number and description of the Deliverables shipped; and appropriate evidence of inspection, if required by the LADWP. Only Deliverables pursuant to a Statement of Work or Existing Software pursuant to an Order, as applicable, covered by this Agreement shall be listed on any particular packing sheet, and items under any other contracts between the LADWP and

Contractor shall not be included thereon.

5. DELIVERY. Contractor shall only deliver the number of copies of the Existing Software specified in a mutually agreed upon Order. If contractor delivers in excess of the quantities specified in such order, the LADWP shall not be required to make any payment for the excess, and may at the LADWP's discretion dispose of such excess, return such excess to contractor at contractor's expense and risk, or make such excess available for pick-up by contractor.

6. SUBSTITUTIONS AND QUALITY.

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

b) Quality. The Contractor's work in providing the Services shall reflect competent professional knowledge, judgment, and accepted industry practice. Subject to **SECTION 13 ("TERM AND TERMINATION")**, the Contractor shall promptly correct, or remedy any work, errors, or omissions relating to such Services, at its sole expense, which do not conform to the provisions of this Agreement. This Section 6(b) shall be subject to the provisions of Section 21(b) (Services).

c) Drawing Quality. (Section Intentionally Deleted.)

d) Professional Licensure and Certification. (Section Intentionally Deleted.)

7. DELIVERY, INSPECTION, ACCEPTANCE AND REJECTION.

a) Delivery. Contractor shall deliver the Existing Software as specified in a mutually agreed upon Order to such addresses as may be from time to time specified by the LADWP. If mutually agreed to by the parties, Contractor shall deliver all Deliverables according to the Schedule to such addresses as may be from time to time specified by the LADWP.

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

c) Acceptance and Rejection. Upon the completion of the inspection and testing described in **Subsection 7(b) ("Inspection")**, the LADWP shall inform Contractor of whether the corresponding

Deliverables are accepted by the LADWP. Any failure of the LADWP to provide such notice within sixty (60) days of delivery shall be deemed a acceptance thereof. the Contractor shall remove all rejected Deliverables promptly, and in no event later than five (5) days after such rejection. The LADWP shall be free to dispose of any Deliverables which are not so removed. Acceptance of Deliverables shall not be construed to waive any warranty rights that the LADWP might have at law or by this Agreement.

d) Quality Program. (Section Intentionally Deleted.)

e) Facilities. (Section Intentionally Deleted.)

8. SAMPLES. (Section Intentionally Deleted.)

9. SAFETY AND ACCIDENT PREVENTION. The LADWP agrees to provide a suitable and safe environment at its facilities with respect to services if the parties mutually agree that such services will be provided under this agreement if applicable, in performing work under this Agreement, contractor shall conform to all specific safety requirements contained in the Agreement and as required by law or regulation. If applicable, contractor shall take any additional precautions as the LADWP may reasonably require for safety and accident prevention purposes, and shall at all times exercise reasonable and prudent judgment with respect thereto. Any violation of such requirements, laws or regulations shall be considered a material breach of this agreement.

10. PERSONNEL.

a) Information. The Department shall

provide reasonably necessary representatives with authority to act on the LADWP's behalf with respect to approvals, requests, and meeting scheduling.

b) Capacity. Contractor shall use commercially reasonable efforts to insure that the size of the staff employed by the Contractor in its performance hereunder (if such staff are necessary) shall be reasonably adequate in number and quality at all times to perform the work required by this Agreement.

c) Identification. If the parties desire for Contractor to perform Services for LADWP and have mutually agreed upon a Statement of Work, the Contractor shall furnish the LADWP from time to time upon request the names, titles, and qualifications of its key project personnel and subcontractors, including without limitation individual resumes, and the tasks to be performed by such individuals. Upon receipt of such request, the Contractor shall respond within two (2) business days.

d) Approval. (Section Intentionally Deleted.)

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

11. FORCE MAJEURE. If either party is unable to perform its obligations because of causes beyond its reasonable control including but not limited to strikes, lockouts, labor disputes, embargos, acts of God, governmental regulations, judicial orders, enemy or hostile governmental action ("Force Majeure"), then such party shall immediately notify the other party in writing, and such party's performance shall be suspended for the period equal to the period

time of such cause for suspension of performance, provided that, the foregoing shall not apply to either party's obligation to make a payment hereunder.

12. FEES, INVOICES AND PAYMENT.

a) **Fees.** If applicable, the LADWP shall pay the Fees described in each Statement of Work for Services and Deliverables which have been accepted by the LADWP. Contractor will send an invoice to the LADWP for such Services and Deliverables. Any Fees for Services specified in a Statement of Work shall not increase for the duration of the Statement of Work, unless expressly agreed to otherwise by the LADWP. Unless expressly stated in a Statement of Work, all salaries, wages, or other payments (including without limitation any overtime) to any third parties, Authorized Subcontractors or employees, shall be the sole responsibility of the Contractor, and the Contractor hereby agrees to fully indemnify, defend and hold harmless the LADWP with respect thereto.

a.1) **Fees for Existing Software; Fees for Covered Services.** The Department shall pay the fees and expenses for the Existing Software that is specified herein, in an Exhibit to this Agreement and/or in an Order. Contractor will send an invoice to the LADWP for such Existing Software. The LADWP shall pay the fees for maintenance, support and training as specified herein or in an Exhibit to this Agreement. Contractor will send an invoice to the LADWP for such Covered Services.

b) **Travel and Costs.** If travel is required and is mutually agreed to by the parties, travel time of the Contractor's personnel shall not be charged to, or paid by, the LADWP without the LADWP's prior written consent. Unless otherwise agreed to

by the parties in writing, any allowed travel time shall be at the LADWP's own normal rates, without allowance for premium or overtime.

c) **Invoices.** Upon the LADWP's acceptance of each shipment of Deliverables (including without limitation acceptance of completed Services, if any), the LADWP shall so notify Contractor, and Contractor shall issue a written invoice to the LADWP with respect thereto. The term "Invoice" will include such invoices as well as invoices that Contractor sends to the LADWP for the Existing Software. Each such Invoice shall meet all the invoice criteria described in **Exhibit G ("Invoice Criteria")**, and shall contain the contract/purchase order number, the vendor code number, the City of Los Angeles Business Tax Registration Certificate Number, and the identification of material, equipment and/or services covered by the Invoices. In all cases the amount of applicable sales tax or use tax shall be separately stated on the Invoice. All Invoices shall be accompanied by such written documentation as the LADWP may reasonably require in order to support the amount and calculation of all corresponding Fees. Except for Invoices for any annual maintenance and support subscription fees, Invoices for Services (if applicable) shall be issued monthly for all Services provided during the immediately preceding month.

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

Fees under any Invoices, the LADWP agrees to make payment of all undisputed amounts as hereinabove provided. All fees or other amounts are non-cancelable, non-contingent and non-refundable except as expressly stated in this Agreement. LADWP will pay all amounts due under this Agreement in U.S. currency. Except for taxes paid by Contractor on its net income, all amounts due pursuant to an Invoice are net of, and LADWP will be solely responsible for, any shipping charges, withholding, use, sales, value-added, import and any other taxes, fees, tariffs or duties associated with this Agreement or LADWP's use of the Existing Software and maintenance and support.

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

f) Taxpayer Identification Number. Contractor hereby represents and warrants that its TIN is **94-2690532**. No Fees shall be payable or paid to Contractor unless and until such TIN is verified by the LADWP as valid.

g) Third Party Claims. To the extent applicable, Contractor shall promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Agreement so as to prevent any lien or other claim under any provision of law from arising against any LADWP property (including reports, documents, and other tangible matter or Deliverables produced

hereunder), against the Contractor's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

h) Most Favored Customer. (Section Intentionally Deleted.)

13. TERM AND TERMINATION.

a.1) Term The term of this Agreement ("Term") shall commence upon the Effective Date of this Agreement and shall expire three (3) years thereafter, unless earlier terminated as hereinafter provided.

a.2) Renewal Option At the Department's sole option, the term of this Agreement may be extended for up to an additional two (2) years, exercisable in yearly increments, or any portion thereof, upon 30 days prior written notice to Contractor of such intent to renew.

b) Termination without Cause. Termination by the LADWP. This Agreement may be terminated by the LADWP, without cause, upon written notice. Upon receipt of such notice, the Contractor shall immediately stop all work pursuant to a Statement of Work (if any) and shall cease providing any services (if any) under this Agreement. The Contractor shall be entitled to payment of Fees for all Deliverables completed, including without limitation Services provided (if any and in both cases where accepted by the LADWP), until the date of such notice, for any unpaid license fees for the Existing Software and any unpaid fees for maintenance and support, and also for reimbursement for reasonable and documented re-stocking charges imposed on Contractor by third party suppliers due to such termination, where such charges have been called to the LADWP's attention

beforehand and in writing. The Contractor shall then deliver to the LADWP, in an organized and usable form, all Deliverables "work in process" as of such date (if any).

c) Termination for Material Breach.

Either party may terminate this Agreement upon notice, in whole or in part, for the material breach of this Agreement by the other party (including without limitation, in the case of Contractor, any such breach by Contractor's Authorized Subcontractors) which has remained uncured for a period of thirty (30) days from the date of notice thereof to the breaching party. Without limiting the generality of the foregoing: (i) any late payment of Fees by the LADWP shall not, in and of itself, be deemed a material breach of this Agreement only in such cases where late payment of Fees does not exceed ninety (90) days; and (ii) any failure of Contractor to timely perform Services or deliver other Deliverables according to any Schedule and this Agreement, shall be deemed a material breach hereof, and in such case the LADWP shall also have the right to reject all such Deliverables. In the case of such late performance or delivery by Contractor, the LADWP may, in addition to any rights and remedies the LADWP may also have, require Contractor, at Contractor's expense, to ship any Deliverables via air freight or by other expedited routing means (at no cost to the LADWP) to avoid or minimize actual or potential delay.

d) Disqualification. In the event Contractor receives one (1) or more notices of material breach as described in **Subsection 13(c) ("Termination for Material Breach")**, whether such material breaches are cured or not, the LADWP may consider such material breaches when deciding to award future contracts.

e) Remedies Not Exclusive. (Section Intentionally Deleted.)

f) Right of Offset. (Section Intentionally Deleted.)

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

h) Errors and Omissions. For ninety (90) days after services are performed (if any), the Contractor will be responsible for correcting or remedying any failure of Contractor's performance of the services under this Agreement (if any) to comply with the applicable Statement of Work. The cost of correcting or remedying any such failure to comply shall be borne by the Contractor. Revising Contractor-prepared documents at the request of the LADWP to incorporate comments by the public or by agencies having jurisdiction in matters of the particular task assignment is not considered to be a remedy of such failure to comply, but is considered an integral part of document preparation which may be called for by a Task Assignment.

14. TAXES. Unless otherwise required by law, the LADWP is exempt from Federal excise taxes. The LADWP will only pay for

any State or local sales or use taxes on the Services rendered, the Existing Software being licensed hereunder under an Order, and other Deliverables supplied to the LADWP pursuant to this Agreement.

15. NEWLY MANUFACTURED DELIVERABLES. If Contract provides tangible Deliverables, All tangible Deliverables furnished under this Agreement shall contain only newly manufactured items. Used or reconditioned Deliverables are prohibited, unless otherwise expressly agreed to by the LADWP in a corresponding Statement of Work.

16. RECORDS AND AUDIT.

a) Records and Audits. Incorporated by Reference. See Exhibit K

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

c) Right to Review. The LADWP reserves the right to review any portion of the Services performed by the Contractor under this Agreement (if any), and the Contractor agrees to cooperate to the fullest extent. Contractor shall furnish to the LADWP such reports, statistical data, and other information

pertaining to the Contractor's Services (if any) as shall be reasonably required by the LADWP. The right of the LADWP to conduct such review shall not relieve the Contractor of any obligation set forth herein.

17. RIGHTS IN LICENSES.

a) Disclosure of Work Product. (Section Intentionally Deleted.)

b) Background Technology and Inventions. (Section Intentionally Deleted.)

c) Assignment and License. (Section Intentionally Deleted.)

d) Waiver or Assignment of Rights. (Section Intentionally Deleted.)

e) Continuing Assurances and Enforcement. (Section Intentionally Deleted.)

f) Future Development. This Agreement shall not preclude the Contractor from developing materials outside this Agreement that are competitive with, irrespective of their similarity to, Deliverables which are delivered to the LADWP pursuant to this Agreement.

g) Existing Software License. (Section Intentionally Deleted.)

g.1) "Licensed Software" shall mean the Existing Software and related documentation, as specified herein or in an Order mutually agreed to by the parties, ordered and paid for by the LADWP. The rights granted by Contractor to the LADWP for the Licensed Software shall be as specified in **Exhibit L (Software License Agreement)**.

g.2) No Background Technology; No Prior

Work Product The parties agree and acknowledge that, for purposes of this Agreement, there is no "Background Technology" and there is no "Prior Work Product." Consequently, those terms will not be applicable to and will be deemed to be deleted from this Agreement.

h) Documentation License. (Section Intentionally Deleted.)

18. CONFIDENTIAL INFORMATION AND SOURCE CODE ESCROW.

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

b) Protection of Confidential Information. Except as expressly permitted by this Agreement, the Receiving Party shall not disclose the Confidential Information of the Disclosing Party (using the same degree of care which the Receiving Party ordinarily uses with respect to its own proprietary information, but in no event with less than

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

c) State Law Requirements - Protection for Personal Information. (Section Inserted.) State law (See S.B. 1386 and A.B. 1950) requires a person or entity that owns or licenses computerized data that includes personal information, of a California resident, to disclose any breach of the data base security system and to

implement and maintain procedures and practices to protect personal information from unauthorized access, destruction, use, modification, or disclosure and, shall require by contract, that non-affiliated third party recipients of such personal information, implement and maintain security procedures and practices to protect the personal information. Accordingly, vendor agrees to implement and maintain such security procedures and practices, in conformance with S.B. 1386 and A.B. 1950, with respect to any personal identification information received under this agreement, as well as notify the City of any breach in security. In addition, vendor shall not share, disclose, or in anyway transfer the personal identification information without the written approval of the LADWP.

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

be consistent with City Charter, Sections 271, 272 and 273.

d) Exceptions. Notwithstanding anything herein to the contrary, Confidential Information shall not be deemed to include any information which: **(i)** was already lawfully known to the Receiving Party at the time of disclosure by the Disclosing Party as reflected in the written records of the Receiving Party; **(ii)** was or has been disclosed by the Disclosing Party to a third party without obligation of confidence; **(iii)** was or becomes lawfully known to the general public without breach of this Agreement; **(iv)** is independently developed by the Receiving Party without access to, or use of, the Confidential Information; **(v)** is approved in writing by the Disclosing Party for disclosure by the Receiving Party; **(vi)** is required to be disclosed in order for the Receiving Party to enforce its rights under this Agreement; or **(vii)** is required to be disclosed by law or by the order of a court or similar judicial or administrative body; provided, however, that the Receiving Party shall notify the Disclosing Party of such requirement immediately and in writing, and shall cooperate reasonably with the Disclosing Party, at the Disclosing Party's expense, in the obtaining of a protective or similar order with respect thereto.

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

f) **Escrow.** (Section Modified.)

(i) **Preferred Beneficiary.**

The term "Escrow Agent" or "Approved Escrow Agent" shall mean DSI Technology Escrow Services. Contractor will add the LADWP as a preferred beneficiary to Contractor's existing escrow arrangement with the Escrow Agent under the Escrow Agreement for the first year that this Agreement is in effect. The LADWP, Contractor and Escrow Agent will enter into the preferred beneficiary acceptance form attached as **Exhibit M ("Preferred Beneficiary Acceptance Form")**. For subsequent years that this Agreement is in effect, Contractor shall retain the LADWP as a preferred beneficiary.

(ii) **License Grant.**

Subject to SECTION 18 ("CONFIDENTIAL INFORMATION AND SOURCE CODE ESCROW"), Contractor hereby grants to LADWP a perpetual, irrevocable, non-exclusive, royalty-free, fully paid up, non-transferable (except as provided in **Subsection 24(j) ("Assignment")**) license with respect to the Escrow Materials (including without limitation all Proprietary Rights therein) to use, execute, copy and modify such Escrow Materials solely as reasonably necessary or desirable in order to exercise the LADWP's rights under **Section 17(b)** of this Agreement. Notwithstanding anything to the contrary herein, however, LADWP understands and agrees that it shall not exercise the license granted in this **Subsection 18(f)(ii) ("License Grant")** with respect to the Escrow Materials unless and until the Escrow Materials are released to LADWP pursuant to the Escrow Agreement.

(iii) **Escrow Verification Services.** General escrow services as described in Section 18-F of the Agreement are included in Standard Escrow Services as

described above. LADWP may, at its option, request that the escrow services used by OSISoft provide additional specific escrow verification services at LADWP's sole expense (Escrow Verification Services) from time to time not to exceed once per year, which shall consist of a complete compilation and testing of the source code and object code, if any, on file with the Approved Escrow Agent. LADWP will then receive the results of such Escrow Verification Services."

19. THIRD PARTY BODILY INJURY AND PROPERTY DAMAGE, INTELLECTUAL PROPERTY AND DELIVERABLES INDEMNITY.

a) **Indemnity.** Subject to the provisions of Section 19(b) below and if Contractor provides Services under this Agreement, Contractor agrees that from and after the Effective Date it shall fully indemnify, and defend the LADWP, the Board, and its and their affiliates, officers, directors, agents, employees, customers and assigns (the "**Indemnified Parties**") from and against any and all actions by a third party due to Contractor's negligence and willful misconduct in performing such Services and will pay any costs, damages and reasonable attorneys' fees attributable to such claim, provided that, the LADWP shall notify Contractor promptly of any third party claim in connection with the foregoing, shall cooperate reasonably with Contractor in connection therewith and shall provide Contractor with all assistance, information and authority reasonably required by Contractor (at Contractor's expense), in the defense or settlement of the foregoing. The LADWP shall have the right at its own expense to be represented in any action related to the foregoing by counsel of its own

choice, and shall cooperate reasonably with Contractor with respect to such litigation.

Subject to the provisions of Section 19(b) below, Contractor will defend any action brought against the LADWP to the extent that it is based upon a claim that the Licensed Software infringe any U.S. patent, copyright or trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded or paid in settlement in any such action, provided that: (i) the LADWP notifies the Contractor within 30 days in writing of the claim; and (ii) the LADWP provides Contractor with all assistance, information and authority reasonably required for the defense and settlement of the claim, at Contractor's expense.

Contractor will have no liability for infringement claims of any kind arising from: (i) any use of the Licensed Software beyond the scope of this Agreement; (ii) the LADWP's use of the Licensed Software in combination with any products not developed by Contractor, if the basis for the claim is such combined use; (iii) the LADWP's failure to use updated or modified versions of the Licensed Products provided or made available by Contractor without additional charge; or (iv) Contractor's compliance with designs or specifications provided by the LADWP. THE PROVISIONS OF THIS SECTION 19(a) SET FORTH CONTRACTOR'S SOLE AND EXCLUSIVE OBLIGATIONS AND THE LADWP'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

b) Control. In Contractor's defense of the LADWP, negotiation, compromise, and settlement of any foregoing infringement or misappropriation action, the LADWP shall

retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the Los Angeles City Charter, particularly Article II, Sections 271, 272 and 273 thereof. If Contractor settles with a third party who brings a claim or action under Section 19(a) above and such settlement does not require the LADWP to pay any amounts to such third party that are in addition to the amounts paid or payable by the LADWP to Contractor under this Agreement, as of such date of settlement and thereafter, Contractor shall not have any further liability or obligation (including but not limited to the obligation to defend or further defend against the claim brought by such third party) to the LADWP relating to or in connection with this Section 19 irrespective of whether the LADWP agrees with or consents to such settlement.

c) Bonds. (Section Intentionally Deleted.)

d) Claims and Remediation. If Contractor receives notice of a claim, demand, threat, suit or proceeding regarding the type of intellectual property infringement or misappropriation specified in **Section 19(a)**, or if in Contractor's judgment such a claim is likely, Contractor may, at its sole option and expense, procure for LADWP the right to continue using, the Deliverables, or the Licensed Software, replace or modify the Deliverables or the Licensed Software so that they are no longer infringing but retains substantially the same functionality (the replacement or modification for the Deliverables shall, upon acceptance by the LADWP, be considered Deliverables), or if neither of the options described above can be accomplished despite Contractor's reasonable efforts, then Contractor may terminate the LADWP' rights and

Contractor's obligations hereunder with respect to such Deliverable and/or Licensed Software and refund to the LADWP the unamortized portion of the fees paid for such Deliverable or Licensed Software, based upon a straight-line five (5) year depreciation commencing as of the date the LADWP received such Deliverable or Licensed Software.

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

20. MAINTENANCE AND SUPPORT.

a) **Hardware Maintenance.** (Section Intentionally Deleted.)

b) **Software Maintenance.** (Section Modified.) For so long as LADWP pays Contractor's applicable Software Reliance Program fees, Contractor shall provide Software Maintenance which shall consist of those activities and services described as such in **EXHIBIT J ("Software Maintenance")**. The terms and conditions for the Software Reliance Program will be provided upon request. Contractor shall use reasonable measures to provide Software Maintenance hereunder in a reasonably timely manner. Any failure of Contractor to provide such Software Maintenance within a reasonable time period shall thereupon suspend the obligation of the LADWP to pay the pro rata portion of associated fees.

c) **Failure to Provide Maintenance.** (Section Intentionally Deleted.)

d) **Availability.** (Section Intentionally Deleted.)

21. WARRANTIES.

a) **Deliverables.** If Contractor provides Services under this Agreement, Contractor hereby represents and warrants that the Deliverables (but not including Services) shall materially conform to the specifications mutually agreed upon by the parties for a period of one (1) year after delivery. If and as applicable, as the LADWP's sole and exclusive remedy and Contractor's entire liability for any breach of the foregoing warranty, Contractor will repair or replace, at no additional charge to the LADWP, any Deliverables that fail to meet this limited warranty. Subject to LADWP's advance payment of the applicable Software Reliance Program (SRP) fees such repair and replace will include any Updates, Bug Fixes or other Replacement Software as applicable. The limited warranty set forth herein shall automatically become null and void if a party other than Contractor modifies the Deliverables in any way.

b) **Services.** If Contractor provides Services under this Agreement, Contractor represents and warrants that for ninety (90) days after performance, Contractor shall have performed such Services in a professional and workmanlike manner, in accordance with the practices of Contractor's industry. If and as applicable, as the LADWP's sole and exclusive remedy and Contractor's entire liability for any breach of the foregoing warranty, Contractor will re-perform, at no additional charge to the LADWP, any such Services that fail to meet this limited warranty.

b.1) Licensed Software.

Contractor warrants that, for a period of one (1) year after delivery of the Licensed Software, the Licensed Software will function in accordance with Contractor's

accompanying documentation in all material respects. As LADWP's sole and exclusive remedy and Contractor's entire liability for any breach of the foregoing warranty, Contractor will repair or replace, at no additional charge to LADWP, any Licensed Software that fail to meet this limited warranty. The limited warranty set forth herein shall automatically become null and void if a party other than Contractor modifies the Licensed Software in any way.

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

d) Viruses. Contractor represents and warrants that it has exercised and shall exercise commercially reasonable efforts to

ensure that no viruses, "Trojan Horses", "Worms" or other damaging, dangerous or objectionable code (collectively, "Viruses") are included with the Deliverables (if any) or the Licensed Software. Notwithstanding the foregoing, in no event will any mechanism employed in the software to prevent use beyond that granted in this Agreement be deemed to be a Virus.

e) Disclaimer. EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION 21, CONTRACTOR MAKES NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NONINFRINGEMENT.

22. LIMITATION OF LIABILITY. EVEN IF ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE AND REGARDLESS OF WHETHER A CLAIM ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) NOR SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY HEREUNDER EXCEED THE TOTAL

LICENSE FEES PAID BY THE LADWP TO CONTRACTOR UNDER THIS AGREEMENT DURING THE TRAILING 12 MONTH PERIOD OR ONE MILLION DOLLARS (\$1,000,000), WHICHEVER IS GREATER. THE PARTIES EXPRESSLY AGREE THAT THE ALLOCATION OF RISK CONTAINED IN THIS SECTION IS AN ESSENTIAL BASIS OF THIS AGREEMENT.

23. SURVIVAL AND ORDER OF PRECEDENCE. In the event of any expiration or termination of this Agreement, the provisions of Section 1 (“Definitions”), Subsection 3(b) (“No Obligation”), Section 13 (“Term and Termination”), Section 16 (“Records and Audit”), Section 17 (“Rights and Licenses”), Section 18 (“Confidential Information and Source Code Escrow”) (except for 18(f) (“Escrow”)), Section 19 (“Intellectual Property and Deliverables Indemnity”), Section 21 (“Warranties”) for the remainder of term of the warranties specified therein, Section 22 (“Limitation of Liability”), Section 23 (“Survival and Order of Precedence”), and Section 24 (“General”) shall survive and shall continue to bind the parties. In the event of any expiration or termination of this Agreement, the parties agree to return or at the other party’s request destroy all of the other party’s Confidential Information within three (3) business days, and without limiting the foregoing, LADWP will return or at Contractor’s request destroy all copies of the Licensed Software within its possession or control. In the event of any conflict between the terms of this Agreement and the terms of any exhibit, the terms of the exhibit shall control. In the event of any conflict between the following documents, all of which are hereby incorporated by reference into this Agreement, the order of precedence shall be as follows:

- a. Any Amendment
- b. Agreement
- c. Other referenced documents
- d. Response

23.1 AMENDMENT OF PRIOR ORDER. (Section Inserted.) THE PARTIES HEREBY AMEND THE PRIOR ORDER (DEFINED ABOVE IN THE RECITALS) AND, BY ENTERING INTO THIS AGREEMENT, THE TERMS AND CONDITIONS HEREIN HEREBY REPLACE AND SUPERSEDE THE TERMS AND CONDITIONS OF THE PRIOR ORDER IN THEIR ENTIRETY. THE TERMS AND CONDITIONS IN THIS AGREEMENT AS APPLIED TO THE SUBJECT MATTER COVERED BY THE PRIOR ORDER SHALL BE EFFECTIVE AS OF THE PRIOR ORDER DATE (DEFINED ABOVE IN THE RECITALS).

24. GENERAL.

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

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

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

d) Injunctive Relief. (Section Intentionally Deleted.)

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

LOS ANGELES DEPARTMENT OF WATER AND POWER

Mr. Ali Morabbi
Substations and Engineering Services
Manager,
111 North Hope Street, Room 905
Los Angeles, California 90012-2694

With a Copy To:

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

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

OSIsoft, Inc.
Attn: Jason Scully, General Counsel
777 Davis Street, Suite 250
San Leandro, California 94577

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

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

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

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

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

j) Assignment. Neither this Agreement nor any rights or obligations of a party hereunder may be assigned in whole or in part without the prior written approval of the other party, provided however, that subject to the LADWP providing Contractor with prior written notice, the LADWP shall have the right to assign this Agreement to a party that acquires assets from the LADWP which involve the use of the Existing Software if such party agrees in writing to be bound by the terms and conditions of Contractor's standard Software License and Services Agreement. Contractor may require any assignee to update all Licensed Software to the then-current version and purchase one year of Software Reliance Program Covered

Services at Contractor's then-current rate. Except as otherwise specified in writing by Contractor in its consent to assign this Agreement, Orders submitted by the assignee will be in accordance with Contractor's then current list price. For the purposes of this Subsection 24(j) ("Assignment"), a change in the persons or entities who control fifty percent (50%) or more of the equity securities or voting interest of a party shall be deemed to be an assignment. Any attempted assignment or deemed assignment, whether by operation of law or otherwise without complying with this subsection shall be null and void.

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

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

m) Entire Agreement. This Agreement together with the Exhibits hereto completely and exclusively states the agreement of the parties regarding its subject matter. This Agreement supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment or exhibit signed on behalf of the LADWP and Contractor by their duly authorized representatives. Any purported oral

amendment to this Agreement shall have no effect.

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


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INTENTIONALLY.**

AGREED TO:

DEPARTMENT OF WATER AND
POWER OF THE CITY OF LOS
ANGELES BY BOARD OF WATER AND
POWER COMMISSIONERS OF THE
CITY OF LOS ANGELES

For: OSIsoft, LLC

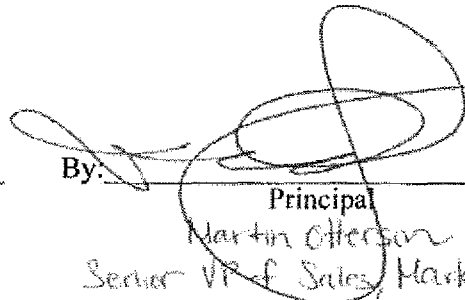
By: _____
RONALD O. NICHOLS
General Manager

By:  _____
Principal
Jenny Linton
President

Date: _____

Date: 5/15/13

And: _____
BARBARA E. MOSCHOS
Secretary

By:  _____
Principal
Martin Otterson
Senior VP of Sales, Marketing & Industry

Date: 5/15/13

EXHIBIT A STATEMENT OF WORK

WHEREAS, the OSIssoft shall provide standard software maintenance support (Covered Services), proprietary training and PI Historian software licnese as specified in Exhibit L Software License Agreement.

1. HARDWARE

Please refer to Exhibit I Hardware Maintenance

2. SOFTWARE

For Standard Support Services Provided for Software Maintenance, please refer to Exhibit J. Software Maintenance And Licensing (Covered Services).

2.1. Annual Enterprise Maintemance Services and Fee

LADWP's annual Enterprise Services subscription price shall be equal to 20% ("*Enterprise Services Rate*") of the License Fee Basis.

"*License Fee Basis*" shall be the Initial License Fee plus any additional license fees paid hereunder for Enterprise Infrastructure

2.2. Initial License and Fee

LADWP shall receive Enterprise Infrastructure for the Assets specified in Appendix A ("*Assets*") of Exhibit L Software License Agreement for an initial license fee of **\$3,692,450**, payable in equal installments on the Effective Date and first anniversary of the Effective Date.

2.3. Additional Software Licensing and Fee

Licensing and Enterprise Services Rate Adjustments are described in Exhibit L Software License Agreement, section 4.1.

2.4 Training Services and Fee

Exhibit L Software License Agreement, subsection 2.2 (h) describes Training and Fees under this contract.

3. FEES SCHEDULE

License for Assets specified in Appendix A of Exhibit L Software License Agreement

	Year 1	Year 2	Year 3	Year 4 (Opt.)	Year 5 (Opt.)
Software License Fee	\$1,846,225	\$1,846,225	\$0	\$0	\$0
Maintenance and Training Services	\$738,490	\$738,490	\$738,490	\$738,490	\$738,490
Travel Expenses Allocation*	\$45,000	\$23,000	\$23,000	\$15,000	\$15,000
Contingency Cost** (Maximum up to)				\$150,000	\$150,000
Annual Due	\$2,599,715	2,599.715	\$753,490	\$903,490	\$903,490

*This training and service expenses are calculated according to Exhibit L Software License Agreement, Appendix B (LADWP Travel and Living Expenses) for five weeks periods (25 working days) per year.

** Not to exceed specified amount which covers CPI increases, additional licenses not included under EA license, and change in Exhibit L, Appendix A (Initial Licensee Affiliates, Assets and Asset Capacities).

4. SUMMARY OF SERVICES TO BE PROVIDED UNDER THIS AGREEMENT

Details of Maintenance and license servies to be provided under this agreement are specified in Exhibit L Software License Agreement, section 2. (Enterprise Services) and section 3. (Enterprise Licensing).

EXHIBIT B GOVERNMENT AND INSURANCE TERMS

The parties agree that the following Section 1 (Business Policies) will only apply if the parties mutually agree that Contractor will provide Services (other than the Covered Services) to LADWP.

1. Business Policies.

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

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

B. The Contractor shall submit all written documents on paper with a minimum of 30 percent post-consumer recycled content. Existing company/corporate letterhead/stationery that accompanies these documents is exempt from this requirement. Documents of two or more pages in length shall be duplex-copied (double-sided pages). Neon or fluorescent paper shall not be used in any written documents submitted to the LADWP. Contractor makes user manuals available in electronic form free of charge. LADWP acknowledges and agrees that as a condition to Contractor's compliance with this provision, LADWP will not order paper manuals.

1.2 Non-Discrimination and Equal Employment Practices.

The proposer shall not discriminate in employment practices against any employee or applicant for employment because of race, religion, national origin, sex, age, or physical handicap. The proposer shall complete, sign, and submit to the Department the "Non-Discrimination and Equal Employment Practices" (2 pages) affidavit.

1.3 Affirmative Action Plan

The proposer shall have an Affirmative Action Plan on file with the Director of Supply Chain Services. The proposer shall comply with the requirements of the City of Los Angeles and shall complete, sign, and submit to the Department the "Affirmative Action Plan" (3 pages) affidavit.

An Affirmative Action Plan shall be in effect and on file with the Department for the duration of the contract period.

1.4 Equal Benefits Ordinance

Unless otherwise exempted in accordance with the provisions of this Ordinance, this

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

1. During the performance of the Contract, the CONSULTANT certifies and represents that the CONSULTANT will comply with the EBO. The CONSULTANT agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

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

2. The failure of the CONSULTANT to comply with the EBO will be deemed to be a material breach of the Contract by the Awarding Authority.

3. If the CONSULTANT fails to comply with the EBO the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

4. Failure to comply with the EBO may be used as evidence against the CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

5. If the Bureau of Contract Administration determines that a CONSULTANT has set up or used its Contracting entity for the purpose of evading the intent of the EBO, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the CONSULTANT in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

1.5 Contractor Responsibility Program

Unless otherwise exempt in accordance with the provisions of the Ordinance, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of the Los Angeles Administrative Code, which requires CONSULTANT to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect CONSULTANT'S fitness and ability to continue performing the contract. In accordance with the provisions of this Ordinance, by signing this Contract, CONSULTANT pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. The CONSULTANT further agrees to:

1. Notify the awarding authority within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the CONSULTANT is not in compliance with all applicable federal, state and local laws in performance of this contract;
2. Notify the awarding authority within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the CONSULTANT has violated the provisions of Section 10.40.3(a) of the Ordinance;
3. Ensure that its subcontractor(s), as defined in the Ordinance, submit a Pledge of Compliance to awarding authorities; and
4. Ensure that its subcontractor(s), as defined in the Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify Awarding Authorities within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Ordinance in performance of the subcontract.

1.6 Americans with Disabilities Act

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

1.7 Contributions and Fundraising Limits

The Agreement is subject to Charter section 470(c)(12) and related ordinances. As a result, Consultants may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the time they submit the response until either the contract is approved or, for successful Consultants, 12 months after the contract is signed. The Consultant's principals and subcontractors performing \$100,000 or more in work on the contract, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

As part of their Agreement to the Department, Consultants shall complete, sign, and submit the City Ethics Commission's "CEC Form 50" (1 page) and "CEC Form 55" (3 pages) affidavits. The affidavits require Consultants to identify their principals, their subcontractors performing \$100,000 or more in work on the contract, and the principals of those subcontractors. Consultants must also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. Agreements submitted without completed "CEC Form 50" and "CEC Form 55" affidavits shall be deemed nonresponsive. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org.

1.8 Iran Contracting Act of 2010

In accordance with California Public Contract Code Sections 2200-2208, all Consultants entering into, or renewing contracts with the LADWP for goods and services estimated at one million dollars (\$1,000,000) or more shall complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit" (1 page).

1.9 Service Contract Worker Retention Ordinance and Living Wage Policy

Unless otherwise exempt in accordance with the provisions of this Ordinance, this contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., of the Los Angeles Administrative Code, as amended from time to time.

1. CONSULTANT assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of benefits as defined in the LWO.
2. CONSULTANT further pledges that it will comply with federal law proscribing retaliation for union organizing and will not retaliate for activities related to the

LWO. CONSULTANT shall require each of its Subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONSULTANT shall receive and retain on file the executed pledges from each such Subcontractor within ninety (90) days of the execution of the Subcontract. CONSULTANT'S evidence of executed pledges from each such Subcontractor shall fully discharge the obligation of the CONSULTANT to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.

3. The CONSULTANT, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONSULTANT shall post the Notice of Prohibition Against Retaliation provided by the City.
4. Any Subcontract entered into by the CONSULTANT relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the LWO and SCWRO.
5. CONSULTANT shall comply with all rules, regulations and policies promulgated by the designated administrative agency, which may be amended from time to time.

Under the provisions of Section 10.36.3(c) and Section 10.37.5(c) of the Los Angeles Administrative Code, the City shall have the authority, under appropriate circumstances, to terminate this contract and otherwise pursue legal remedies that may be available if the City determines that the subject CONSULTANT has violated provisions of the LWO and the SCWRO or both.

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

Earned Income Tax Credit

This contract is subject to the provisions of Section 10.37.4 of the Los Angeles Administrative Code, requiring employers to inform employees making less than Twelve Dollars (\$12.00) per hour of their possible right to the federal Earned Income Tax Credit (EITC). Employers must further make available to employees the forms required to secure advance EITC payments from employers.

1.10 Child Support Policy

The Consultant and any subconsultant(s) must fully comply with all applicable State and Federal employment reporting requirements for the Consultant's and any subconsultant(s)' employees. The Consultant and any subconsultant(s) must fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. The Consultant and any subconsultant(s) must certify that the principal owner(s) thereof (any person who owns an interest of 10 percent or more) are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. The Consultant and any subconsultant(s) must certify that such compliance will be maintained throughout the term of this Agreement.

Failure of the Consultant and/or any subconsultant(s) to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under this Agreement. Failure of the Consultant and/or any subconsultant(s) or principal owner(s) thereof to cure the default within ninety (90) calendar days of notice of such default by the Department shall subject this Agreement to termination.

The Consultant will contractually require all subconsultants performing services under this Agreement to comply with the provisions of this section.

2. Insurance Requirements.

2.1 Insurance

A. General Statement

Acceptable evidence of required insurance, from insurers acceptable to the Department, is required to be submitted by the Contractor and must be maintained current by the Contractor throughout the term of this Agreement. Said evidence of insurance must be on file with the Risk Management Section in order to receive payment under any agreement for services rendered, and in order to commence work under this Agreement.

B. Applicable Terms and Conditions

1. Additional Insured Status Required

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

2. Severability of Interests and Cross Liability Required

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

3. Primary and Non-Contributory Insurance Required

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

4. Deductibles Subject to Department's Discretion

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

5. Proof of Insurance for Renewal or Extension Required

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

6. Submission of Acceptable Proof of Insurance and Notice of Cancellation

Contractor shall provide proof to the Risk Manager of all specified insurance and related requirements either by production of the actual insurance policy(ies), by use of Department's own endorsement form(s), by other written evidence of insurance acceptable to the Risk Manager, but always in a form acceptable to the Risk Manager and the Office of the City Attorney. The documents evidencing all specified coverage shall be filed with the Department prior to Contractor beginning operations hereunder. Said proof shall contain at a minimum, the applicable policy number, the inclusive dates of policy coverage, the date the protection begins for the Department, and the insurance carrier's name. It shall bear an original signature of an authorized representative of said carrier, and shall provide that such insurance shall not be subject to cancellation, material reduction

in coverage or non-renewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) calendar days prior to the effective date thereof. The notification shall be sent by registered mail to: The Office of the City Attorney, Water and Power Division, Post Office Box 51111, JFB Room 340, Los Angeles, California 90051-0100.

7. Claims-Made Insurance Conditions

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

8. Failure to Maintain and Provide as Cause for Termination

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

9. Periodic Right to Review/Update Insurance Requirements

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

10. Specific Insurance Requirements

See Exhibit O, "Contract Insurance Amount Requirements."

C. Worker's Compensation

By signing this Agreement, Contractor hereby certifies that it is aware of the provisions of Section 3700 et. seq., of the Labor Code which requires every

employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all such times as they may apply during performance of the work pursuant to this Agreement.

EXHIBIT C ESCROW AGREEMENT

MASTER PREFERRED ESCROW AGREEMENT

Master Number _____

This Agreement is effective ____ among DSI Technology Escrow Services, Inc. ("DSI"), __OSIsoft, LLC__ ("Depositor") and any additional party signing the Acceptance Form attached to this Agreement ("Preferred Beneficiary"), who collectively may be referred to in this Agreement as "the parties."

A. Depositor and Preferred Beneficiary have entered or will enter into a license agreement, development agreement, and/or other agreement regarding certain proprietary technology of Depositor (referred to in this Agreement as "the License Agreement").

B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.

C. Depositor and Preferred Beneficiary desire to establish an escrow with DSI to provide for the retention, administration and controlled access of certain proprietary technology materials of Depositor.

ARTICLE 1 -- DEPOSITS

1.1 Obligation to Make Deposit. Within a reasonable time following the signing of this Agreement by the parties, including the signing of the Acceptance Form, Depositor shall deliver to DSI the proprietary technology and other materials ("Deposit Materials") required to be deposited by the License Agreement or, if the License Agreement does not identify the materials to be deposited with DSI, then such materials will be identified on an Appendix A. If Appendix A is applicable, it is to be prepared and signed by Depositor and Preferred Beneficiary. DSI shall have no obligation with respect to the preparation, signing or delivery of Appendix A.

1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to DSI, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Deposit Materials are written or stored. Additionally, Depositor shall complete Appendix B to this Agreement by listing each such tangible media by the item label description, the type of media and the quantity. The Appendix B must be signed by Depositor and delivered to DSI with the Deposit Materials. Unless and until Depositor makes the initial deposit with DSI, DSI shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the deposit account as required in Section 2.2 below.

1.3 Deposit Inspection. When DSI receives the Deposit Materials and the Appendix B, DSI will conduct a deposit inspection by visually matching the labeling of the tangible media containing the Deposit Materials to the item descriptions and quantity listed on the Appendix B. In addition to the deposit inspection, Preferred Beneficiary may elect to cause a verification of the Deposit Materials in accordance with Section 1.6 below.

1.4 Acceptance of Deposit. At completion of the deposit inspection, if DSI determines that the labeling of the tangible media matches the item descriptions and quantity on Appendix B, DSI will date and sign the Appendix B and mail a copy thereof to Depositor and Preferred Beneficiary. If DSI determines that the labeling does not match the item descriptions or quantity on the Appendix B, DSI will (a) note the discrepancies in writing on the Appendix B; (b) date and sign the Appendix B with the exceptions noted; and (c) mail a copy of the Appendix B to Depositor and Preferred Beneficiary. DSI's acceptance of the deposit occurs upon the signing of the Appendix B by DSI. Delivery of the signed Appendix B to Preferred Beneficiary is Preferred Beneficiary's notice that the Deposit Materials have been received and accepted by DSI.

1.5 Depositor's Representations. Depositor represents as follows:

- a. Depositor lawfully possesses all of the Deposit Materials deposited with DSI;
- b. Depositor represents that the Deposit Materials do not infringe the copyright rights or incorporate any misappropriated trade secrets of any third party; and furthermore that to the best of Depositor's knowledge the Deposit Materials do not infringe any U.S. patent;
- b. The Deposit Materials are not subject to any lien or other encumbrance;
- c. The Deposit Materials consist of the proprietary technology and other materials identified either in the License Agreement or Appendix A, as the case may be; and
- d. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials are encrypted, the decryption tools and decryption keys have also been deposited.

1.6 Verification. Preferred Beneficiary shall have the right, at Preferred Beneficiary's expense, to cause a verification of any Deposit Materials. Preferred Beneficiary shall notify Depositor and DSI of Preferred Beneficiary's request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Deposit Materials. If a verification is elected after the Deposit Materials have been delivered to DSI, then only DSI, or at DSI's election an independent person or company selected and supervised by DSI, may perform the verification.

1.7 Deposit Updates. Unless otherwise provided by the License Agreement, Depositor shall update the Deposit Materials within 60 days of each release of a new version of the product which is subject to the License Agreement. Such updates will be added to the existing deposit. All

deposit updates shall be listed on a new Appendix B and the new Appendix B shall be signed by Depositor. Each Appendix B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Appendix B. The processing of all deposit updates shall be in accordance with Sections 1.2 through 1.6 above. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any updates.

1.8 Removal of Deposit Materials. The Deposit Materials may be removed and/or exchanged only on written instructions signed by Depositor and Preferred Beneficiary, or as otherwise provided in this Agreement.

ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

2.1 Confidentiality. DSI shall maintain the Deposit Materials in a secure, environmentally safe, locked facility which is accessible only to authorized representatives of DSI. DSI shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement, DSI shall not disclose, transfer, make available, or use the Deposit Materials. DSI shall not disclose the content of this Agreement to any third party. If DSI receives a subpoena or other order of a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, DSI will immediately notify the parties to this Agreement unless prohibited by law. It shall be the responsibility of Depositor and/or Preferred Beneficiary to challenge any such order; provided, however, that DSI does not waive its rights to present its position with respect to any such order. DSI will not be required to disobey any court or other judicial tribunal order. (See Section 7.5 below for notices of requested orders.)

2.2 Status Reports. DSI will issue to Depositor and Preferred Beneficiary a report profiling the account history at least semi-annually. DSI may provide copies of the account history pertaining to this Agreement upon the request of any party to this Agreement.

2.3 Audit Rights. During the term of this Agreement, Depositor and Preferred Beneficiary shall each have the right to inspect the written records of DSI pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior notice.

ARTICLE 3 -- GRANT OF RIGHTS TO DSI

3.1 Title to Media. Depositor hereby transfers to DSI the title to the media upon which the proprietary technology and materials are written or stored. However, this transfer does not include the ownership of the proprietary technology and materials contained on the media such as any copyright, trade secret, patent or other intellectual property rights.

3.2 Right to Make Copies. DSI shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. DSI shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit Materials onto any copies made

by DSI. With all Deposit Materials submitted to DSI, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials including but not limited to any specialized hardware and/or software needed.

3.3 Right to Transfer Upon Release. Subject to the occurrence of a Release Condition and the terms and conditions of this Agreement, Depositor hereby grants to DSI the right to transfer Deposit Materials to Preferred Beneficiary. Except upon the occurrence of a Release Condition DSI shall not transfer the Deposit Materials to the Preferred Beneficiary.

ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, for each Preferred Beneficiary, "Release Condition" shall have the meaning specified in the Acceptance Form. If no release conditions are contained in the Acceptance Form, then DSI will not be authorized to release the Deposit Materials to Preferred Beneficiary.

4.2 Filing For Release. If Preferred Beneficiary believes in good faith that a Release Condition has occurred, Preferred Beneficiary may provide to DSI written notice of the occurrence of the Release Condition and a request for the release of the Deposit Materials. Upon receipt of such notice, DSI shall provide a copy of the notice to Depositor by commercial express mail.

4.3 Release Authorization. DSI shall not release the Deposit Materials to Preferred Beneficiary until it receives a Release Authorization from Depositor. "Release Authorization" shall mean the written representation by the President of the Depositor that a Release Condition has occurred or has not been cured and that DSI may release the Deposit Materials to Preferred Beneficiary. If DSI does not receive the Release Authorization within ten (10) business days of DSI sending Preferred Beneficiary's notice to Depositor DSI shall notify both Depositor and Preferred Beneficiary that there is a dispute to be resolved pursuant to the Depositor/Beneficiary Dispute Resolution section of this Agreement as specified in Section 7.3. Subject to Section 5.2, DSI will continue to store the Deposit Materials without release pending (a) joint instructions from Depositor and Preferred Beneficiary; (b) resolution pursuant to the Dispute Resolution provisions; or (c) order of a court.

4.4 Release of Deposit. *If DSI receives a Release Authorization from the Depositor, DSI is authorized to release the Deposit Materials to the Preferred Beneficiary or, if more than one beneficiary is registered to the deposit, to release a copy of the Deposit Materials to the Preferred Beneficiary. However, DSI is entitled to receive any fees due DSI before making the release. Any copying expense in excess of \$300 will be chargeable to Preferred Beneficiary. Upon any such release, the escrow arrangement will terminate as it relates to the Depositor and Preferred Beneficiary involved in the release.*

4.5 Right to Use Following Release. Unless otherwise provided in the License Agreement or in the Acceptance Form, upon release of the Deposit Materials in accordance with this Article 4, Preferred Beneficiary shall have the right to use the Deposit Materials for the sole purpose of

continuing the benefits afforded to Preferred Beneficiary by the License Agreement. In any event, Preferred Beneficiary shall be obligated not to disclose the released Deposit Materials to any third party.

ARTICLE 5 -- TERM AND TERMINATION

5.1 Term of Agreement. The initial term of this Agreement is for a period of one year. Thereafter, this Agreement shall automatically renew from year-to-year unless (a) Depositor and Preferred Beneficiary jointly instruct DSI in writing that the Agreement is terminated; (b) Preferred Beneficiary instructs DSI in writing that the Agreement is terminated as it relates to Preferred Beneficiary; or (c) the Agreement is terminated by DSI for nonpayment in accordance with Section 5.2. If the Acceptance Form has been signed at a date later than this Agreement, the initial term of the Acceptance Form will be for one year with subsequent terms to be adjusted to match the anniversary date of this Agreement. If the deposit materials are subject to another escrow agreement with DSI, DSI reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to the parties to this Agreement affected by such delinquency. Any such party shall have the right to make the payment to DSI to cure the default. If the past due payment is not received in full by DSI within one month of the date of such notice, then at any time thereafter DSI shall have the right to terminate this Agreement to the extent it relates to the delinquent party by sending written notice of termination to such affected parties. DSI shall have no obligation to take any action under this Agreement so long as any payment due to DSI remains unpaid.

5.3 Disposition of Deposit Materials Upon Termination. Upon termination of this Agreement, DSI shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, DSI may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. DSI shall have no obligation to return or destroy the Deposit Materials if the Deposit Materials are subject to another escrow agreement with DSI.

5.4 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. Depositor's Representations (Section 1.5);
- b. The obligations of confidentiality with respect to the Deposit Materials;
- c. The rights granted in the sections entitled Right to Transfer Upon Release (Section 3.3) and Right to Use Following Release (Section 4.5), if a release of the Deposit Materials has occurred prior to termination;

- d. The obligation to pay DSI any fees and expenses due;
- e. The provisions of Article 7; and
- f. Any provisions in this Agreement which specifically state they survive the termination or expiration of this Agreement.

ARTICLE 6 -- DSI'S FEES

6.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. DSI shall notify the party responsible for payment of DSI's fees at least 60 days prior to any increase in fees. For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. DSI shall not be required to perform any service unless the payment for such service and any outstanding balances owed to DSI are paid in full. Fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest. If invoiced fees are not paid, DSI may terminate this Agreement in accordance with Section 5.2. Late fees on past due amounts shall accrue interest at the rate of one and one-half percent per month (18% per annum) from the date of the invoice.

ARTICLE 7 -- LIABILITY AND DISPUTES

7.1 Right to Rely on Instructions. DSI may act in reliance upon any instruction, instrument, or signature reasonably believed by DSI to be genuine. DSI may assume that any employee of the Preferred Beneficiary who gives any written notice, request, or instruction has the authority to do so. DSI hereby acknowledges that only the President of Depositor or those identified in writing by the President of Depositor have the authority to give any written notice, request or instructions to DSI. DSI shall not be responsible for failure to act as a result of causes beyond the reasonable control of DSI.

7.2 Indemnification. Depositor and Preferred Beneficiary each agree to indemnify, defend and hold harmless DSI from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by DSI relating in any way to any third party action related to this escrow arrangement unless such Liabilities are adjudged to be caused by the negligence or willful misconduct of DSI or breach of this Agreement by DSI.

7.3 (a) Dispute Resolution. Except as otherwise stated in this Agreement, any dispute relating to or arising from this Agreement shall be resolved by arbitration under the Commercial Rules of the American Arbitration Association. Three arbitrators who have significant experience in the enterprise software industry shall be selected. The Depositor and Preferred Beneficiary shall each select one independent arbitrator and the two chosen arbitrators shall select the third

independent arbitrator, or failing agreement on the selection of the third arbitrator, the American Arbitration Association shall select the third independent arbitrator. However, if DSI is a party to the arbitration, DSI shall select the third independent arbitrator. Arbitration will take place in San Francisco, California, USA. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator(s). The arbitrators shall apply California substantive law to adjudicate any dispute brought by the parties. Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address.

(b) **Equitable Relief.** Notwithstanding the foregoing, Depositor may seek equitable relief in any state or federal court of competent jurisdiction to prevent the release of the Deposit Materials that it believes in good faith is contrary to the terms of this Agreement.

7.4 Controlling Law. This Escrow Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to its conflict of law provisions.

7.5 Notice of Requested Order. If any party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct DSI to take, or refrain from taking any action, that party shall:

- a. Give DSI prior notice of the hearing;
- b. Include in any such order that, as a precondition to DSI's obligation, DSI be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
- c. Ensure that DSI not be required to deliver the original (as opposed to a copy) of the Deposit Materials if DSI may need to retain the original in its possession to fulfill any of its other escrow duties.

ARTICLE 8 -- GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement, which includes the Acceptance Form and the Appendices described herein, embodies the entire understanding among all of the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. DSI is not a party to the License Agreement between Depositor and Preferred Beneficiary and has no knowledge of any of the terms or provisions of any such License Agreement. DSI's only obligations to Depositor or Preferred Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the parties hereto, except that Appendix A need not be signed by DSI, Appendix B need not be signed by Preferred Beneficiary and the Acceptance Form need only be signed by the parties identified therein.

8.2 Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified in the attached Appendix C

and Acceptance Form. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Unless otherwise provided in this Agreement, all documents and communications may be delivered by First Class mail.

8.3 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.4 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, DSI shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Preferred Beneficiary unless DSI receives clear, authoritative and conclusive written evidence of the change of parties.

8.5 Regulations. Depositor and Preferred Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.

_____	DSI Technology Escrow Services, Inc.
Depositor	
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**PREFERRED BENEFICIARY
ACCEPTANCE FORM**

Account Number _____

Depositor, Preferred Beneficiary and DSI Technology Escrow Services, Inc. ("DSI"), hereby acknowledge that _____ is the Preferred Beneficiary referred to in the Master Preferred Escrow Agreement ("Escrow Agreement") effective _____, 20____ ("Effective Date") with DSI as the escrow agent and _____ as the Depositor. Preferred Beneficiary hereby agrees to be bound by all provisions of such Escrow Agreement.

The following provisions are hereby incorporated into the Escrow Agreement. If there is any conflict between this Acceptance Form and the Escrow Agreement, the terms and conditions of this Acceptance Form shall govern. Capitalized terms not defined herein shall have the meaning specified in the Escrow Agreement.

1. Pursuant to Section 4.1 of the Escrow Agreement "*Release Condition*" shall mean:

(a) Depositor has materially failed to provide the maintenance updates and error corrections required by the License Agreement, and such failure remains uncured.

(b) Depositor ceases to do business.

2. This section replaces Section 4.5 of the Escrow Agreement in its entirety:

"4.5 Right to Use Following Release. Upon release of the Deposit Materials, Preferred Beneficiary shall only have the right to use the Deposit Materials as specified in the License Agreement; provided however that Preferred Beneficiary may modify and copy the Deposit Materials for the sole purpose of performing maintenance and error-corrections for Preferred Beneficiary's own internal business purposes. Other than expressly stated herein, Preferred Beneficiary's use of the Deposit Materials shall be subject to all of the restrictions contained in the License Agreement, including without limitation Preferred Beneficiary's obligation not to disclose the Deposit Materials to any third party."

3. This section is hereby inserted as a new Section 6.3 of the Escrow Agreement:

"6.3 Payment by Preferred Beneficiary. Preferred Beneficiary shall pay to Depositor, Depositor's then current escrow maintenance fee on an annual basis by each anniversary of the Effective Date. Depositor shall have the right to remove Preferred Beneficiary from the Escrow Agreement upon notice to Preferred

Beneficiary if such payment is not received by Depositor within thirty (30) days of the date such payments are due."

4. Depositor hereby enrolls Preferred Beneficiary to the following account(s):

Account Number

Account Number

Notices and communications to Preferred Beneficiary should be addressed to:

Invoices should be addressed to:

Company Name: _____
Address: _____

Designated Contact: _____
Telephone: _____
Facsimile: _____

Contact: _____
P.O.#, if required: _____

Preferred Beneficiary

Depositor

By: _____ -
Name: _____ -
Title: _____ -
Date: _____ -

By: _____ -
Name: _____ -
Title: _____ -
Date: _____ -

DSI Technology Escrow Services, Inc.

By: _____
Name: _____
Title: _____
Date: _____

Appendix A

MATERIALS TO BE DEPOSITED

Account Number _____

Depositor represents to Preferred Beneficiary that Deposit Materials delivered to DSI shall consist of the following:

The OSI Programs or Software as defined in the Software License and Services Agreement in effect between Preferred Beneficiary and Depositor.

Depositor

Preferred Beneficiary

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix B

DESCRIPTION OF DEPOSIT MATERIALS

Depositor Company Name _____

Account Number _____

Product Name _____ Version _____

(Product Name will appear as the Appendix B Name on Account History report)

DEPOSIT MATERIAL DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
_____	Disk 3.5" or _____	
_____	DAT tape _____ mm	
_____	CD-ROM	
_____	Data cartridge tape _____	
_____	TK 70 or _____ tape	
_____	Magnetic tape _____	
_____	Documentation	
_____	Other _____	

PRODUCT DESCRIPTION:

Environment _____

DEPOSIT MATERIAL INFORMATION:

Is the media encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

I certify for Depositor that the above described
Deposit Materials have been transmitted to DSI:

DSI has inspected and accepted the above
materials (*any exceptions are noted above*):

Signature _____

Signature _____

Print Name _____

Print Name _____

Date _____

Date Accepted _____

Appendix B# _____

Send materials to: DSI, 9265 Sky Park Court, Suite 202, San Diego, CA 92123 (858) 499-1600

Appendix C

DESIGNATED CONTACT

Master Number _____

Notices and communications
should be addressed to:

Invoices should be addressed to:

Company Name: _____

Address: _____

Designated Contact: _____

Contact: _____

Telephone: _____

Facsimile: _____

P.O.#, if required: _____

Requests to change the designated contact should be given in writing by the designated contact or an authorized employee.

Contracts, Deposit Materials and notices to
DSI should be addressed to:

Invoice inquiries and fee remittances
to DSI should be addressed to:

DSI Technology Escrow Services, Inc.
Contract Administration
9265 Sky Park Court, Suite 202
San Diego, CA 92123

DSI Technology Escrow Services, Inc.
Accounts Receivable
PO Box 45156
San Francisco, CA 94145-0156

Telephone: (858) 499-1600

(858) 499-1636

Facsimile: (858) 694-1919

(858) 499-1637

Date: _____

**ADDITIONAL ESCROW ACCOUNT AMENDMENT
TO MASTER PREFERRED ESCROW AGREEMENT**

Master Number _____

New Account Number _____

_____ ("Depositor") has entered into a Master Preferred Escrow Agreement with DSI Technology Escrow Services, Inc. ("DSI"). Pursuant to that Agreement, Depositor may deposit certain Deposit Materials with DSI.

Depositor desires that new Deposit Materials be held in a separate account and be maintained separately from the existing account. By execution of this Amendment, DSI will establish a separate account for the new Deposit Materials. The new account will be referenced by the following name: _____.

Depositor hereby agrees that all terms and conditions of the existing Master Preferred Escrow Agreement previously entered into by Depositor and DSI will govern this account. The termination or expiration of any other account of Depositor will not affect this account.

_____ Depositor	DSI Technology Escrow Services, Inc.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT D CONTRACTOR'S QUALITY ASSURANCE PROGRAM

Not applicable

EXHIBIT E INCLUDE PROJECT BACKGROUND – (PROJECT PLAN)

(Section Intentionally Left Blank)

EXHIBIT F RESPONSE

(Section Intentionally Left Blank)

EXHIBIT G INVOICE CRITERIA

Los Angeles Department of Water and Power

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

INVOICE PREPARATION CHECKLIST

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

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

PO.)				
7. If freight charges are authorized in the PO, are you, and not the freight company, billing for the charges?				
8. Are all taxes stated separately? (DWP is not exempt from payment of sales tax. Out-of-State vendor: Please indicate if California sales/use tax should be paid directly to the State of California.)				
9. Is your invoice submitted in accordance with contract terms?				
10. Does your invoice number appear on any credit memo?				

EXHIBIT H PRIOR WORK PRODUCT

(Section Intentionally Left Blank)

EXHIBIT I HARDWARE MAINTENANCE

Since Contractor shall not be responsible for maintaining any hardware nor shall provide any services in connection therewith and the LADWP shall be solely responsible for maintaining all hardware, this Exhibit I does not apply and is deemed to be deleted in its entirety.

EXHIBIT J SOFTWARE MAINTENANCE AND LICENSING

1. Services

Enterprise Support and Services under this contract is described in Exhibit L Software License Agreement, Section 2. Enterprise Services ("Enterprise Services").

2. Conditions to the Enterprise Services

Conditions to the Enterprise Services are subject to conditions listed in Exhibit L Software License Agreement, subsection 2.3 General Conditions to Enterprise Services.

3. License and Enterprise Infrastructure Definitions

Definitions of Enterprise License and Infrastructure is defined in Exhibit L Software License Agreement, section 3. Enterprise Licensing.

4. Authorized Customer Representative

Customer agrees to supply to OSISOFT below Authorized Customer Representatives, including telephone numbers, e-mail addresses, fax numbers and any other information that may be required. The Department may, at any time, by written notice to OSISOFT, designate different or additional persons as authorized customer representatives.

Below is the current list of authorized customer representatives:

1. Name: Luis Jansen
 E-mail: luis.jansen@ladwp.com
 Telephone numbers: (213)367-3494
 Fax numbers: (213)367-3592

2. Name: Sungly Chiu
 E-mail: sungly,chiu@ladwp.com
 Telephone numbers: (213)367-2797
 Fax numbers: (213)367-3592

3. Name: Ali Morrabi
 E-mail: ali.morabbi@ladwp.com
 Telephone numbers: (213)367-2908
 Fax numbers: (213)367-3592

EXHIBIT K RIGHT TO AUDIT CLAUSE

1. Right to Audit: The Contractor and the Contractor's subcontractors and suppliers shall be subject at any time with 7 calendar days prior written notice to audits by the Department or the Department's agents, collectively defined as "Authorized Auditors", relating to all billings and to verify compliance with all contract requirements relative to practices, methods, procedures, and documentation. The Authorized Auditors shall have access to all records and data relating to the contract. The audits will be performed using FAR, Part 30 and 31, et seq., generally accepted accounting practices and principles, and City Contractor Cost Guidelines, and any other applicable City, State and Federal government audit standards if any. The Contractor shall maintain and the Authorized Auditors will have the right to examine and audit all books, records, documents, accounting procedures and practices, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred or anticipated to be incurred in performing the Contract. Any information provided on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The Contractor shall not, however, be required to furnish the Authorized Auditors with commonly available software. If the Contractor, the Contractor's subcontractors and/or suppliers are required to submit cost or pricing data in connection with the Contract and/or the Contract Amendment, the Authorized Auditors will have the right to examine all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. The Authorized Auditors will also have the right to reproduce, photocopy, download, transcribe, and the like any such records. The Contractor shall make said evidence or to the extent accepted by the Authorized Auditors, photographs, micro-photographs etc. or other authentic reproductions thereof available to the Authorized Auditors at the Contractor's offices at all reasonable times and without charge. The Contractor and the Contractor's subcontractors and suppliers shall keep and preserve all such records for a period of not less than 3 years from and after Final Payment or, if the Contract is terminated in whole or in part, until 3 years after final Contract closeout.

The Contractor, the Contractor's subcontractors and suppliers shall account for and be responsible for unallowable costs and mutually agreed unallowable costs. The detail and depth of records required as backup support for proposals, billings, or claims shall be that which adequately establishes and maintains visibility of identified unallowable costs, costs directly associated to unallowable costs, and allowable costs.

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

The Contractor shall maintain and segregate cost and pricing data, books, records, documents, and any other accounting evidence sufficient to properly reflect all direct and indirect

costs of whatever nature claimed to have been incurred or anticipated to be incurred by a Contract Amendment, including a change order.

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

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

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

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

Notwithstanding the foregoing, if the audit reveals that the overpayment is more than 5% of the billing, the Contractor shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the audit.

EXHIBIT L SOFTWARE LICENSE AGREEMENT

Enterprise Program Agreement

December __, 2012

("Effective Date")

OSIsoft, LLC ("**OSIsoft**")
 Legal Department
 777 Davis Street, Suite 250
 San Leandro, California 94577
 Phone: (510) 297-5800

Los Angeles Department of Water and Power
 ("LADWP" or "**Licensee**")
111 N. Hope Street
Los Angeles, CA 90012

Contacts:

Business:

Name: Norma Tam
 Email: ntam@osisoft.com
 Phone: 949-651-1839

Legal:

Name: Legal Department
 Email: legal@osisoft.com
 Facsimile: (510) 295-2444

Contacts:

Business:

Name: Sungly Chiu
 Email: suNgly.chiu@ladwp.com
 Phone: (213) 367-2797

Legal:

Name: _____
 Email: _____
 Phone: _____

This Enterprise Program Agreement ("**Enterprise Agreement**") effective as of the Effective Date specified above incorporates by this reference the terms and conditions of that certain Software License and Services Agreement with an effective date of December __, 2012 (the "**SLA**") by and between OSIsoft, LLC (formerly OSIsoft, Inc., "**OSIsoft**"), and LADWP. Unless otherwise specified, all capitalized terms in this Enterprise Agreement have the meaning defined in the SLA.

1. COMMERCIAL TERMS

Pricing Term	3 years, with an option for an additional 2 years
Annual Enterprise Services Fee	Licensee's annual Enterprise Services subscription price shall be equal to 20% (" Enterprise Services Rate ") of the License Fee Basis. " License Fee Basis " shall be the Initial License Fee plus any additional license fees paid hereunder for Enterprise Infrastructure
Initial License Fee	Licensee shall receive Enterprise Infrastructure for the Assets specified in Appendix A (" Assets ") for an initial license fee of \$3,692,450 , payable in equal installments on the Effective Date and first anniversary of the Effective Date
Net Licensee Fee Due Effective Date:	\$1,846,225
Net Initial Enterprise Services Fee Due:	\$ 738,490
Initial Invoice Total	\$2,584,715

2. ENTERPRISE SERVICES ("*Enterprise Services*")

2.1. Enterprise Support.

- (a) **Remote Management of PI Systems ("*Remote Management*")**. Licensee will permit OSIsoft to remotely monitor certain performance metrics of Licensee's Enterprise Infrastructure in accordance with the mutually agreed Roll Out Plan. The software used to provide the Remote Management service is for use only by OSIsoft in providing the Enterprise Services or by Licensee to monitor the performance of the Enterprise Infrastructure, and may not be used by Licensee for any purpose including, without limitation, to monitor other software programs or equipment. Remote Management services are in no way meant to serve as a safety monitoring service and Licensee shall indemnify OSIsoft against any claims resulting from Licensee's failure to operate Licensee's equipment in a safe manner. In the event that Licensee ceases to subscribe to Enterprise Services, Licensee will delete this software upon OSIsoft's request. OSIsoft will use data collected by the Remote Management service to issue to Licensee recommendations for hardware and software (Enterprise Infrastructure and OS) upgrades and other measures Licensee may implement to increase Enterprise Infrastructure performance as agreed in the Roll Out Plan.
- (b) **Telephone Assistance and Remote Support Service.** Licensee will be entitled to contact the OSIsoft telephone support desk seven (7) days a week, twenty-four (24) hours a day to ask questions or seek advice regarding the use of the Enterprise Infrastructure. OSIsoft will assist Licensee in using the Enterprise Infrastructure and in identifying and providing workarounds, if possible, for problems with the Enterprise Infrastructure. OSIsoft will use its best efforts to return all calls for support within four (4) hours. OSIsoft will maintain compatible equipment or emulators to be able to remotely operate on Licensee's system.
- (c) **Bug Fixes.** OSIsoft will use reasonable efforts to provide Licensee with an avoidance procedure for and a correction of each material defect in the Enterprise Infrastructure that cause the Enterprise Infrastructure not to conform in all material respects with the OSIsoft Documentation (a "*Bug Fix*").
- (d) **Software Updates and Upgrades.** As OSIsoft develops permanent solutions for known Enterprise Infrastructure problems, OSIsoft will, from time to time, incorporate such solutions into planned updates to the Enterprise Infrastructure, as applicable, ("*Updates*"). Such Updates may also include enhancements and extensions or other changes to the Enterprise Infrastructure as are determined by OSIsoft to be suitable to the uses made of the Enterprise Infrastructure by OSIsoft's licensees and are made available by OSIsoft to its other subscribers to Enterprise Services.
- (e) **Licensee Vendor Benefits.** OSIsoft will extend telephone support to Licensee IT vendors in their support of Licensee's use of the Enterprise Infrastructure. As a condition to providing such support, Licensee will notify OSIsoft of vendors authorized to seek support on Licensee's behalf and provide all relevant contact information. Such vendors will also have facilitated access to OSIsoft's relevant partner program.

2.2. Enterprise Services

- (a) **EPM and Private Extranet Access to OSISOFT Resources.** A global Enterprise Program Manager (“*EPM*”) will be assigned to Licensee’s account to provide a reasonable amount of coordination and assistance for questions pertaining to architecture and deployment of Enterprise Infrastructure (as defined in Section 3 below), as well as project management. Licensee will assign its own Program Manager (“*Licensee Program Manager*”) to manage the relationship with OSISOFT. The Licensee Program Manager is responsible for the identification of potential installations globally and to identify and make available the required resources within Licensee. The EPM will strive to understand the business of Licensee and develop domain knowledge to further facilitate collaboration in utilization of the Enterprise Infrastructure. Additionally, the EPM will coordinate between OSISOFT technical staff and Licensee to create and maintain, as part of the Roll Out Plan, a central monitoring philosophy for the Enterprise Infrastructure, including alerts, proactive remedial actions and fixes. OSISOFT reserves the right to change the EPM at any time upon notice to Licensee.
- (b) **Roll Out Plan.** OSISOFT, in collaboration with Licensee, will develop a roll out and update plan (“*Roll Out Plan*”) for the Enterprise Infrastructure. This Roll Out Plan will be modified to account for material changes in the Assets. The parties will work together to develop a schedule and process for producing this Roll Out Plan.

The Roll Out Plan will specify what services OSISOFT will provide for each installation and for what areas Licensee will have primary responsibility. It will also set forth the various technical requirements and specifications for each installation and the overall enterprise infrastructure architecture including:

- hardware and software requirements,
- installation schedule,
- remote access requirements and plan,
- selection of interfaces,
- update and back-up strategy,
- data collection architecture,
- migration strategy, and
- maximizing reliability/availability through redundancy and fault tolerance strategies.

Taking into account Licensee’s stated business objectives and resources, the Roll Out Plan will include a proposed schedule, recommendations on training for Licensee personnel and end users, best practices for process book displays, reports and other recommendations for operation of the Enterprise Infrastructure.

- (c) **Reviews.** Reviews will be conducted on an as-needed basis by the EPM, Licensee Program Manager and appropriate management personnel. These reviews may be conducted in person at a mutually agreed upon location or virtually, using web-based

collaboration tools. These reviews shall be based upon the quarterly review report prepared by the OSIssoft team and supervised by the EPM, and will address any concerns identified by the EPM or Licensee Program Manager, and be specifically focused on Licensee's opportunities and goals. The Rollout Plan may be adjusted and modified at these meetings.

- (d) **Installation of Enterprise Infrastructure.** OSIssoft will provide installation, upgrade and migration services for Enterprise Infrastructure in accordance with the mutually agreed Roll Out Plan. These installation services will be performed remotely from OSIssoft's offices or through an installation manager server installed on Licensee's network and connected to Licensee's deployment locations and computers ("*Installation Management System*"). On an exception basis as expressly agreed in the Roll Out Plan, these installations may be performed manually on-site at Licensee's facilities. Licensee will provide the Datastream Point configuration in electronic format for configuration of Interface(s) as set forth in the mutually agreed Roll Out Plan.
- (e) **Center of Excellence.** OSIssoft will provide reasonable assistance and information resources to Licensee in Licensee's application of Enterprise Infrastructure to Licensee's particular needs.

These services include:

- Workshops to investigate solutions including review of existing presentations and projects across industries.
- Design review to assist in applying OSIssoft and partner technologies to identify pitfalls and benefits.
- Participate with Licensee project teams as OSIssoft technology coordinator and advisor
- Assist with presentations on technology, risk and benefits.
- Written preliminary design concepts for Licensee projects outlining the most comprehensive use of OSIssoft's software components.
- Assist or sponsor communication events seminars, webinars or conference calls.
- Assist Licensee with partner evaluation and coordination with OSIssoft and User Groups ("*UG*").

Licensee shall bear complete responsibility for determining whether any concepts, preliminary designs, application recommendations or advice by OSIssoft are appropriate for Licensee's operations. COE personnel will strive to understand Licensee's business, but in no event does OSIssoft represent that such personnel are experts in Licensee's particular industry. While Licensee's operational and business data will remain Licensee's Confidential Information, Licensee acknowledges that OSIssoft may utilize deliverables of general applicability to assist other customers or improve the Enterprise Infrastructure, even if such deliverables are based upon requirements provided by Licensee. These materials may include, but are not limited to, application designs, architecture, general

engineering or programming methodologies in common use or within a particular industry, algorithms, sample screens or enhancements to the Enterprise Infrastructure.

(f) **On-Site Assistance.**

(i) In the event that OSISOFT is unable to resolve a problem with the Enterprise Infrastructure through Remote Management, the Installation Management System, telephone support or remote connection, Licensee may request OSISOFT to provide on-site assistance. After verifying the need for on-site assistance, OSISOFT will use its best efforts, subject to the reasonable availability of its personnel, to commence travel for such on-site assistance within one (1) business day for travel of less than 1000 miles from OSISOFT's facilities, and within two (2) business days otherwise. OSISOFT will render on-site assistance to Licensee until resolution of the problem is completed or identified or for so long as reasonable progress is, in OSISOFT's judgment, being made. OSISOFT may suspend the performance of on-site assistance as required to obtain additional resources, but will resume such assistance when such resources become available. Licensee agrees to supply OSISOFT with access to and use of all information and facilities reasonably necessary for OSISOFT to render any on-site services pursuant to this Agreement. OSISOFT will comply with all reasonable safety rules and procedures provided by Licensee to OSISOFT personnel in advance.

(ii) OSISOFT's obligation with respect to on-site assistance is limited to isolating, identifying, and reporting problems associated with Enterprise Infrastructure. If problems are isolated to Enterprise Infrastructure, OSISOFT will provide Licensee with Bug Fixes, as available. As an interim solution, until a Bug Fix is available, OSISOFT will use reasonable efforts to assist Licensee in finding an avoidance procedure, if possible, which allows use of the Enterprise Infrastructure.

(iii) OSISOFT will invoice and Licensee will pay OSISOFT's out of pocket expenses incurred in providing on-site assistance pursuant to Section 2.2(i). In addition, if on-site assistance is necessary because Licensee has failed to meet the Technical Prerequisites (as defined below) for Enterprise Services, or otherwise fails to permit OSISOFT to access remotely the relevant computer system, then OSISOFT will invoice and Licensee will pay for the time spent by OSISOFT personnel in connection with providing such on-site assistance, in accordance with OSISOFT's then-current field services rates. The origin of any problems associated with the Enterprise Infrastructure will not affect any amounts invoiced for on-site services, even if such problems are caused by Nonqualified Products (as defined below).

(g) **Migration of Third Party Historical Data.** OSISOFT will assist Licensee in migrating data from third party historian software to the Enterprise Infrastructure. Data from the third party historian must be provided by Licensee to OSISOFT in comma delimited format suitable for OSISOFT's "Batch File Interface". OSISOFT will supply Licensee with the technical requirements to prepare such data files. OSISOFT will convert the data supplied by Licensee into a data file that is compatible with the Enterprise Infrastructure. The data will not be validated by OSISOFT. Data validation is the sole responsibility of the Licensee. The

migration scope does not include migration of calculations or applications.

- (h) **Training and User Conference Vouchers.** OSISOFT will provide Licensee with incentives to stay up to date on OSISOFT's products and best practices. Training webinars and self-paced training using OSISOFT's online Learning Channel on YouTube™ (<http://www.youtube.com/user/OSISOFTLearning>) will be provided at no cost to Licensee. Additionally, OSISOFT will make available to Licensee a variety of training courses held at its designated training facilities. Finally, each year OSISOFT may hold one or more UserGroup (UG) meetings.

Licensee will receive vouchers redeemable for:

- (i) standard training courses at a rate of one (1) seat for one (1) day per \$5,000 paid to OSISOFT for Enterprise Services per year; and
- (ii) admission to a User Conference at a rate of one (1) seat per \$40,000 paid to OSISOFT for Enterprise Services per year

Onsite training courses are also available at a rate of one (1) day per twelve (12) standard training course vouchers.

From time to time OSISOFT may make other services or admission to other events available for purchase with these vouchers. Vouchers are valid for one (1) year from each anniversary date of the Effective Date of this Enterprise Agreement and cannot be carried over to subsequent years. In no event may vouchers be redeemed for anything other than the foregoing including, without limitation, software products, professional services or cash, unless otherwise expressly agreed by the parties.

Vouchers cannot be sold, bartered, swapped or exchanged.

- (i) **Travel and Living Expenses.** Licensee will reimburse OSISOFT for all reasonable out of pocket travel or living expenses incurred in connection with mutually agreed upon services provided by OSISOFT under this Enterprise Agreement. OSISOFT will incur such expenses in compliance with its then-current field services travel policy of Licensee (LADWP) as in appendix B.

2.3. **General Conditions to Enterprise Services** All Enterprise Services to be rendered by OSISOFT hereunder are subject to the following conditions:

- (a) **Technical Prerequisites ("Technical Prerequisites")** In order for OSISOFT to provide Enterprise Services, Licensee recognizes that certain technical pre-requisites must be met. OSISOFT will notify Licensee of any Technical Prerequisites in the Enterprise Infrastructure documentation or the Roll Out Plan. These prerequisites may include, but are not limited to, Licensee's acquisition of one or more additional computer servers for the Installation Management System, providing a connection for periodic remote access to target computer hardware that will accept reports, messages, and file transfers for purposes of troubleshooting, remote installations and application of updates, and Licensee access to a voice line in proximity to a relevant computer system during telephone support calls.

When remote access is necessary, Licensee's system must be available to OSISOFT when required, and OSISOFT must have a logon, password, and sufficient priority to access the system when needed. Licensee recognizes that proper operation of Remote Management and Installation Management System will require installation of certain software that will be removed should Enterprise Services be terminated. Should Licensee not meet the Technical Prerequisites or otherwise prevent OSISOFT's provision of Remote Management services, operation of the Installation Management System or not permit remote installations, Licensee recognizes that except as specified in the Roll Out Plan, Licensee will be responsible for installing, maintaining and managing all aspects of the Enterprise Infrastructure Software; in which case Licensee's employees will need to be certified by OSISOFT to perform these activities.

- (b) **Nonqualified Products.** OSISOFT shall have no obligations or responsibilities of any kind hereunder with respect to any hardware or software product other than the Enterprise Infrastructure ("*Nonqualified Products*"). Nonqualified Products shall also include software provided by OSISOFT that has not been released for general commercial distribution. If the performance by OSISOFT of the Enterprise Services is made more difficult or impaired because of Nonqualified Products, OSISOFT shall so notify Licensee, and Licensee will immediately remove the Nonqualified Product at its own risk and expense during any efforts to render services under this Enterprise Agreement. Licensee shall be solely responsible for the compatibility and functioning of Nonqualified Products with the Enterprise Infrastructure or the OSISOFT software that enables Enterprise Services.
- (c) **Backup Procedures.** OSISOFT will recommend, but Licensee is solely responsible for maintaining, a procedure external to the Enterprise Infrastructure for reconstruction of lost or altered files, data, or programs to the extent deemed necessary by Licensee and for actually reconstructing any lost or altered files, data or programs.
- (d) **Operator Procedures.** Licensee shall at all times follow routine operator procedures as specified in OSISOFT operating manuals or other operating manuals for the Enterprise Infrastructure.
- (e) **Licensee Representative.** A designated representative of Licensee shall be present at all times OSISOFT is performing services on Licensee's premises. OSISOFT personnel will not enter or remain at Licensee's premises or the premises in the absence of such Licensee representative.
- (f) **Isolation.** Licensee is solely responsible for ensuring that the Enterprise Infrastructure is isolated from any process links or anything else that could cause harm before requesting on-site assistance.
- (g) **Additional Services.** For clarification, any services beyond the scope of Enterprise Services as specified in this Agreement including, without limitation, providing on-site installation services beyond those expressly provided in the Roll Out Plan or additional services or time required as a result of Licensee not meeting any Technical Prerequisites (such as not having the appropriate hardware prepared as specified by OSISOFT), will be subject to OSISOFT's then-current field services rate. As of the Effective Date this rate is

\$2,000/person/day. OSIsoft will provide an estimate using the then-current applicable rates upon request.

3. ENTERPRISE LICENSING

3.1. Enterprise Infrastructure Definitions.

“Licensee’s Enterprise” means LADWP’s Power Generation (including PPA) and Power Transmission & Distribution, and up to 75,000 Meters. Water is excluded in this Enterprise Agreement.

“Asset” means the Sites, Meters and PMUs as specified in Appendix A.

“Asset Capacity” means the capacity of each Asset measured as specified in Appendix A.

“Operating Data” is (i) data generated directly by operation of the Assets, including all analyses, calculations and derivatives thereof, and (ii) market, environmental, meteorological data or other information that is used to operate the Assets.

“Meter” means a physical device which measures and analyzes for energy usage in time differentiated registers, including 5 minute reads. Specifically, a Meter is a single device connected to Licensee’s customers’ home devices, including appliances, thermostats, water heaters, pool pumps, etc., which receives data from such devices, and which data is then read from the single Meter by remote access and control, either by Licensee or a third-party service provider for the purpose of customizing and monitoring home energy consumption.

“Enterprise Infrastructure” is a software system comprised of database, visualization, analytic and interface software as described in the then-current accompanying documentation. Enterprise Infrastructure is a family of OSIsoft Products that is remotely installed, monitored, managed and supported. These include standard interfaces (as available)* for connection to a variety of data sources and manual inputs; server collectives designed for data collection and analytics; desktop software that includes trending, graphical and spreadsheet tools; and elements and services for inclusion in a real time corporate portal such as Microsoft SharePoint.

“Multispeak or AMI-based Head-End (HE) Interface(s)”

A. OSIsoft shall provide up to three Multispeak Interfaces that OSIsoft and Licensee anticipate may successfully connect Enterprise Infrastructure to a third-party provided head end (HE) of Licensee’s choosing, to receive Operating Data from the Meters or other device(s) directly associated with an Asset. The Multispeak specification from NRECA (National Rural Electric Cooperative Association) consists of standards for describing electric meters and the data they measure. OSIsoft’s Multispeak Interface reads files that conform to these standards and stores the results in PI.

For purposes of this document, an **HE interface** consists of the following functionality:

- The ability to read meter or other permitted device structures from the HE and create and update these in the AF Server.
- The ability to read meter or other permitted device data and add this real time data into the PI Server.
- The ability to pass on the following commands to the HE:
 - On-Demand Reads
 - Remote Connect/Disconnect
 - Ping

All other functionality is outside of the scope of the HE Interface unless mutually agreed in writing by authorized representatives of the Parties.

B. If Multispeak does not provide the necessary functionality, OSIsoft shall make reasonable commercial efforts to provide up to three (3) beta **AMI-based HE interfaces** to Licensee's selected HE providers 6 months from when the HE vendor provides a "Programmatic interface."

For OSIsoft to successfully create an AMI interface in the timeline described, the HE must provide the following functionality to Licensee and OSIsoft, in at least Beta quality at the beginning of OSIsoft's development period:

- HE vendor must be able notify/provide any changes to Licensee's meters or other permitted device(s) within the HE system. This includes the capability to queue changes when the interface is disconnected.
- HE vendor must be able to provide the data from the meters or other permitted device(s) by either:
 - Publish/Subscribe method.
 - Push data files through a defined protocol.
 - Web service methods.
 - File based.
- If the Licensee requires On-Demand reads, Remote connect/disconnect, or Ping the meter or device, the HE vendor must provide a programmatic interface to accomplish this.

3.2. Scope of License.

- (a) **Identified Assets Only.** Licensee may use the Enterprise Infrastructure only for the purpose of processing the Operating Data generated by the Assets identified in **Appendix A.**
- (b) **Additional Assets.** Licensee may add additional Assets to **Appendix A** upon written notification to OSIsoft or in connection with each Annual Review as provided below.

- (c) **Usage by Licensee.** Licensee may use unlimited copies and quantities of Enterprise Infrastructure (including Datastream Points) for the purpose of:
- (i) processing Operating Data generated by the Assets up to the Asset Capacity as may be revised in accordance with this Enterprise Agreement; and
 - (ii) redundancy and failover options, development systems, test systems, research and development, pilot plants, analysis of financial data pertaining to the Asset, and operation of a central Enterprise Infrastructure system to monitor other Enterprise Infrastructure systems installed throughout Licensee's organization.
 - (iii) LADWP is allowed to move operational data from their existing MDM to PI for operational usages.
 - (iv) LADWP is allowed to use Enterprise Infrastructure for an Asset with generation capacity below 1MW; however, Enterprise Services are not included for such Assets.
- (d) **Limitations on Scope.** Enterprise Infrastructure may not be used to process Operating Data: (i) generated by non-Assets, even if such Operating Data is stored in equipment located within an Asset (ii) to monitor facilities including, without limitation, power consumption of Licensee's information technology assets and HVAC systems, or (iii) in any automated metering initiative or similar customer direct billing or metering initiatives.

3.3. Usage by Licensee's Services Vendors. Licensee's contractors may also use the Enterprise Infrastructure solely for the benefit of Licensee and subject to the terms and conditions of this Enterprise Agreement. Licensee will be responsible for monitoring usage of the Enterprise Infrastructure by its contractors to ensure compliance with this Enterprise Agreement.

3.4. Enterprise Services Maintenance. As a condition to retaining its licenses to Enterprise Infrastructure, Licensee agrees to maintain a current Enterprise Services subscription for all Enterprise Infrastructure purchased hereunder.

4. ENTERPRISE PROGRAM PRICING

4.1. Licensing and Enterprise Services Rate Adjustments.

- (a) **Asset Capacities.** Asset Capacities are measured in number of Meters, and megawattage (MW) of power generation capacity of each Asset.
- (b) **Material Change in Asset Capacities:** A material change in the Asset Capacity shall be defined as a five percent (5%) increase or decrease in the licensing metric of a license

asset, a change in the asset classification or the addition or divestment of an asset, as applicable.

- (c) **Annual Review.** If the annual review performed in accordance with this Enterprise Agreement reveals that Licensee is using any Enterprise Infrastructure to process data generated by additional Assets or there is a material increase in the Asset Capacity of an Asset, Licensee shall purchase the required Enterprise Infrastructure licenses at the License fee specified below and OSISOFT will include such new Assets in the Enterprise Services calculation for the new Review Period:

<u>Asset Description</u>	<u>License Fee</u>
Generation Metric	Price per asset
Fossil, Steam and Gas Power Plants	\$400 per MW
Hydro	\$500 per MW
Wind	\$1,000 per MW
Refuse/BioFuel	\$1,000 per MW
Bulk Solar (1MW+)	\$1,000 per MW

Other Metric	Price per asset
SmartGrid - Distribution Devices, Demand Response, Distributed Energy Resources, Meter Data -- (MDM and all billing use are excluded)	\$3.40 per Meter

The number of data tags (or Data Streams) associated with each **Meter** will be **mutually agreed** upon between LADWP and OSISOFT.

If Licensee has ceased operating an Asset and all use of the Enterprise Infrastructure containing Asset data or there is otherwise a material decrease in the Asset Capacity, then Licensee's annual Enterprise Services fee will be reduced by the Enterprise Services Rate multiplied by the applicable license fee specified above in OSISOFT's Enterprise Services calculation for the new Review Period.

4.2. Pricing Protection; Term of Agreement; Enterprise Conversion Procedure.

- (a) The Pricing in Section 4.1(c) will remain fixed for **three (3) years**, with option to add 2 more years (together, the three years plus optional two years is the "**Pricing Term**"). After the Pricing Term, if Licensee wishes to continue with the Enterprise Program for an additional term of years not to exceed five years without OSISOFT's written consent, and so long as Licensee has not allowed its Enterprise Services subscription to lapse, the Enterprise license and Enterprise Service fee pricing may not be raised by any more than United States western region CPI per annum for the then-currently Licensed Assets, said CPI rate accruing from the Effective Date of this Agreement. For purposes of this Section, a "lapse in Enterprise Services" means the Enterprise Services period has expired without timely payment in full of

the fees and without a party's notice of intent not to renew as provided herein. Provided, if through no fault of Licensee, the City of Los Angeles directly causes Licensee to fail to make timely payment of Enterprise Services Fees, OSISOFT may in its sole discretion, extend the deadline for such payment for such period as it may decide. The Annual Enterprise Services Fee shall remain 20% of the nominal Enterprise Program Agreement Fees as may be adjusted in accordance with the material change in Asset Capacities and this pricing protection provision. If at any time Licensee has allowed its Enterprise Services subscription to lapse, it shall pay all such Enterprise Services fees in arrears from the time lapsed, in addition to the Enterprise Services subscription fees going forward, paid annually in advance, within ninety (90) days, or Licensee will be deemed to have opted out of this Agreement, and the Enterprise Conversion Procedure herein below shall apply.

- (b) **Termination and Enterprise Conversion Procedure.** LADWP will inform OSISOFT thirty (30) days prior to its intent to terminate the EA contract. In the event Licensee opts out of this Agreement or OSISOFT does not renew the Enterprise Program at the end of the Pricing Term, usage limits for Enterprise Infrastructure will be inventoried as further described herein below, and converted to the license levels then-currently in use by Licensee, using the license units as defined in Licensee's SLA and the nearest OSISOFT Product sizes in OSISOFT's then-current applicable price list. Licensee will no longer be eligible to receive any Enterprise Services and all pricing, except as set forth herein below, shall be canceled. Licensee and OSISOFT will create an inventory of all OSISOFT Software that has been installed, including the number of PI Servers, number of Datastream Points configured within each Server, number of Individual Users and Interface Nodes. OSISOFT will have the opportunity to perform an audit to validate this inventory. For the inventoried OSISOFT Products, Licensee may purchase annual software maintenance and support ("SRP") at OSISOFT's then-current applicable list price. Any future expansions of these systems or any additional OSISOFT Products will be available from OSISOFT at OSISOFT's then-current applicable list price, under the terms of Licensee's SLA.

4.3. Ordering and Delivery.

- (a) **Annual License Review.** On an annual basis (the "*Review Period*") OSISOFT and Licensee will perform an OSISOFT Product license review. Licensee will provide OSISOFT with all reasonably requested information necessary to determine whether Licensee is using the Enterprise Infrastructure within the purchased license limits. Unless otherwise agreed, the initial Review Period shall commence with the Effective Date.
- (b) **Additional Assets Through Review.** OSISOFT and Licensee have agreed to the Assets specified in **Appendix A**. The Assets will be modified at the end of each Review Period as necessary. At the end of each Review Period, Licensee will submit an order to OSISOFT for the Enterprise Infrastructure licenses and corresponding Enterprise Services fees required to cover any additional Assets or material increase in the Asset Capacity at the prices stated in this Enterprise Agreement.
- (c) **Fulfillment.** Licensee or Licensee Affiliates may submit requests for additional copies of any Enterprise Infrastructure without payment of additional license fees. Such requests may be submitted in any form mutually agreeable to both parties.

- (d) **Availability.** Enterprise Infrastructure is only available from OSIsoft directly and not through any third party distributor or sales channel.

5. GENERAL CONDITIONS


- 5.1. Affiliate Eligibility.** "*Licensee Affiliate*" means any entity that controls, is controlled by, or is under common control with Licensee. For purposes of this Enterprise Agreement, "control" of an entity means having ownership of at least fifty percent (50%) of the voting equity or beneficial interest of such entity. Licensee Affiliates that Licensee would like to add to this Enterprise Agreement are listed in the attached **Appendix A**. Licensee may add Licensee Affiliates to this Enterprise Agreement by providing OSIsoft with written or electronic notice containing the contact information for each relevant Licensee Affiliate specified in **Appendix A**. Upon OSIsoft's consent, not to be unreasonably withheld or delayed, such Licensee Affiliates will be added to this Enterprise Agreement and **Appendix A** will be deemed amended accordingly. Licensee Affiliates on **Appendix A** are entitled to use and order Enterprise Infrastructure and shall be bound by this Enterprise Agreement as a "Licensee". Notwithstanding the foregoing, any such Licensee Affiliate shall remain eligible to receive the benefits of this Enterprise Agreement only so long as it continues to qualify as a Licensee Affiliate as defined in this Section. Should a Licensee Affiliate no longer qualify as such under this Enterprise Agreement, then Licensee will notify OSIsoft and such change of ownership or control shall be considered an assignment of the OSIsoft Products then being used by such Licensee Affiliate for purposes of this Enterprise Agreement, and such Licensee Affiliate will no longer be eligible to order any Enterprise Infrastructure or receive Enterprise Services under this Enterprise Agreement. Licensee and any Licensee Affiliate that purchases OSIsoft Product licenses shall be jointly and severally liable for any breach of this Enterprise Agreement by any Licensee Affiliate.
- 5.2. Assignment.** Licensee may assign Enterprise Infrastructure licensed under this Enterprise Agreement provided that Licensee provides prior written notice to OSIsoft. The usage limits for any assigned Enterprise Infrastructure will be converted to the license levels then-currently in use by Licensee, using the license units as defined in OSIsoft's then-current standard Software License and Services Agreement and the nearest Server sizes in OSIsoft's then-current applicable price list ("*Converted Software*"). Licensee will provide OSIsoft with all information reasonably necessary to determine the appropriate license sizes for the Converted Software. Licensee hereby acknowledges that as a condition to any assignment OSIsoft may require the assignee to: (i) purchase up to one year of support and maintenance services at OSIsoft's then-current rate; and (ii) execute OSIsoft's then-current standard Software License and Services Agreement. Except as otherwise specified in writing by OSIsoft, Orders submitted by the assignee will be in accordance with OSIsoft's then current list price. Any attempted assignment or transfer of the Enterprise Infrastructure or this Enterprise Agreement, whether by operation of law, as a result of any change in control (as defined in paragraph 5.1) of Licensee or otherwise without complying with this Section shall be null and void.
- 5.3. Scope of Enterprise Agreement.** Unless otherwise specified, this Enterprise Agreement supersedes all prior agreements, understandings or arrangements with respect to the subject matter hereof and any existing OSIsoft software products within Licensee's possession or control shall be subject to the terms and conditions of the SLA and this Enterprise Agreement, as applicable. Any pricing provided herein cannot be combined with any other discounts including, without limitation, any discounts for volume purchases. OSIsoft may refuse any Orders submitted by Licensee or a Licensee Affiliate pursuant to any other pricing agreement, understanding or arrangement.

IN WITNESS WHEREOF, the parties have executed this Enterprise Agreement as of the Effective Date through their duly authorized representatives. Each individual signatory below hereby represents and warrants that they have full corporate power and authority to execute this agreement and bind the respective parties to the terms and conditions of this Enterprise Agreement.

Licensee: Los Angeles Department of Water and Power Licensor: OSIssoft, LLC

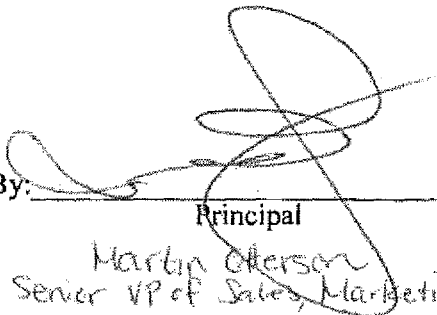
By: _____
RONALD O. NICHOLS
General Manager

Date: _____

By:  _____
Principal
Jenny Linton
President

Date: 5/15/13

And: _____
BARBARA E. MOSCHOS
Secretary

By:  _____
Principal
Martin Otersen
Senior VP of Sales, Marketing & Industry

Date: 5/15/13

Appendix A
Initial Licensee Affiliates, Assets and Asset Capacities

The initial Assets and Asset Capacities included within the initial scope of Enterprise Infrastructure license and services are specified herein below, and are summarized as follows:

- Up to 75,000 Meters
- 215 Substations (Distribution, Transmission, Switching, Switch Yards, and Industrial Stations)
- Grid Operations (Headquarters, Substations Automation System (SAS) Operation Center, and Energy Control Center (ECC))
- Four (4) Gas/Steam Power Plants – currently at 3415MW(not to exceed 3560MW during the Pricing Term)
- One (1) Hydro Plant (Pump Storage – Castaic) – 1247 MW
- Owen Gorge/Aqueduct – off basin Hydro – 208MW
- Wind – currently 120 MW (not to exceed 300MW during the Pricing Term)
- Solar -currently less than 20MW (not to exceed 510MW during the Pricing Term)
- 6 Phasor Measurement Units, and additional 3 PMU per year (not to exceed 15 PMUs for the term of this Agreement)

For contact name, phone & email information, please refer to Exhibit J, section 4 Authorized Customer Representative

1) Site Name:	Asset A
Physical Street Address:	111 N. Hope Street
City, State, Zip Code:	Los Angeles, CA 90012
Country:	USA
Asset Capacity:	1555MW – being repowered to 1700 in the next 3 yrs
3) Site Name:	Asset C
Physical Street Address:	111 N. Hope Street
City, State, Zip Code:	Los Angeles, CA 90012
Country:	USA
Asset Capacity:	576 MW
5) Site Name:	Asset E
Physical Street Address:	111 N. Hope Street
City, State, Zip Code:	Los Angeles, CA 90012
Country:	USA
Asset Capacity:	1247 MW

2) Site Name:	Asset B
Physical Street Address:	111 N. Hope Street
City, State, Zip Code:	Los Angeles, CA 90012
Country:	USA
Asset Capacity:	817MW
4) Site Name:	Asset D
Physical Street Address:	111 N. Hope Street
City, State, Zip Code:	Los Angeles, CA 90012
Country:	USA
Asset Capacity:	466 MW
6) Site Name:	Asset F
Physical Street Address:	111 N. Hope Street
City, State, Zip Code:	Los Angeles, CA 90012
Country:	USA
Asset Capacity:	135 MW

7) Site Name:	Asset G
Physical Street Address:	111 N. Hope street
City, State, Zip Code:	Los Angeles, CA 90012
Country:	USA
Asset Capacity:	Aggregating data to HQ
9) Site Name:	Asset I
Licensee/Affiliate Legal Name:	Licensee's Customers
Contact Name, phone & email:	N/A
Physical Street Address:	
City, State, Zip Code:	
Country:	
Asset Capacity:	Up to 75,000 Meters

8) Site Name:	Asset H
Physical Street Address:	111 N. Hope Street
City, State, Zip Code:	Los Angeles, CA 90012
Country:	USA
Asset Capacity:	
10) Site Name:	Asset J
Licensee/Affiliate Legal Name:	
Contact Name, phone & email:	
Physical Street Address:	
City, State, Zip Code:	
Country:	
Asset Capacity:	

11) Site Name:	
Licensee/Affiliate Legal Name:	
Contact Name, phone & email:	
Physical Street Address:	
City, State, Zip Code:	
Country:	
Asset Capacity:	
13) Site Name:	
Licensee/Affiliate Legal Name:	
Contact Name, phone & email:	
Physical Street Address:	
City, State, Zip Code:	
Country:	
Asset Capacity:	

12) Site Name:	
Licensee/Affiliate Legal Name:	
Contact Name, phone & email:	
Physical Street Address:	
City, State, Zip Code:	
Country:	
Asset Capacity:	
14) Site Name:	
Licensee/Affiliate Legal Name:	
Contact Name, phone & email:	
Physical Street Address:	
City, State, Zip Code:	
Country:	
Asset Capacity:	

(Attach additional sheets as needed)

Appendix B
LADWP Travel and Living Expenses

1. Compensation for Expenses

“The Department will reimburse the Consultant, at actual cost, for reasonable, necessary, authorized and approved incidental expenses while performing the work. These expenses will include, but not limited to:

1.1 Air fare and Car Rental: Air fare is limited to coach class only. Car rental is limited to one compact rental per 4 passengers per trip. Original receipts for airfare and car rental must be submitted.

1.2 Meal and Lodging expenses:

1.2.1 Meal expenses up to a maximum limit of \$57.99 per day. This should include taxes and tips. The following Breakdown for Meals shall be used as a guideline:

Breakfast	\$13.98
Lunch	\$18.02
Dinner	\$25.99

Actual Meal costs shall be reported, but do not require submission of receipts. Lodging expenses up to a maximum limit of \$168.81 per day (Los Angeles area). This should include taxes and tips. Lodging receipts must show paid in full with zero balance owed. Meals and Lodging are reimbursable only on working days as reported on timesheets, and payments are subject to the approval of the Department’s Contract Administrator identified in this Agreement.

1.2.2 Original receipts must be submitted for necessary travel expenses \$25.00 or more.

1.3 Mileage for non-rental car travel will be paid at the rate per Department’s Administrative Bulletin for Mileage Reimbursement in effect at the time of travel. As of January 1, 2011, this rate is fifty five point five cents (\$0.555) per mile.”

EXHIBIT M PREFERRED BENEFICIARY ACCEPTANCE FORM

ENROLLMENT FORM

Deposit Account Number:

OSIsoft Agreement Number: _____ (“Agreement”)

Depositor, Preferred Beneficiary and Iron Mountain Intellectual Property Management, Inc. (“IMIPM”) formerly known as DSI Technology Escrow Services, Inc. or “DSI”, hereby acknowledge that OSIsoft, Inc. is the “Depositor” referred to in the Escrow Agreement bearing an effective date of _____ that supports Deposit Account Number: _____ with IMIPM (formerly DSI) as the escrow agent. _____ is the “Preferred Beneficiary” enrolling under this Agreement. Depositor, Preferred Beneficiary and IMIPM hereby agrees to be bound by all provisions of the Escrow Agreement as hereby amended effective as of the last date noted on the signature blocks of this Enrollment Form..

1. Since DSI Technology Escrow Services, Inc. or DSI is now known as Iron Mountain Intellectual Property Management, Inc., or IMIPM all references in the Agreement to DSI shall now be understood and agreement to refer to IMIPM.

1.5. The text in Section 1.1, Exhibit C is hereby deleted and replaced with the following:

1.1. DEFINITION OF ESCROW MATERIALS. Capitalized terms used in this Escrow Agreement and not defined herein shall have the meanings assigned to them in the License Agreement. “Escrow Materials” shall mean one (1) copy of the Source Code for the version(s) of the Software licensed by LADWP, instructions and any other documentation that would allow a third party programmer reasonably skilled to compile the source code, and, where regularly provided by OSIsoft to its customers, third party tools to assist in compiling the Source Code for the sole purpose of LADWP’s continued performance of maintenance and error corrections for its licensed Software executables in accordance with the License Agreement in the event of an Escrow Release Condition. Such Escrow Materials shall also include any Updates of such Software (as such term is defined in the License Agreement) made available to the LADWP pursuant to SECTION 20 (“MAINTENANCE AND SUPPORT”) of the Agreement

Deposit within thirty (30) days of the LADWP’s acceptance of the Software in accordance with SECTION 7 (“DELIVERY, INSPECTION, ACCEPTANCE AND REJECTION”) of the License Agreement, Contractor shall deliver to the Escrow Agent a sealed package certified by an authorized officer of Contractor to contain a complete set of the Escrow Materials as defined in SECTION 1 (“DEFINITION OF ESCROW MATERIALS”) hereof, for such accepted Software (a “Deposit”).

2. The text in Section 1.3 is hereby deleted and replaced with the following:

1.3 Acceptance of Deposit. IMIPM will conduct a visual deposit inspection upon receipt of any Deposit Material and associated Exhibit B and provide notice by electronic mail, telephone, or regular mail to the Depositor and Preferred Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement. If IMIPM determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B attached hereto, Iron Mountain will provide Depositor with notice by electronic mail, telephone, or

regular mail of such discrepancies. IMIPM will work directly with the Depositor to resolve any such discrepancies prior to accepting Deposit Material. OTHER THAN IMIPM'S INSPECTION OF THE DEPOSIT MATERIALS, AS DESCRIBED ABOVE, IMIPM SHALL HAVE NO OBLIGATION REGARDING THE ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR NON-PERFORMANCE OF THE DEPOSIT MATERIALS.

3. Section 2.2 is hereby deleted and replaced with the following:

2.2 Status Reports. IMIPM shall provide to Depositor and Preferred Beneficiary access to the Iron Mountain real-time, on-line portal to view data and documentation relative to this Agreement. Upon request, IMIPM will provide ad hoc status reports to Depositor and Preferred Beneficiary.

4. Pursuant to Section 4.1 of the Escrow Agreement "*Release Condition*" shall mean:

- (a) Depositor has materially failed to provide the maintenance updates and error corrections required by the Agreement, or otherwise fails to meet its obligations set forth in Section 20 ("Maintenance and Support") or Section 21 (Warranties) to repair or replace the OSISoft Products in breach of warranty, and such failure remains uncured for more than sixty (60) days.
- (b) Contractor becomes insolvent, or files or has filed against it any proceeding in bankruptcy or for reorganization under any federal bankruptcy law or similar state law, or has any receiver appointed for all or a substantial part of Contractor's assets or business, or makes any assignment for the benefit of its creditors, or enters into any other proceeding for debt relief, provided that any successor in interest to Contractor (including any receiver, assignee or executor in bankruptcy) has failed to assume the Section 20 maintenance and support obligations within 60 days of the filing in bankruptcy reorganization proceeding, insolvency, or appointment of receiver.
- (c) Contractor ceases to do business or institutes any proceedings for the liquidation or winding up of its business or for the termination of its corporate charter;

5. This section replaces Section 4.5 of the Escrow Agreement in its entirety:

4.5 Right to Use Following Release. Upon release of the Deposit Materials, Preferred Beneficiary shall only have the right to use the Deposit Materials as specified in the License Agreement; provided however that Preferred Beneficiary may modify and copy the Deposit Materials for the sole purpose of performing maintenance and error-corrections for Preferred Beneficiary's own internal business purposes. Other than expressly stated herein, Preferred Beneficiary's use of the Deposit Materials shall be subject to all of the restrictions contained in the License Agreement, including without limitation Preferred Beneficiary's obligation not to disclose the Deposit Materials to any third party.

5.5. This section is added to Section 4.6 of the Escrow Agreement (Exhibit C):

4.6 Bankruptcy. Contractor and the LADWP acknowledge that this Escrow Agreement is an "agreement supplementary to" the License Agreement as provided in Section 365(n) of Title

11, United States Code (the "Bankruptcy Code"). Contractor acknowledges that if Contractor, as a debtor in possession or a trustee in bankruptcy in a case under the Bankruptcy Code, rejects the License Agreement or this Escrow Agreement, the LADWP may elect to retain its rights under the License Agreement and this Escrow Agreement as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the LADWP to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the LADWP as provided in the License Agreement and this Escrow Agreement, including the right to obtain the Escrow Materials.

6. That the Agreement be amended by adding the following to the end of Section 5.1 of the Agreement:

IMIPM reserves the right to terminate this Agreement, after the initial term, for any reason, other than for nonpayment, by providing Depositor and Preferred Beneficiary ninety (90) days' prior written notice of its intent to terminate. If IMIPM so terminates it will refund, upon written request all pre-paid, but unearned fees and provide reasonable assistance to Depositor and Preferred Beneficiary who shall negotiate in good faith to identify a successor escrow agent and enter into a successor escrow agreement on terms as nearly similar to the terms of this Agreement as is practicable.

6.5. This section replaces Section 6.1, Exhibit C of the Escrow Agreement in its entirety:

6.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. DSI shall notify the party responsible (OSIsoft, LLC) for payment of DSI's fees at least 60 days prior to any increase in fees. For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested.

7. Section 7.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

7.2 Indemnity, Limitation of Liability, Consequential Damages Waiver

Indemnity. Each party shall defend, indemnify and hold harmless the others, their corporate affiliates and their respective officers, directors, employees, and agents and their respective successors and assigns from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, reasonable attorneys' fees), arising under this Agreement from the negligent or intentional acts or omissions of the indemnifying party or its subcontractors, or the officers, directors, employees, agents, successors and assigns of any of them.

Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE HEREIN, ALL LIABILITY, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID OR OWED TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS. THIS LIMIT SHALL NOT APPLY TO ANY PARTY FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT, (II) LIABILITY FOR DEATH OR BODILY INJURY, (III) DAMAGE TO TANGIBLE PROPERTY (EXCLUDING THE DEPOSIT ITEMS), (IV) THEFT, OR (V) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Consequential Damages Waiver. IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR INFORMATION, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES, OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES

7.5. This section replaces Section 7.3 a, Exhibit C of the Escrow Agreement in its entirety:

7.3 (A) ARBITRATION. Subsequent to the Escrow Agent's delivery of the Escrow Materials to the LADWP pursuant to **PARAGRAPH 8 ("DELIVERY OF ESCROW MATERIALS TO THE LADWP")**, if any dispute arises relating to this Escrow Agreement, such dispute shall be settled by arbitration before three arbitrators who have significant experience in the enterprise software industry, selected in accordance with the commercial rules of the American Arbitration Association, to take place in Los Angeles County, California, within thirty (30) days following the LADWP's delivery of a Default Notice to Escrow Agent pursuant to **PARAGRAPH 8 ("DELIVERY OF ESCROW MATERIALS TO THE LADWP")**. The Depositor and Preferred Beneficiary shall each select one independent arbitrator and the two chosen arbitrators shall select the third independent arbitrator, or failing agreement on the selection of the third arbitrator, the American Arbitration Association shall select the third independent arbitrator. However, if DSI is a party to the arbitration, DSI shall select the third independent arbitrator. The arbitrators shall be instructed to render their award in writing within fifteen (15) days after the end of the hearing, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address.

8. That Section 7.5(a) of the Agreement be deleted in its entirety and replaced with the following:

7.5 a. Give IMIPM at least five business days' prior notice of the hearing, unless the nature of the order makes such notice impracticable.

9. Section 8.2 is hereby deleted in its entirety and replaced with the following:

8.2. Notices and Correspondence. All notices, invoices, payments, deposits and other documents and communications shall be given to the parties at the addresses specified in the attached Appendix C and Acceptance Form. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties. Unless otherwise provided in this Agreement, all documents and communications by this Escrow Agreement shall be sufficiently given:

- (a) upon delivery, if given in person with a signed receipt;
- (b) if given by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or
- (c) if given by registered or certified mail (air mail if international), postage prepaid, return receipt requested, five days after deposit in the mail in accordance with the provisions hereof.

AUTHORIZED PERSON(S)/NOTICES TABLE

Please provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All Notices will be sent electronically and/or through regular mail to the appropriate address set forth below.

Depositor Preferred Beneficiary

PRINT NAME:		PRINT NAME:	
TITLE:		TITLE:	
EMAIL ADDRESS		EMAIL ADDRESS	
STREET ADDRESS		STREET ADDRESS	
PROVINCE/CITY/STATE		PROVINCE/CITY/STATE	
POSTAL/ZIP CODE		POSTAL/ZIP CODE	
PHONE NUMBER		PHONE NUMBER	
FAX NUMBER		FAX NUMBER	

BILLING CONTACT INFORMATION TABLE

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.

COMPANY:	
PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
STREET ADDRESS 1	
PROVINCE/CITY/STATE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to ipmcontracts@ironmountain.com OR Iron Mountain, Attn: Contract Administration, 2100 Norcross Parkway, Suite 150, Norcross, Georgia, 30071, USA.

NOTE: SIGNATURE BLOCKS FOLLOW ON THE NEXT PAGE

DEPOSITOR PREFERRED BENEFICIARY

SIGNATURE:		SIGNATURE:	
PRINT NAME:		PRINT NAME:	
TITLE:		TITLE:	
DATE:		DATE:	
EMAIL ADDRESS		EMAIL ADDRESS:	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	

10. This section is added to Section 8, Exhibit C of the Escrow Agreement:

8.6 GOVERNING LAW. This Escrow Agreement shall be construed and interpreted in accordance with the laws of the State of California.

**Approved as to Form and Legal Content:
Iron Mountain Legal Department**

Approved as to Operational Content:

Iron Mountain Operations

**Name:
Date:**

EXHIBIT N OSISOFT TRAINING

OSISOFT will provide training as stated in subsection (h) of 2.2 Enterprise Services.

Training, and User Conference Vouchers. OSISOFT will provide Licensee with incentives to stay up to date on OSISOFT's products and best practices. Training webinars and self-paced training using OSISOFT's online Learning Channel on YouTube™ (<http://www.youtube.com/user/OSISOFTLearning>) will be provided at no cost to Licensee. Additionally, OSISOFT will make available to Licensee a variety of training courses held at its designated training facilities. Finally, each year OSISOFT may hold one or more UserGroup (UG) meetings.

Licensee will receive vouchers redeemable for:

- (i) standard training courses at a rate of one (1) seat for one (1) day per \$5,000 paid to OSISOFT for Enterprise Services per year; and
- (ii) admission to a User Conference at a rate of one (1) seat per \$40,000 paid to OSISOFT for Enterprise Services per year

Onsite training courses are also available at a rate of one (1) day per twelve (12) standard training course vouchers.

From time to time OSISOFT may make other services or admission to other events available for purchase with these vouchers. Vouchers are valid for one (1) year from each anniversary date of the Effective Date of this Enterprise Agreement and cannot be carried over to subsequent years. In no event may vouchers be redeemed for anything other than the foregoing including, without limitation, software products, professional services or cash, unless otherwise expressly agreed by the parties.

Vouchers cannot be sold, bartered, swapped or exchanged.

EXHIBIT O CONTRACT INSURANCE REQUIREMENTS --

For Contractors, Service Providers, Vendors, and Tenants

Agreement/Activity/Operation: OSIsoft – PI Historian Maintenance Program
 Reference/Agreement: Legal Agreement
 Term of Agreement: Up to 5 years with option
 Contract Administrator and Phone: Sungly Chiu 213-367-2797
 Buyer and Phone Number: Charvon Tolson 213-367-1881
 Risk Manager / Date: Avery Neaman 213-367-4678 / 6-11-12

Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated. Firm 30 day Notice of Cancellation required by Receipted Delivery.

PER OCCURRENCE LIMITS		
<p>(x) WORKERS' COMPENSATION(Stat. Limits)/Employer's Liability:</p> <p style="padding-left: 20px;"> <input checked="" type="checkbox"/> Broad Form All States Endorsement <input type="checkbox"/> Jones Act (Maritime Employment) <input checked="" type="checkbox"/> Waiver of Subrogation <input type="checkbox"/> Other: _____ </p> <p>(x) AUTOMOBILE LIABILITY:</p> <p style="padding-left: 20px;"> <input checked="" type="checkbox"/> Owned Autos <input checked="" type="checkbox"/> Hired Autos <input type="checkbox"/> Contractual Liability <input type="checkbox"/> MCS-90 (US DOT) <input type="checkbox"/> Waiver of Subrogation </p> <p>(x) GENERAL LIABILITY: () Limit Specific to Project () Per Project Aggregate</p> <p style="padding-left: 20px;"> <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Premises and Operations <input type="checkbox"/> Fire Legal Liability <input type="checkbox"/> Corporal Punishment <input type="checkbox"/> Watercraft Liability <input type="checkbox"/> Waiver of Subrogation <input type="checkbox"/> Marine Contractors Liability </p> <p>(x) PROFESSIONAL LIABILITY:</p> <p style="padding-left: 20px;"> <input checked="" type="checkbox"/> Contractual Liability <input type="checkbox"/> Additional Insured </p> <p>() AIRCRAFT LIABILITY: ()</p> <p style="padding-left: 20px;"> <input type="checkbox"/> Passenger Per Seat Liability <input type="checkbox"/> Pollution </p> <p>() PROPERTY DAMAGE: () Loss Payable Status (AOIMA)</p> <p style="padding-left: 20px;"> <input type="checkbox"/> Replacement Value <input type="checkbox"/> All Risk Form <input type="checkbox"/> Builder's Risk:\$ _____ <input type="checkbox"/> Transportation Floater:\$ _____ <input type="checkbox"/> Scheduled Locations/Propt. </p> <p>() WATERCRAFT:</p> <p style="padding-left: 20px;"> <input type="checkbox"/> Protection and Indemnity <input type="checkbox"/> Waiver of Subrogation </p> <p>() POLLUTION: ()</p> <p style="padding-left: 20px;"> <input type="checkbox"/> Incipient/Long Term <input type="checkbox"/> Waiver of Subrogation </p> <p>() CRIME: () Joint Loss Payable Status</p> <p style="padding-left: 20px;"> <input type="checkbox"/> Fidelity Bond <input type="checkbox"/> Employee Dishonesty <input type="checkbox"/> Computer Fraud <input type="checkbox"/> Other: _____ </p> <p>() ASBESTOS LIABILITY: () Additional Insured</p>	<p>() US L&H (Longshore and Harbor Workers) () Outer Continental Shelf () Black Lung (Coal Mine Health and Safety) () Other: _____</p> <p>() Any Auto (x) Non-Owned Auto (x) Additional Insured () Trucker's Form () Other: _____</p> <p>() Contractual Liability (x) Products/Completed Ops. () Garagekeepers Legal Liab. () Collapse/Underground () Pollution () Airport Premises () Other: _____</p> <p>() Contractual Liability () Additional Insured () Hull Waiver of Subrogation () Other: _____</p> <p>() Actual Cash Value () Named Perils Form () Boiler and Machinery () Contractors Equipment\$ ____ () Other: _____</p> <p>() Pollution () Other: _____</p> <p>() Sudden and Accidental () Contractor's Pollution () Other: _____</p> <p>() Financial Institution Bond () In Transit Coverage () Commercial Crime () Other: _____</p>	<p>(\$1,000,000.00)</p> <p>(\$1,000,000.00)</p> <p>(\$1,000,000.00)</p> <p>() Personal Injury (x) Independent Contractors () Child Abuse/Molestation () Explosion Hazard (x) Addition Insured Status () Hangarkeepers Legal Liab. () Other: _____</p> <p>(x) 3 Year Discovery Tail () Other: _____</p> <p>() Agreed Amount () Earthquake: _____ () Flood: _____ () Loss of Rental Income: ____ () Other: _____</p> <p>() Additional Insured () Other: _____</p> <p>() Additional Insured () Loss of Monies/Securities () Wire Transfer Fraud () Forgery/Alteration of Docs.</p>

PER OCCURRENCE LIMITS

() _____ (\$ _____) (type of coverage)	() _____	() _____
() _____	() _____	() _____
() _____	() _____	() _____
() _____ (\$ _____) (type of coverage)	() _____	() _____
() _____	() _____	() _____
() _____	() _____	() _____
() _____ (\$ _____) (type of coverage)	() _____	() _____
() _____	() _____	() _____
() _____	() _____	() _____