

0150-12644-0000

**TRANSMITTAL**

TO  
The Council

DATE  
10/2/2024

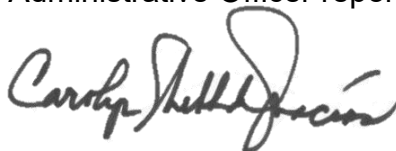
COUNCIL FILE NO.

FROM  
The Mayor

COUNCIL DISTRICT  
All

**PROPOSED PERSONAL SERVICES CONTRACT BETWEEN THE BUREAU OF SANITATION  
(BOS) AND HITACHI ENERGY USA INC., FOR SOFTWARE MAINTENANCE OF BOS'  
ELLIPSE AND RELATED PRODUCTS AND INTEGRATIONS**

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



MAYOR

*Attachment*

MWS/PJH/JVW:amm/jpq:10240196t

(Carolyn Webb de Macias for)

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

To: The Mayor	Date: 06/24/24	C.D. No. ALL	CAO File No.: 0150-12644-0000
Contracting Department/Bureau: Public Works Bureau of Sanitation		Contact: Dan Seto – (323) 342-6288 Nancy Lantin – (213) 485-2158	
Reference: Transmittal from the Board of Public Works dated April 12, 2024; referred for report on April 15, 2024			
Purpose of Contract: Software maintenance of Ellipse, BOS' Computerized Maintenance System, and related products and integrations			
Type of Contract: (X) New contract ( ) Amendment, Contract No.		Contract Term Dates: Five years from execution, with two three-year renewal options, and month-to-month extension for up to six months or a total potential term of 11 years and six months	
Contract/Amendment Amount: \$8,125,451			
Proposed amount \$8,125,451 + Prior award(s) \$0 = Total \$8,125,451			
Source of funds: Sewer Operations and Maintenance Fund and Sewer Capital Fund			
Name of Contractor: Hitachi Energy USA Inc.			
Address: 901 Main Campus Drive, Raleigh, NC 27606			
	Yes	No	N/A
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested			X
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: 0%			
8. Business Inclusion Program			X
9. Equal Benefits & First Source Hiring Ordinances	X		
10. Contractor Responsibility Ordinance	X		
11. Disclosure Ordinances	X		
12. Bidder Certification CEC Form 50	X		
13. Prohibited Contributors (Bidders) CEC Form 55	X		
14. California Iran Contracting Act of 2010	X		

## RECOMMENDATION

That the City Council authorize the Board of Public Works (Board), or two members of the Board, on behalf of the Bureau of Sanitation, to execute the proposed sole source Personal Services Contract with Hitachi Energy USA Inc., for software maintenance of Ellipse and related products and integrations for a five-year term, with two three-year renewal options, and an option to extend on a month-to-month basis for six months to be exercised at the City's sole discretion, for a total potential term of eleven years and six months, which has been previously approved by the Board. The total maximum not to exceed contract amount is \$8,125,451 for the services and authority to execute is subject to the City Attorney approval as to form.

## SUMMARY

In accordance with Executive Directive No. 3 (Villaraigosa series), the Board of Public Works (Board), on behalf of the Bureau of Sanitation (Bureau/BOS), requests approval to execute a new personal services contract (Contract) with Hitachi Energy USA Inc. (Vendor/Hitachi) for software maintenance of the Ellipse, the Bureau's Computerized Maintenance Management System (Ellipse) and related products and integrations. The current Vendor has provided services since 1998 through several

AMM	Analyst	10240196	City Administrative Officer		

contracts and letters of agreement. The Vendor developed Ellipse and has provided implementation services for BOS, since BOS began utilization of Ellipse July 1, 2017. Ellipse is used by over 800 BOS employees in managing over 350,000 treatment plant and collection system assets, is integrated with the City's Financial Management System, the Field Automation for Sanitation Trucks and is critical to generating monthly preventive maintenance work orders, managing 40,000 warehouse items and processing over \$20 million in purchases annually. The most recent contract with Hitachi expired on June 30, 2021 and services have been provided on a holdover basis since then due to a variety of factors including the unpredictability of the software upgrades and the various integrations into newer Citywide systems. The new sole source contract which has been approved by the City Attorney as to form will become effective upon execution and have a total potential term of eleven years and six months, if approved by Council. Our Office has reviewed the request and recommend approval.

## **Background**

*Initial System Implementation* - Initially in 1998, the Bureau contracted with Indus International (now the Vendor) for consulting services to integrate the Department of General Services' Citywide financial and procurement system, Supply Management System (SMS) with the Bureau's system (C.F. 98-2007), for a cost of \$1,903,025. In 2000, the Council approved Amendment No. 1 which increased the cost ceiling to \$3,056,040 to implement the Vendor's new proprietary computerized asset management system, Enterprise Maintenance Planning and Control (EMPAC) system within the four City Wastewater Treatment Plants and the Clean Water Conveyance Divisions. In 2001, the Council approved Amendment No. 2 which increased the cost ceiling to \$4,349,040 to complete mobile application integration and extended the term to 2003. In the same year, the Bureau implemented its Field Automation for Sanitation Trucks (FAST) system to enable the Clean Water Conveyance Division's field crews to update maintenance data from the field directly to the EMPAC system. Contract No. 108094 continued services from 2005 to 2008 for a cost of \$1,525,000. From 2008 to 2012 services were continued through the use of interim purchase orders.

*Ellipse and Current Procurement* - In 2013, the Bureau contracted with Ventyx, Inc. (formerly Indus International) for software maintenance and support services for the EMPAC system and its integrations with other applications (C.F. 12-1762) for a total cost of \$2,000,000. In 2017, the Council approved Amendment No. 1 with ABB Enterprise Software, Inc. (formerly Ventyx, Inc.) which increased the cost ceiling to \$6,425,000 and extended the term to 2021. The Vendor has continued to provide services since the contract expiration in 2021 through several one-time purchase orders and Letters of Agreement during the finalizing of the proposed Contract. As the EMPAC system is a legacy system and no longer supported by the Vendor, the most recent Letter of Agreement provides for the conversion from the EMPAC system to the new Ellipse system for a cost of \$95,000. The Letter of Agreement provided for a limited term. The total budget from 1998 to 2024 is \$12.4 million, exclusive of purchase orders. Approval of this Agreement will result in an additional \$8,125,451 for a total budget of \$20.5 million over the next eleven years through 2036.

*Scope of Work* - Under the proposed Contract, the Vendor will provide software maintenance of the Ellipse system and related products and integrations. The Vendor will also provide the following services on an as-needed basis as directed by the City through the use of Statements of Service (SOS):

- Provide three free Vendor Customer Conference passes for each Vendor Proprietary Software Customer Support Conference during the first five year term of the proposed Contract;

- Provide software maintenance and support services for integration of Ellipse with the City's Financial Management System (FMS);
- Provide on-call professional services for consultation, assessment, analysis, and recommendations on implementation activities;
- Provide integration support between licensed programs and the Bureau's mobile applications; and,
- Provide additional licenses for add-on software and maintenance for add-on Bureau-licensed applications

Failure of the Vendor to comply with any of the provisions of the Contract will result in liquidated damages in accordance with the provisions in Article 9 of the proposed Contract.

*Compensation for Services* – Funding will be provided on a project-by-project basis from the Sewer Construction and Maintenance Fund (SCM). The maximum compensation under the proposed Contract is \$8,125,451. The estimated cost for the first year is \$175,634 and those funds are included in the department's budgetary accounts. The rate for each subsequent year of the Contract is based on a five percent increase per year as the Consumer Price Index can fluctuate. Table 1 details compensation.

Table 1: Estimated Cost of Services		
Item	Estimated Cost	Estimated Annual Costs
Annual Maintenance *	\$2,495,201	\$226,836
Ellipse/FMS Integration	\$905,250	\$82,295
On-Call Professional Services	\$306,000	\$27,818
Mobile Computing Integration	\$969,000	\$82,073
Additional Software Licensing	\$3,450,000	\$313,636
<b>Total</b>	<b>\$8,125,451</b>	<b>\$732,658</b>
*Base cost includes Annual Maintenance only. All other services are on an as-needed basis and charged per SOS. Compensation for as-needed services are estimates.		

Services excluding annual software maintenance are on an as-needed basis and will only be provided at the written request from the City through the use of an SOS. The Contract gives no guarantee of minimum amount of work to the Vendor. In accordance with City Standard Provisions for contracting, payment obligation is subject to the availability of budgeted funds.

*Sole Source Justification* - As the proper functioning of Ellipse and its integration with both FMS and FAST are critical to the operation of the Wastewater Treatment plants, collection system, and conveyance system, maintenance of this software is a necessity. The Vendor is the software manufacturer and author of the Ellipse system and is the only company authorized and capable of providing software maintenance and integration support to other applications. Additionally, the Vendor does not provide licenses to other firms to perform maintenance services for Ellipse. The Vendor has developed a historical relationship with the Bureau, and the Vendor's software engineers have specific technical knowledge and understanding of the Bureau's system installation, data, and functionality. As a result of the proprietary nature of the work being contracted, the City Attorney has determined that the Vendor is the sole source that can provide the service and made the determination on February 27, 2024 that the Bureau could proceed with a sole-source contract.



## **CITY COMPLIANCE**

On July 20, 2023, in accordance with Charter Section 1022, the Personnel Department determined that it would be more feasible to contract out the work due to the proprietary nature of the work and the City forces lacking the technical expertise to perform the proposed work. On September 23, 2023, the Bureau filed a Notice of Intent to Contract. The Vendor does not subcontract or license with other firms to perform the proposed work. As there are no opportunities for subcontracting, on October 4, 2023, the Office of Procurement waived the Business Inclusion Program requirement for this Contract. All other City requirements and standard contract provisions have been adhered to.

The City Attorney has reviewed the proposed Contract as to form. In accordance with Los Angeles City Charter Section 373 and Los Angeles City Administrative Code Section 10.5(a), execution of the Contract requires Council approval as the total term exceeds three years.

## **FISCAL IMPACT STATEMENT**

The execution of the proposed Contract will result in expenditure of up to \$8,125,451 over the potential 11-years and six months term. There is no impact to the General Fund as funding will be identified on a project-by-project basis from the SCM, subject to availability and included in the annual budget. A total of \$180,000 is budgeted for this purpose in the SCM in 2024-25 to offset the FY year costs of \$175,634. Future funding is contingent upon Council approval of the funds as part of the annual budget process. The Contract includes an obligation limitation clause which limits the City's obligation to make payments to funds which have been appropriated for the stated purpose.

## **FINANCIAL POLICIES STATEMENT**

The recommendation in this report complies with the City's financial policies in that expenditures of special funds are limited to the mandates of the funding source.

Attachment – Bureau of Sanitation and Bureau of Contract Administration Joint Board Report (BPW-2024-0209) dated April 12, 2024

*MWS/PJH/JVW:amm/jpq:10240196*

**BOARD OF PUBLIC WORKS  
MEMBERS**

**AURA GARCIA**  
PRESIDENT

**M. TERESA VILLEGAS**  
VICE PRESIDENT

**DR. MICHAEL R. DAVIS**  
PRESIDENT PRO TEMPORE

**VAHID KHORSAND**  
COMMISSIONER

**SUSANA REYES**  
COMMISSIONER

**CITY OF LOS ANGELES**

CALIFORNIA



**KAREN BASS**  
MAYOR

**OFFICE OF THE  
BOARD OF PUBLIC WORKS**

**TJ KNIGHT**  
ACTING EXECUTIVE OFFICER

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

TEL: (213) 978-0261  
TDD: (213) 978-2310  
FAX: (213) 978-0278

<http://bpw.lacity.org>

April 12, 2024

**BPW-2024-0209**

The Honorable Mayor Bass  
City Hall – Room 320  
Los Angeles, CA 90012  
Attn: Heleen Ramirez

**SOLE SOURCE CONTRACT – HITACHI ENERGY USA INC.**

As recommended in the accompanying report from the Directors of the Bureaus of Sanitation and Contract Administration, which this Board has adopted, the Board of Public Works (Board) recommends that the Mayor and City Council:

1. AUTHORIZE to execute a sole source contract with Hitachi Energy USA Inc. for the maintenance of the Ellipse software, and its interfaces to the Financial Management System, the Mobile Computing System, and other related products that may be used by Bureau of Sanitation (BOS). The term of the contract is for five years with two renewal options of three years each at BOS's sole discretion with a cost not to exceed \$8,125,451; and
2. AUTHORIZE the President or two members of the Board will execute the contract.

(W.O. S10IHSSO, S11IHSSC)

Fiscal Impact: There is no impact to the General Fund.

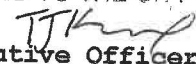
Sincerely,

TJ KNIGHT,  
Acting Executive Officer, Board of Public Works

TK:lc

## DEPARTMENT OF PUBLIC WORKS

BUREAU OF SANITATION  
BUREAU OF CONTRACT ADMINISTRATION  
JOINT BOARD REPORT NO. 2  
APRIL 12, 2024

ADOPTED BY THE BOARD  
PUBLIC WORKS OF THE CITY  
of Los Angeles California  
AND REFERRED TO THE MAYOR  
**APR 12 2024**  
AND REFERRED TO THE CITY COUNCIL  
  
Executive Officer  
Board of Public Works

CD: ALL

AUTHORITY TO EXECUTE A SOLE SOURCE CONTRACT WITH HITACHI ENERGY USA INC. FOR THE SOFTWARE MAINTENANCE OF ELLIPSE AND RELATED PRODUCTS AND INTEGRATIONS (W.O. # S10IHSSO & S11IHSSC)

RECOMMENDATIONS

1. Approve and forward this report with transmittals to the Mayor and City Council with the request that the Board of Public Works (Board) be authorized to execute a sole source contract with Hitachi Energy USA Inc. ("Hitachi Energy") for the maintenance of the Ellipse software, and its interfaces to the Financial Management System (FMS), the Mobile Computing System (FAST), and other related products that may be used by LA Sanitation and Environment (LASAN). The term of the contract is for five (5) years with two (2) renewal options of three (3) years each at LASAN's sole discretion with a cost not to exceed \$8,125,451.
2. Upon the Mayor's and City Council's authorization, the President or two members of the Board will execute the contract.

TRANSMITTALS

1. Copy of the proposed sole source contract between the City of Los Angeles and Hitachi Energy USA Inc. Originals will be delivered to the Board Office.

FISCAL IMPACT STATEMENT

There is no General Fund impact resulting from the execution of this contract. This contract is funded by the Sewer Operations and Maintenance Fund (Fund No. 760) and the Sewer Capital Fund (Fund No. 761). The financing for the sole source contract with Hitachi Energy will be requested through the LASAN Information and Control Systems Division budget.

DISCUSSION**Background**

Ellipse, LASAN's Computerized Maintenance Management System (CMMS), is a commercial software LASAN uses to manage maintenance programs for all four (4) of LASAN's water reclamation treatment facilities and clean water and stormwater conveyance systems. Hitachi Energy developed Ellipse and has provided implementation services for LASAN, and LASAN has utilized Ellipse since July 1, 2017.

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Over 800 LASAN employees use Ellipse to manage over 350,000 treatment plant and collection system assets (such as pumps, centrifuges, scrubbers, pipelines, etc.). Ellipse generates over 30,000 preventive maintenance work orders each month, assists with managing 40,000 warehouse items, and processes over \$20 million in purchases each year.

Ellipse is integrated with the City's Financial Management System (FMS), which is a citywide procurement system owned by the City's General Services Department. The Ellipse/FMS integration, developed by Hitachi Energy, allows Ellipse users to request the purchase of spare parts necessary for performing preventive and emergency maintenance.

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

Hitachi Energy, like many other software vendors, fixes problems and enhances the functionality of its software through upgrades. Each new release of Ellipse, FMS, or FAST may require changes to Ellipse's integrations with FMS and FAST. The proper functioning of Ellipse and its integrations with FMS and FAST is critical to the operations of LASAN's water reclamation facilities and clean water and stormwater conveyance systems.

Because the effects of the software upgrades are unpredictable, significant discretionary funds are requested in this contract. The previous sole source contract between LASAN and Hitachi Energy for Ellipse implementation and support services, C-122152, expired on June 30, 2021.

**Sole Source Justification**

Ellipse is Hitachi Energy's proprietary software. Hitachi Energy, as Ellipse's software manufacturer and author, is the only firm that can create software patches/fixes and/or perform or provide maintenance services for Ellipse. As such, Hitachi Energy is the only company authorized and capable of providing software maintenance and support for the Ellipse system and its integrations to other applications. Hitachi Energy retains the staff and technical expertise to provide maintenance on these systems. Hitachi Energy's engineers and project managers also have specific technical expertise with LASAN's system installations, data, and functionality. This expertise is critical during emergency situations, when it is essential to restore the proper operation and function of the system as quickly as possible.

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JOINT BOARD REPORT NO. 2  
APRIL 12, 2024

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Failure to execute a maintenance contract with Hitachi Energy will put LASAN's maintenance programs at risk; for example, routine software upgrades will not be performed, timely software patches will not be obtained, software upgrades in FMS and FAST would be affected due to integration issues, and there will be no guaranteed response by service personnel in the event of a system failure. Therefore, LASAN is requesting the Board execute this sole source contract with Hitachi Energy.

**Project Scope**

The project scope will include services to provide the required expertise necessary for the software maintenance of Ellipse and its integration with other systems such as FMS and FAST. The services will include, but not be limited to the following:

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

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

- Software maintenance and support services for Ellipse/FMS Integration, including, but not limited to:
  - Software upgrades
  - Defect corrections
  - Technical support
- On-call Professional services to provide consultation, assessment, analysis, and recommendations on implementation activities.
- Professional services for Mobile Computing Integration, including, but not limited to:
  - Software upgrades
  - Defect corrections
  - Technical support
- Software Licensing to provide additional licenses for add-on software that LASAN may choose to acquire from Hitachi Energy and Hitachi Energy Partners.

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**Term of Agreement and Cost Ceiling**

The contract term will be for five (5) years with two (2) three (3)-year renewal options to be exercised at the City's sole discretion. The total estimated contract ceiling for the contract term, including the renewal options, is \$8,125,451. Discretionary funds in the amount of \$5,564,050 are requested for the professional services and licensing as itemized below.

ITEM	ESTIMATED COST
Annual Maintenance for eleven-year period	\$2,561,401
Ellipse/FMS Integration	\$905,250*
On-call Professional Services	\$306,000*
Mobile Computing Integration	\$902,800*
Additional Software Licensing	\$3,450,000*
<b>TOTAL</b>	<b>\$8,125,451</b>

\*Discretionary Funds

**Business Inclusion Program**

Hitachi Energy does not subcontract to or otherwise license any firm to perform maintenance services for Ellipse proprietary software. Therefore, this contract provides no opportunities for subcontractor participation. The Office of Procurement waived the Business Inclusion Program requirement for this project on October 4, 2023.

**Notification of Intent to Contract**

The Notification of Intent to Contract (NOI) was filed with the Office of the City Administrative Officer (CAO) Clearinghouse on [September 23, 2023].

**Charter Section 1022**

The CAO issued the 1022 determination report on [July 20, 2023] and determined that there was an insufficient number of City staff to perform the work proposed to be contracted.

**Approved as to Form**

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

(Continued on next page)

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BUREAU OF CONTRACT ADMINISTRATION  
JOINT BOARD REPORT NO. 2  
APRIL 12, 2024

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**Other City Policies and Requirements**

Hitachi Energy shall comply with all City requirements, including but not limited to:

- Non-Discrimination/Equal Employment Practices/Affirmative Action
- Living Wage and Worker Retention Ordinances
- Equal Benefits Ordinance
- Business Tax Registration Certificate
- Child Support Obligations Ordinance
- Insurance and Performance Bond Requirements
- Slavery Disclosure and Disclosure of Border Wall Contracting Ordinances
- Americans with Disabilities Act
- Municipal Lobbying Ordinance
- Los Angeles Residence Information
- City of Los Angeles Contract History
- Non-Collusion Affidavit
- First Source Hiring Ordinance
- Contractor Bidder Campaign Contribution and Fundraising Restrictions
- Iran Contracting Act of 2010
- City Contractors' Use of Criminal History for Consideration of Employment Applications
- COVID-19 Requirements
- Contractor Data Reporting

**CONTRACTOR RESPONSIBILITY ORDINANCE**

All contractors participating in this program are subject to compliance with the requirements specified in the City of Los Angeles's Contractor Responsibility Ordinance #173677, [Article 14, Chapter 1, Division 10, L.A.C.C.]. Failure to comply with the requirements specified in this ordinance will render the bidder's contract subject to termination pursuant to the conditions expressed therein.

**CONTRACTOR PERFORMANCE EVALUATION**

In accordance with Article 13, Chapter 1, Division 10 of the City of Los Angeles Administrative Code, the appropriate City personnel responsible for quality control of this personal services contract shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration upon completion of this contract.

**Headquarters Address and Workforce Information**

Hitachi Energy is headquartered at 901 Main Campus Dr., Raleigh, NC 27606. Currently, there are over 3600 employees in the North America organization and none living in the City of Los Angeles.

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JOINT BOARD REPORT NO. 2  
APRIL 12, 2024

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**Contract Administration**

Responsibility for administration of this contract will be with the Information and Control Systems Division of LASAN.

PROGRAM REVIEW BY DIRECTOR (PRD) APPROVAL

This contract was approved by PRD on July 19, 2022, in the amount of \$8,125,451.

STATUS OF FINANCING

There is no impact to the General Fund. The total funding for this project is not to exceed \$8,125,451. No funding is required at this time. Specific funding information will be provided at the time of approval of the Task Order Solicitations. Funding sources may include, but are not limited to Fund No. 760, Sewer Operations and Maintenance Fund and Fund No. 761, Sewer Capital Fund.

Funds and appropriations for future fiscal years are not yet identified and existing appropriations may change based on available cash balances. Therefore, funds and appropriations will be determined by the Director and General Manager of LASAN.

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for the City to comply with its governing legal requirements, the City shall have no obligation to make any payments to the Contractor unless the City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract.

The Contractor agrees that any services provided by the Contractor, purchases made by the Contractor or expenses incurred by the Contractor in excess of the appropriation(s) shall be free and without charge to the City and the City shall have no obligation to pay for the services, purchases or expenses. The Contractor shall have no obligation to provide any services, provide any equipment, or incur any expense in excess of the appropriation, amount(s) until the City appropriates additional funds for this Contract.

FUTURE ACTIONS

Upon authorization by the Council and the Mayor, the Board will execute the contracts with Hitachi Energy.



BUREAU OF SANITATION  
BUREAU OF CONTRACT ADMINISTRATION  
JOINT BOARD REPORT NO. 2  
APRIL 12, 2024

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Respectfully submitted,



---

BARBARA ROMERO  
Director and General Manager  
Bureau of Sanitation

COMPLIANCE REVIEW PERFORMED  
AND APPROVED BY:



---

Irene Gonzalez (Mar 21, 2024 13:25 PDT)

---

LYNDA McGLINCHEY, Program Manager II  
Office of Contract Compliance  
Bureau of Contract Administration



---

JOHN L. REAMER, JR.  
Inspector of Public Works  
Bureau of Contract Administration

REVIEWED AND APPROVED BY:



---

Sarai Bhaga (Mar 8, 2024 12:50 PST)

---

SARAI BHAGA, Chief Financial Officer  
Bureau of Sanitation  
Date: \_\_\_\_\_

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

CONTRACT NO. C-

PERSONAL SERVICES CONTRACT

BETWEEN

THE CITY OF LOS ANGELES

AND

HITACHI ENERGY USA INC.

FOR

SOFTWARE MAINTENANCE OF ELLIPSE

AND RELATED PRODUCTS AND INTEGRATIONS

City of Los Angeles  
Department of Public Works  
Los Angeles Sanitation and Environment

Barbara Romero, Director and General Manager  
Mas Dojiri, Assistant Director

Information and Control Systems Division  
Nicolas Tran, Manager

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## **AGREEMENT**

This AGREEMENT, made and entered into by and between the City of Los Angeles, a municipal corporation acting by order of and through its Board of Public Works, hereinafter called the "CITY", and "HITACHI ENERGY USA INC." hereinafter referred to as "CONTRACTOR", and is set forth as follows:

## **WITNESSETH**

WHEREAS, the CITY had a contract C-122152 with CONTRACTOR to develop and implement a new computerized maintenance management system with the ELLIPSE software, created by CONTRACTOR and implemented, configured, and customized for the Bureau of Sanitation, Los Angeles Sanitation and Environment ("BUREAU" or "LASAN"); and

WHEREAS, LASAN's four (4) Water Reclamation Plants and the Clean Water Conveyance Divisions use ELLIPSE to manage maintenance programs and assets; and

WHEREAS, the CONTRACTOR developed Ellipse and integrated ELLIPSE with the citywide procurement system, Financial Management System (FMS), for purchasing materials and spare parts for assets maintenance; and



WHEREAS, the CONTRACTOR also integrated ELLIPSE with the Field Automation for Sanitation Trucks (FAST) system for work management related to the Clean Water Conveyance Divisions assets maintenance; and

WHEREAS, the CITY relies on ELLIPSE and its integration with FMS, and FAST for all aspects of asset management in the Clean Water Program; and

WHEREAS, the CITY's ELLIPSE implementation and support contract with the CONTRACTOR (C-122152), as amended by contract C-122152-1, expired on June 30, 2021; and

WHEREAS, while the City, through its General Services Department (GSD), currently has a contract with CGI, Inc. for the maintenance of FMS, that contract does not provide technical consulting services for integration with Ellipse; and

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

WHEREAS, the CONTRACTOR, as the author of ELLIPSE and its integrations with FMS and FAST, is uniquely qualified to provide these technical services; and

WHEREAS, the CONTRACTOR is the only company authorized to provide

software maintenance and support for ELLIPSE and its integrations, as ELLIPSE is the CONTRACTOR's proprietary software and the CONTRACTOR does not provide licenses to other firms to perform maintenance services for ELLIPSE; and

WHEREAS, the CONTRACTOR's engineers and project managers have specific technical expertise with LASAN's system installations, data, and functionality which is critical during emergency situations when it is essential to restore the proper operation and function of the system as quickly as possible; and

WHEREAS, failure to execute a maintenance contract with Hitachi Energy will put LASAN's maintenance programs at risk; for example, routine software upgrades will not be performed, timely software patches will not be obtained, software upgrades in FMS and FAST would be affected due to integration issues, and there will be no guaranteed response by service personnel in the event of a system failure; and

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

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

WHEREAS, the CONTRACTOR has agreed to perform the above referenced tasks in a professionally sound manner in accordance with all applicable laws, rules, regulations and other requirements of local, state, and federal governments for a minimum of eleven (11) years from the Effective Date of this AGREEMENT;

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

#### **ARTICLE 1 – CONSTRUCTION OF PROVISIONS AND TITLES HEREIN**

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

## **ARTICLE 2 – DEFINITIONS**

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

AGREEMENT/CONTRACT	This contractual agreement between the CITY and CONTRACTOR for CONTRACTOR SERVICES.
BOARD	The Board of Public Works of the City of Los Angeles.
BUREAU/LASAN	Bureau of Sanitation, Department of Public Works, City of Los Angeles.
CITY	The City of Los Angeles, Board of Public Works, or its subordinate Bureaus. The term CITY may also refer to the geographic area known as the City of Los Angeles, the City Council, other Departments of the City of Los Angeles, or any person employed by the City of Los Angeles, or who is authorized to represent the City of Los Angeles in matters concerning this AGREEMENT. CITY includes all persons employed or authorized by the CITY.
CITY PROJECT MANAGER/ PROJECT MANAGER	The CITY's designated representative for all matters related to this AGREEMENT.
CONTRACTOR	HITACHI ENERGY USA INC.

CONTRACTOR PARTNERS	SOLUTION PARTNER, SERVICE PARTNER, or PLATFORM PARTNER.
CONTRACTOR SERVICES	All services to be provided by the CONTRACTOR specified in this AGREEMENT.
CPI	United States Consumer Price Index for all Urban Consumers for All Items, not seasonally adjusted, for the most recent twelve-month period.
CWNCD	LASAN's Clean Water North Conveyance Division.
CWSCD	LASAN's Clean Water South Conveyance Division.
ELLIPSE	CONTRACTOR's Enterprise asset management software application.
DIRECTOR	Director of LASAN or the Director's designated representative.
EMPAC	Enterprise Maintenance Planning and Control.
FAST	Field Automation for Sanitation Trucks.
GSD	General Services Department, City of Los Angeles.
GIS	Geographical Information System.
LICENSED PROGRAM	An off-the-shelf computer program or program module that is licensed to the CITY by CONTRACTOR.

MBE/WBE/SBE/EBE/DVBE/OBE	Minority/Women/Small/Emerging/Disabled Veteran/Other Business Enterprises.
PLATFORM PARTNER	A hardware or software partner of CONTRACTOR offering products that form part of the CONTRACTOR solution offerings.
PROJECT	The maintenance and support of the LICENSED PROGRAMS.
SERVICE PARTNER	A CONTRACTOR approved company that provides systems integration and consulting services in partnership with the CONTRACTOR.
SOLUTION PARTNER	A CONTRACTOR partner who directly offers complementary products that are an essential part of the end-to-end solutions.
SOS	Statement of Service.
SUBCONTRACTOR	An individual or company having an agreement with the CONTRACTOR to provide services, equipment, or materials to the CONTRACTOR.

### **ARTICLE 3 – PROJECT DESCRIPTION**

On December 14, 1998, the BOARD approved the execution of a contract (C-97798) between Indus International (now the CONTRACTOR) and the BUREAU for the implementation of a new computerized maintenance management system for the

Clean Water Program with EMPAC software (now ELLIPSE software). The four (4) Clean Water Reclamation Plants and the Clean Water Conveyance Divisions use ELLIPSE for asset, maintenance and inventory management activities. The CONTRACTOR developed the ELLIPSE interface with the new customized Citywide Financial Management System (FMS), a financial & procurement system implemented by the Department of General Services (GSD) using CGI, Inc. software.

In September 2003, the BUREAU implemented the Field Automation for Sanitation Trucks (FAST) application for use in the Clean Water Conveyance Division's maintenance trucks to enable crews to enter maintenance activity data from the field into EMPAC software (now ELLIPSE software). FAST uses the NaviGate software from Gatekeeper Systems, Inc. Indus International (now the CONTRACTOR) worked with Gatekeeper Systems, Inc. to develop the electronic interface between EMPAC software (now ELLIPSE software) and FAST. The FAST application has been deployed for sewer and storm water maintenance crews at all the Clean Water Conveyance Division yards.

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

Because the ELLIPSE to FMS and FAST integrations are unique to the CITY's implementation, specific expertise from the CONTRACTOR as the author of ELLIPSE is necessary for keeping all of the systems operating properly. Failure to secure this sole

source contract with the CONTRACTOR will adversely affect the maintenance program for all four (4) Clean Water Reclamation Plants and the Clean Water Conveyance Divisions.

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

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



- 4.1 The CONTRACTOR shall perform such work with a degree of skill and diligence normally employed by professional analysts or contractors performing the same or similar services.
- 4.2 The CONTRACTOR warrants that the services will be performed in a manner consistent with generally accepted industry standards. The CITY's sole remedy and the CONTRACTOR's sole obligation in the event of a breach of the warranty contained herein is, at the CONTRACTOR's option and upon agreement with the CITY: (i) to re-perform the services, or (ii) to refund the amounts paid by the CITY for the services which were not as warranted, provided the CONTRACTOR has received notice from the CITY within sixty (60) days of the completion of the services which the CITY alleges were not performed consistent with the warranty in Section 10.
- 4.3 Maintenance of Records
- The CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this AGREEMENT, in their original form or as otherwise approved by the CITY. These records shall be retained for a period of no less than four (4) years from the later of the following: (1) final payment made by the CITY, (2) the expiration of this CONTRACT or (3) termination of this CONTRACT. The records will be subject to examination and audit by authorized CITY personnel or the CITY's representatives at any time. The CONTRACTOR shall provide any reports requested by the CITY regarding performance of this CONTRACT. Any subcontract entered into by the

CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, the CONTRACTOR may, upon the CITY's written approval, submit the required information to the CITY in an electronic format, e.g. USB flash drive, at the expiration or termination of this CONTRACT.

#### 4.4 Scope of Services

Services shall include, but not be limited to, the following:

4.4.1 Annual Maintenance Fee for ELLIPSE for a maximum of eleven (11) years which will be paid annually. The rate for Annual Maintenance and support will be \$175,634.46 for the first year. So long as the CITY remains on a version of the ELLIPSE software under active support as described in Hitachi's Support Policy Exhibit O, the rate for each subsequent year will be the previous year's amount plus the current CPI at the time the renewal is escalated, or 5.0%, whichever is less, for each year the CITY chooses to renew the Annual Maintenance and Support Services.

Applicable uplift fees, as described in Hitachi's Support Policy Exhibit O, will apply if the ELLIPSE version in production with the CITY is not under active support by the CONTRACTOR. The CONTRACTOR will notify the CITY no less than one (1) year before a version of the ELLIPSE software will no longer be under active support. The CONTRACTOR shall provide the necessary staff and/or resources to work directly with the CITY and other contractors in support of the ELLIPSE application.

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

- access to the CONTRACTOR Software Customer Portal, the latest ELLIPSE software updates
- defect corrections, troubleshooting and fixing
- remote diagnostics support pursuant to the CITY's Maintenance Agreement

As part of the Annual Maintenance Fee, the CONTRACTOR shall provide three (3) free CONTRACTOR Customer Conference passes to the CITY for each Conference that convenes during the first five (5) year term of this agreement. Notwithstanding the foregoing, these three passes can only be used in the year granted and do not carry-over and/or accumulate year to year. These passes are "use it or lose it" for each year.

#### 4.4.2 ELLIPSE/FMS Integration Support (estimated at \$905,250 over 11 years)

The CONTRACTOR shall provide the necessary staff and/or resources to work directly with the CITY and other contractors in supporting ELLIPSE/FMS integration. The support includes, but is not limited to telephone support, documentation, software configuration, tuning, software modification, project management and testing. The cost for the ELLIPSE/FMS integration Support is only an estimate. The CONTRACTOR shall provide ELLIPSE/FMS Integration Support services on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONTRACTOR from the CITY. The CONTRACTOR shall

not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

#### 4.4.3 On-call Professional Services (estimated at \$306,000 over 11 years)

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

#### 4.4.4 Mobile Computing Integration (estimated at \$969,000 over 11 years)

The CONTRACTOR shall provide the necessary staff and/or resources to work directly with the CITY and other contractors in the support of the integration between the LICENSED PROGRAMS and the BUREAU's mobile applications. The support provided includes, but is not limited to, telephone support, documentation, software modification, software configuration, tuning, testing, project management and implementation of

new integration functionality. The cost for the Mobile Computing Integration is only an estimate. The CONTRACTOR shall provide Mobile Computing Integration on an "as needed" basis only as directed by the CITY. There is no minimum amount of work guaranteed to the CONTRACTOR from the CITY. The CONTRACTOR shall not perform any work on this portion of the AGREEMENT without an express written request from the CITY, pursuant to a SOS.

#### 4.4.5 Software Licensing (estimated at \$3,450,000 over 11 years)

The CONTRACTOR shall provide additional licenses and/or licenses for add-on software and maintenance for the LASAN licensed applications from the CONTRACTOR and CONTRACTOR PARTNERS. The cost for this licensing is only an estimate. Ongoing Maintenance costs for any new software license purchase is also included in this estimate. The CONTRACTOR shall provide Software Licensing on an "as needed" basis only as directed by the CITY. There is no minimum amount of purchased licenses guaranteed to the CONTRACTOR from the CITY. The CONTRACTOR shall not deliver any software licenses without an express written request from the CITY, pursuant to an Order Form.

### 4.5 Contractor Schedule of Services and Costs

4.5.1 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule of services and subsequent revisions and

reports, the CONTRACTOR shall prepare the schedule and submit it to the PROJECT MANAGER within fifteen (15) calendar days of the Notice to Proceed. This schedule shall be submitted electronically in Microsoft Project format. The CONTRACTOR shall perform the work in accordance with the signed SOS and prepare revisions and updates in a timely manner.

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

4.5.3 In the event the PROJECT MANAGER has authorized project management hours to prepare the schedule and the subsequent revisions and reports, the CONTRACTOR shall submit an updated schedule to the PROJECT MANAGER at least five (5) working days prior to the submittal of the

CONTRACTOR's monthly payment request. The updated CONTRACTOR's schedule shall accurately reflect the status of work and incorporate all changes into the schedule. Updated schedules shall also be submitted at the request of the PROJECT MANAGER. Upon approval of an amended schedule, the approved changes shall be reflected in the next scheduled update submittal by the CONTRACTOR, or other update submittal approved by the PROJECT MANAGER.

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

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

4.5.6 Total value of this agreement not to exceed \$8,125,451. This is the total value of all of the sections above.

## **ARTICLE 5 – KEY CONTRACTOR PERSONNEL**

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

Rick Sherman, Hitachi Energy

320 Interlocken Parkway, Suite 200

Broomfield, Colorado, 80021

C: (702) 277-5893

Rick.Sherman@hitachienergy.com

Additional technical specialists shall be assigned subject to the CITY PROJECT MANAGER'S approval.

- 5.2 The CONTRACTOR agrees that personnel assigned to these positions at the commencement of services under this AGREEMENT shall serve in these positions as long as required by the CONTRACT, and the CONTRACTOR shall not change personnel assigned to these positions without five (5) business days prior written consent and approval of the CITY PROJECT MANAGER, whose consent shall not be withheld unreasonably.
- 5.3 Unless otherwise approved by the CITY, the CONTRACTOR shall use its own employees to perform the services described in this CONTRACT. The CITY has



the right to review and approve any personnel who are assigned to work under this CONTRACT. The CONTRACTOR shall remove personnel from performing work under this CONTRACT if requested to do so by the CITY.

- 5.4 The CONTRACTOR shall not use SUBCONTRACTORS to assist in performance of this Contract without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this CONTRACT and paying all SUBCONTRACTORS. The CITY has the right to approve the CONTRACTOR's SUBCONTRACTORS, and the CITY reserves the right to request replacement of any SUBCONTRACTOR. The CITY does not have any obligation to pay the CONTRACTOR's SUBCONTRACTORS, and nothing herein creates any privity of contract between the CITY and any SUBCONTRACTOR.

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

The CITY designates Dan Seto as its CITY PROJECT MANAGER to represent the CITY in all matters within the scope of the AGREEMENT relating to the conduct and approval of the work to be performed. Whenever the term "approval of CITY," "consult with CITY," "confer with CITY," or similar terms are used, they shall refer to the CITY PROJECT MANAGER. The CITY PROJECT MANAGER may designate an assistant to act in his/her

stead. The CITY may designate another CITY employee to succeed Dan Seto as CITY PROJECT MANAGER. The CONTRACTOR will be notified in writing in such event.

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

## **ARTICLE 7 – TERM OF AGREEMENT**

Unless terminated as provided under Article 9 or extended by a duly approved amendment to this AGREEMENT signed by the parties, the term of this AGREEMENT shall be for five (5) years from the date of full execution, with two (2) renewal options of three (3) years each to be exercised at the CITY's sole discretion. In addition to the two (2) renewal options of three (3) years each, the CITY shall have the option to extend the AGREEMENT on a month-to-month basis for a maximum of six (6) months, during which period the CITY and the CONTRACTOR shall continue performance under the terms of this AGREEMENT. The CITY may exercise the month-to-month extension option either at the end of the initial five (5) year term if the CITY elects not to exercise its renewal options, or, if the City does elect to renew, at the end of either the first or second three-year renewal term. To exercise the month-to-month extension option, the City shall provide the CONTRACTOR written notice at least 90 days prior to the expiration of the then-current term of the AGREEMENT. If either party decides to terminate the relationship during such period of month-to-month operation, the

CONTRACTOR shall be obligated to continue performance for at least sixty (60) days after written notice from the terminating party.

Unless otherwise provided, this CONTRACT shall take effect when all of the following events have occurred (i.e., "full execution"):

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

## **ARTICLE 8 – SUSPENSION**

At the CITY's sole discretion, the CITY may suspend any or all Professional Services (as such Professional Services are described in Article 4.4.2) provided under this CONTRACT by providing the CONTRACTOR with written notice of suspension. Upon receipt of the notice of suspension, the CONTRACTOR shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to the CITY until the CITY gives written notice to recommence the Professional Services.

## **ARTICLE 9 – TERMINATION**

### **9.1 Termination for Convenience**

Except during the initial five-year period, either Party may terminate this CONTRACT for convenience at any time by providing the other Party thirty (30) days written notice. Upon receipt of the notice of termination, the CONTRACTOR shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. The CITY shall pay the CONTRACTOR its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by the CONTRACTOR to effect the termination. Thereafter, neither Party shall have further claims against the other Party under this CONTRACT. All finished and unfinished documents and materials procured for or produced and paid for under this CONTRACT. The Parties agree to execute any documents necessary for the CITY to perfect, memorialize, or record the CITY's ownership of rights provided herein.

### **9.2 Termination for Breach of Contract**

9.2.1 Except as provided in Article 21, if the CONTRACTOR fails to perform any of the provisions of this CONTRACT or so fails to make progress as to endanger timely performance of this CONTRACT, the CITY may give the CONTRACTOR written notice of the default. The CITY's default notice will indicate whether the default may be cured and the time period to cure the

default to the sole satisfaction of the CITY. Additionally, the CITY's default notice may offer the CONTRACTOR an opportunity to provide the CITY with a plan to cure the default, which shall be submitted to the CITY within the time period allowed by the CITY. At the CITY's sole discretion, the CITY may accept or reject the CONTRACTOR's plan. If the default cannot be cured or if the CONTRACTOR fails to cure within the period allowed by the CITY, then the CITY may terminate this CONTRACT due to the CONTRACTOR's breach of this CONTRACT.

9.2.2 If the default under this CONTRACT is due to the CONTRACTOR's failure to maintain the insurance required under this CONTRACT, the CONTRACTOR shall immediately: (1) suspend performance of any services under this CONTRACT for which insurance was required; and (2) notify its employees and SUBCONTRACTORS (if applicable) of the loss of insurance coverage and the CONTRACTOR's obligation to suspend performance of services. The CONTRACTOR shall not recommence performance until the CONTRACTOR is fully insured and in compliance with the CITY's requirements.

9.2.3 If a federal or state proceeding for relief of debtors is undertaken by or against the CONTRACTOR, or if the CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this CONTRACT.

9.2.4 If the CONTRACTOR engages in any dishonest conduct related to the performance or administration of this CONTRACT or violates the CITY's laws, regulations or policies relating to lobbying, then the CITY may immediately terminate this CONTRACT.

9.2.5 Acts of Moral Turpitude

- a) The CONTRACTOR shall immediately notify the CITY if the CONTRACTOR or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
- b) If the CONTRACTOR or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, the CITY may immediately terminate this CONTRACT.
- c) If the CONTRACTOR or a Key Person is charged with or indicted for an Act of Moral Turpitude, the CITY may terminate this CONTRACT after providing the CONTRACTOR an opportunity to present evidence of the CONTRACTOR's ability to perform under the terms of this CONTRACT.
- d) Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as

defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e) For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this CONTRACT, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of the CONTRACTOR.

9.2.6 In the event the CITY terminates this CONTRACT as provided in this section, the CITY may procure, upon such terms and in the manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated, and the CONTRACTOR shall be liable to the CITY for all of its costs and damages, including, but not limited to, any excess costs for such services subject to the limitation of liability set forth herein.

9.2.7 If, after notice of termination of this CONTRACT under the provisions of this section, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this section, or that the default was excusable under the terms of this CONTRACT, the rights and obligations of

the parties shall be the same as if the notice of termination had been issued pursuant to Section 9.1 Termination for Convenience.

9.2.8 The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT.

9.3 In the event that this CONTRACT is terminated, the CONTRACTOR shall immediately notify all employees and SUBCONTRACTORS, and shall notify in writing all other parties contracted with under the terms of this CONTRACT within five (5) working days of the termination.

#### **ARTICLE 10 – SUBCONTRACT APPROVAL**

All subcontracts in excess of \$5,000 shall require the prior approval of the CITY. A copy of all subcontracts shall be submitted to the CITY PROJECT MANAGER showing the SUBCONTRACTOR's name and dollar amount of each subcontract. Wholly-owned subsidiaries of the CONTRACTOR shall not be considered SUBCONTRACTORS.

CONTRACTOR shall not substitute SUBCONTRACTORS listed in this AGREEMENT without the prior written approval of the CITY. The CONTRACTOR shall not add SUBCONTRACTORS to assist in the performance of this AGREEMENT without the prior written approval of the CITY. If the CITY permits the use of SUBCONTRACTORS, the CONTRACTOR shall remain responsible for performing all aspects of this Contract. The CITY has the right to approve CONTRACTOR's SUBCONTRACTORS, and the CITY reserves the right to request replacement of subcontractors. The CITY does not have



any obligation to pay CONTRACTOR's subcontractors, and nothing herein creates any privity of contract between the CITY and the SUBCONTRACTORS.

## **ARTICLE 11 - COMPENSATION, INVOICING, AND PAYMENT**

### 11.1 Definitions

11.1.1 "Cost" as used herein is defined as the sum of: (1) Billing Salary Rates; (2) Indirect Expenses; (3) Other Direct Cost with no markup; and (4) Profit of as defined below. "Billing Salary Rates" shall be at the rates approved by the CITY PROJECT MANAGER, to be charged by the CONTRACTOR for employees' time directly chargeable to their performance of the project work. Any adjustments to the CONTRACTOR's direct salary rate shall be in accordance with established BUREAU policies existing at the time the adjustment is approved. Billing Salary Rate increases are limited to once per year, per employee, on the anniversary date of the CONTRACTOR's AGREEMENT execution, and are subject to the approval of the CITY. In no case shall the "Billing Salary Rates" exceed the actual salary rate paid to the employee.

Any adjustment to the SUBCONTRACTORS' salaries and Hourly Billing Rates shall be reviewed and approved by the CITY PROJECT MANAGER prior to invoicing. Adjustments to the SUBCONTRACTORS' salaries and Hourly Billing Rates may be increased one time per year, per employee, on the anniversary date of the CONTRACTOR's AGREEMENT execution.

Any such increases shall be in accordance with established BUREAU policy at the time the adjustment is approved.

11.1.2 "Indirect Expenses" (including payroll burden, overhead, and general and administrative expenses) shall be at the rate applied to Billing Salary Rate. Indirect Expenses for this Contractor Services Agreement is fixed at a rate of ten percent (10%) for CONTRACTOR personnel located in the Home Office and fixed at a rate of ten percent (10%) for CONTRACTOR located in the Field Office for the duration of the AGREEMENT.

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

11.1.4 "Subcontract Expenses" shall be the actual amount paid by the CONTRACTOR to the SUBCONTRACTOR for their services to the CITY plus a reasonable mark up.

11.1.5 "Profit" shall be limited to ten percent (10%) and shall be applied to the summation of "Indirect Expenses" and "Billing Salary Rates".

11.1.6 Costs incurred by the CONTRACTOR prior to the actual date of full execution of this AGREEMENT shall only be payable to the CONTRACTOR if said costs were incurred in completing any task specifically authorized by this AGREEMENT.

11.1.7 Exhibit A, Project Services Cost Estimate, attached hereto and incorporated herein by this reference, shall be the format used for the estimated total cost by task for each SOS. For SOS's specifying a Cost Reimbursement Plus Profit compensation method, the Project Services Cost Estimate shall be based upon the estimated hours of labor at estimated direct labor rates, the allocated indirect expenses, other direct costs, and profit. For SOS's specifying a Lump Sum compensation method, the Project Services Cost Estimate shall set forth the total project cost and the appropriate payment milestones.

11.1.8 Hourly Billing Rate is a method of compensation whereby the CONTRACTOR is compensated on an hourly basis pursuant to established Hourly Billing Rates set forth in Exhibit F. The hourly billing rates shall be approved by the CITY PROJECT MANAGER for the CONTRACTOR

employees' time directly chargeable to their performance of the project work and includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the CONTRACTOR. Payments shall be made upon the satisfactory completion of the tasks or milestones as set forth in the Project SOS.

11.1.9 The CITY will not pay for the CONTRACTOR's nor the SUBCONTRACTOR's personnel for invoice preparation. The CITY will not pay for CONTRACTOR's nor SUBCONTRACTOR's communication expenses and computer time charges.

## 11.2 Compensation

The CONTRACTOR agrees to perform the work specified in Article 4.4, and the CITY shall compensate the CONTRACTOR either on a Lump Sum basis, a Cost Reimbursement Plus Profit basis, or an Hourly Billing Rate basis upon mutual written agreement. The CITY shall designate the compensation method in the SOS's to be issued under this AGREEMENT. If the SOS specifies the compensation as being on a Cost Reimbursement Plus Profit or Hourly Billing Rate basis, payment shall be made in accordance with the Task Cost Estimates to be provided for CITY approval prior to issuance of Notice to Proceed for any task under this AGREEMENT. Hourly rates, SUBCONTRACTOR fees and other direct/indirect charges shall be in accordance with rates set herein. Individuals who the CONTRACTOR wishes to add to the project must have their compensation rate approved by the CITY's PROJECT MANAGER, and a revised Scope of Services must be prepared as evidence of this addition. The total cost ceiling shall be stated in the SOS.

If the SOS specifies the compensation as being on a Lump Sum basis, payment shall be made upon the satisfactory completion of the tasks or milestones as set forth in the SOS. The total cost ceiling shall be stated in the SOS. The total cost ceiling for this AGREEMENT is \$8,125,451.

## 11.3 Invoicing and Payment

11.3.1 For SOS's specifying a Cost Reimbursement Plus Profit method of payment, the CONTRACTOR shall, once each month, submit to the CITY

an original and three (3) copies of an invoice in a format acceptable to the CITY which will include all costs and a proportionate amount of profit due the CONTRACTOR for services provided during the preceding month. Payments shall be made upon the submission of a complete and accurate invoice and supporting documentation. The CITY shall review the CONTRACTOR's invoice in accordance with the CITY's review procedures. The CITY shall make a good faith effort to process payments in thirty (30) days.

- 11.3.2 Invoices shall be prepared in such form and supported by such copies of invoices, payrolls, time sheets, and other documents of proof as may be reasonably required by the CITY to establish the amount of such invoices as allowable expenses. If applicable, the CONTRACTOR shall submit a Subcontractor Utilization Form, Schedule B, [Exhibit N], as part of the monthly invoice, listing current MBE/WBE/SBE/EBE/DVBE/OBE amounts invoiced as part of the invoicing procedures. The CONTRACTOR must provide an explanation for any item that falls short of the planned utilization with specific plans and recommendations for recovering any shortfalls in utilization. No such invoices shall be paid without the Subcontractor Utilization Form Attachment. All invoices shall be subject to audit for a period of four (4) years from the termination of this AGREEMENT.

- 11.3.3 The CITY shall not be obligated to reimburse the CONTRACTOR for costs incurred in excess of the Project Services Cost Estimate set forth. The CONTRACTOR shall not be obligated to continue performance (including actions under the temporary stop work or termination clauses) or otherwise incur costs in excess of the Project Services Cost Estimate unless and until the CITY shall have notified the CONTRACTOR in writing that such Project Services Cost Estimate has been increased and shall have specified in such notice an estimated Project Services Cost Estimate, which shall thereupon constitute the cost performance of this AGREEMENT. In the absence of the specified notice, the CITY shall not be obligated to reimburse the CONTRACTOR for any costs in excess of the Project Services Cost Estimate set forth, whether those costs were incurred during the course of the AGREEMENT or as a result of termination.
- 11.3.4 When and to the extent that the Project Services Cost Estimate has been increased, any costs incurred by the CONTRACTOR in excess of the Project Services Cost Estimate for any SOS, prior to such increase, shall be allowable to the same extent as if such costs had been incurred after the increase.
- 11.3.5 Notwithstanding any other provision of this CONTRACT, including any exhibits or attachments incorporated therein, and in order for the CITY to comply with its governing legal requirements, the CITY shall have no obligation to make any payments to the CONTRACTOR unless the CITY

shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this CONTRACT. The CONTRACTOR agrees that any services provided by the CONTRACTOR, purchases made by the CONTRACTOR or expenses incurred by the CONTRACTOR in excess of the appropriation(s) shall be free and without charge to the CITY and the CITY shall have no obligation to pay for the services, purchases or expenses. The CONTRACTOR shall have no obligation to provide any services, provide any equipment or incur any expenses in excess of the appropriated amount(s) until the CITY appropriates additional funds for this CONTRACT.

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



#### 11.4 False Claims Act

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

### **ARTICLE 12 – AMENDMENTS**

All amendments, changes or modifications to this CONTRACT shall be in writing and signed and approved pursuant to the provisions of Article 7.

### **ARTICLE 13 – INDEMNIFICATION AND INSURANCE**

#### 13.1 INDEMNIFICATION

Except for the active negligence or willful misconduct of the CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, CONTRACTOR shall defend, indemnify and hold harmless the CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all third party lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of

experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including the CONTRACTOR's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by CONTRACTOR, SUBCONTRACTORS, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

## 13.2 INSURANCE

During the term of this CONTRACT and without limiting the CONTRACTOR's obligation to indemnify, hold harmless and defend the CITY, The CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverage and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit C hereto). The insurance must: (1) conform to the CITY's requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit C hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. The CONTRACTOR shall comply with all Insurance Contractual Requirements shown on Exhibit C hereto. Exhibit C is hereby incorporated by reference and made a part of this CONTRACT.

### 13.3 BONDS

All bonds required by the CITY shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 et seq., as amended from time to time.

## **ARTICLE 14 – INDEPENDENT CONTRACTORS**

The CONTRACTOR is an independent contractor and not an agent or employee of the CITY. 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 CITY.

## **ARTICLE 15 – WARRANTY AND RESPONSIBILITY OF CONTRACTOR**

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

15.2 The CONTRACTOR shall be responsible for the professional quality of other services furnished by the CONTRACTOR under this AGREEMENT. The CONTRACTOR shall re-perform any Services which are not performed in a professional manner at the CONTRACTOR's sole cost and expense.

15.3 The CONTRACTOR shall exhibit proper professional judgment in the use of information furnished by the CITY in Article 6. In the event that said information is not

delivered timely or that it is discovered to be incorrect or misleading, the CONTRACTOR will notify the CITY in a reasonable manner within three (3) business days after the discovery of such tardiness or incorrect or misleading information and promptly make a determination of its costs and schedule impact on this AGREEMENT, as well as recommendations for the correction of such incorrect or misleading information.

15.4 The CONTRACTOR shall perform such professional services as may be necessary to accomplish the work required to be performed under this AGREEMENT in accordance with this AGREEMENT and set forth in the applicable SOS.

15.5 Except as specified in Article 13 and as otherwise provided in this AGREEMENT, the CONTRACTOR shall be and shall remain liable, in accordance with applicable law, for all damages to the CITY caused by the CONTRACTOR's negligent performance of any of the services furnished under this AGREEMENT and for which the City has provided notice within thirty (30) days of the completion of such services, except for errors, omissions, or other deficiencies to the extent attributable to the CITY, the CITY-furnished data, or any third party (excepting any the CONTRACTOR or SUBCONTRACTOR of any tier).

#### **ARTICLE 16 - INTELLECTUAL PROPERTY INDEMNIFICATION**

The CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the CITY, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside

counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by the CONTRACTOR, or its SUBCONTRACTORS, in performing the work under this CONTRACT; or (2) as a result of the CITY's actual or intended use of any Work Product (as defined in Article 18) furnished by the CONTRACTOR, or its SUBCONTRACTORS, under this CONTRACT. The rights and remedies of the CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT. This provision will survive expiration or termination of this CONTRACT.

#### **ARTICLE 17 INTELLECTUAL PROPERTY WARRANTY**

The CONTRACTOR represents and warrants that its performance of all obligations under this CONTRACT does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

## **ARTICLE 18 – OWNERSHIP AND LICENSE**

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this CONTRACT including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of the CONTRACTOR. The CONTRACTOR grants to the CITY a non-exclusive, non-transferable perpetual license to use all Work Product for the CITY's own internal use.

The CONTRACTOR agrees that a monetary remedy for breach of this CONTRACT may be inadequate, impracticable, or difficult to prove and that a breach may cause the CITY irreparable harm. The CITY may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude the CITY from seeking or obtaining any other relief to which the CITY may be entitled.

For all Work Products delivered to the CITY that are not originated or prepared by the CONTRACTOR or its SUBCONTRACTORS under this CONTRACT, the CONTRACTOR shall

secure a grant, at no cost to the CITY, for a non-exclusive perpetual license to use such Work Products for any CITY purposes.

Any subcontract entered into by the CONTRACTOR relating to this CONTRACT shall include this provision to contractually bind its SUBCONTRACTORS performing work under this CONTRACT such that the CITY's license rights of all Work Products are preserved and protected as intended herein.

#### **ARTICLE 19 – SUCCESSORS AND ASSIGNS**

All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns provided, however, that no assignment of the AGREEMENT shall be made without written consent of the parties to this AGREEMENT as required under Article 28.

#### **ARTICLE 20 – CONTACT PERSONS - PROPER ADDRESSES - NOTIFICATION**

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

**To The CITY:**

Contact Person: Dan Seto

Address: Information and Control Systems Division

2714 Media Center Drive, M/S 911

Los Angeles, California, 90065

To CONTRACTOR:

Contact Person: CFO with copy to General Counsel

HITACHI ENERGY

400 Perimeter Center Terrace, Suite 500

Atlanta, GA 30346

**ARTICLE 21 – FORCE MAJEURE (EXCUSABLE DELAYS)**

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this CONTRACT, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's SUBCONTRACTORS), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a SUBCONTRACTOR of the CONTRACTOR shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both the CONTRACTOR and



SUBCONTRACTOR, and without any fault or negligence of either of them. In such case, the CONTRACTOR shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the SUBCONTRACTOR were obtainable from other sources in sufficient time to permit the CONTRACTOR to perform timely. As used in this CONTRACT, the term "SUBCONTRACTOR" means a subcontractor at any tier.

In the event the CONTRACTOR's delay or failure to perform arises out of a Force Majeure Event, the CONTRACTOR agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

#### **ARTICLE 22 – SEVERABILITY**

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

#### **ARTICLE 23 – DISPUTES**

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

## **ARTICLE 24 – ENTIRE AGREEMENT**

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

## **ARTICLE 25 – APPLICABLE LAW, INTERPRETATION, AND ENFORCEMENT**

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and the CITY, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This CONTRACT shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. The CONTRACTOR shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this CONTRACT with no additional compensation paid to the CONTRACTOR.

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

If any part, term or provision of this CONTRACT is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this CONTRACT shall not be affected.

**ARTICLE 26 – CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION  
CERTIFICATE REQUIRED**

For the duration of this CONTRACT, the CONTRACTOR shall maintain valid Business Tax Registration Certificate(s) as required by the CITY's Business Tax Ordinance, Section 21.00 et seq. of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

Should any such certificate(s) become suspended or revoked, it is the CONTRACTOR's responsibility to report the matter immediately to the CITY PROJECT MANAGER.

**ARTICLE 27 – WAIVER**

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

**ARTICLE 28 – PROHIBITION AGAINST ASSIGNMENT OR DELEGATION**

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

- A. Assign or otherwise alienate any of its rights under this CONTRACT, including the right to payment; or

B. Delegate, subcontract, or otherwise transfer any of its duties under this CONTRACT.

#### **ARTICLE 29 – PERMITS**

The CONTRACTOR and its directors, officers, partners, agents, employees, and SUBCONTRACTORS, shall obtain and maintain all licenses, permits, certifications and other documents necessary for the CONTRACTOR's performance of this CONTRACT. The CONTRACTOR shall immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to the CONTRACTOR's performance of this Contract.

#### **ARTICLE 30 - CLAIMS FOR LABOR AND MATERIALS**

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

### **ARTICLE 31 – BREACH**

Except for Force Majeure, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

### **ARTICLE 32 - MANDATORY PROVISIONS PERTAINING TO NON-DISCRIMINATION IN EMPLOYMENT**

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. CONTRACTOR shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, CONTRACTOR shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.

- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

### **ARTICLE 33 – CHILD SUPPORT ASSIGNMENT ORDERS**

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, CONTRACTOR shall fully comply with all applicable State and Federal employment reporting requirements. Failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under this Contract. Failure of CONTRACTOR or principal owner to cure

the default within ninety (90) days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by CONTRACTOR for work to be performed under this Contract must include an identical provision.

**ARTICLE 34 - CONTRACTOR DATA REPORTING (Not Applicable)**

If Contractor is a for-profit, privately owned business, Contractor shall, within 30 days of the effective date of the Contract and on an annual basis thereafter (i.e., within 30 days of the annual anniversary of the effective date of the Contract), report the following information to City via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by City: CONTRACTOR's and any SubCONTRACTOR's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("Contractor/Subcontractor Information"). Contractor shall further request, on an annual basis, that any Subcontractor input or update its business profile, including the Contractor/Subcontractor Information, on RAMP or via another method prescribed by CITY.

**ARTICLE 35 — LIVING WAGE AND SERVICE CONTRACTOR WORKER  
RETENTION ORDINANCE**

**35.1 LIVING WAGE ORDINANCE**

The CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 et seq., as amended from time to time. The CONTRACTOR further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision. (Exhibit G)  
[DECLARATION OF COMPLIANCE WITH LIVING WAGE ORDINANCE EXHIBIT]

**35.2 SERVICE CONTRACTOR WORKER RETENTION ORDINANCE**

The CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 et seq., as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

**ARTICLE 36 – ACCESS AND ACCOMMODATIONS**

CONTRACTOR represents and certifies that:

- A. CONTRACTOR shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 et seq., the Fair Housing Act, and its implementing regulations



and any subsequent amendments, and California Government Code Section 11135;

- B. The CONTRACTOR shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. The CONTRACTOR shall provide reasonable accommodation upon request to ensure equal access to CITY-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this CONTRACT are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

The CONTRACTOR understands that the CITY is relying upon these certifications and representations as a condition to funding this CONTRACT. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

#### **ARTICLE 37 – CONTRACTOR RESPONSIBILITY ORDINANCE**

The CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 et seq., as amended from time to time.

### **ARTICLE 38 – LOS ANGELES BUSINESS INCLUSION PROGRAM**

The CONTRACTOR being a sole source vendor received a waiver from the Mayor's Office and has been exempted from the Los Angeles Business Inclusion Programs. Unless otherwise exempted prior to bid submission, the CONTRACTOR shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this CONTRACT. The CONTRACTOR shall utilize the Business Assistance Virtual Network ("BAVN") at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. The CONTRACTOR shall perform subcontractor outreach activities through BAVN. The CONTRACTOR shall not change any of its designated SUBCONTRACTORS or pledged specific items of work to be performed by these SUBCONTRACTORS, nor shall the CONTRACTOR reduce their level of effort, without prior written approval of the CITY.

### **ARTICLE 39 – DISCLOSURE ORDINANCES**

This CONTRACT is subject to the Slavery Disclosure Ordinance, Section 10.41 et seq. of the Los Angeles Administrative Code, as may be amended from time to time, unless otherwise exempt in accordance with the provisions of this Ordinance. The CONTRACTOR certifies that it has complied with the applicable provisions of the Slavery Disclosure Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this CONTRACT. Any subcontract entered into by the CONTRACTOR for

work to be performed under this CONTRACT must include an identical provision. Exhibit E [SLAVERY DISCLOSURE ORDINANCE EXHIBIT] is attached hereto and incorporated herein by this reference.

The CONTRACTOR shall comply with Los Angeles Administrative Code Section 10.50 et seq., 'Disclosure of Border Wall Contracting.' The City may terminate this CONTRACT at any time if the City determines that the CONTRACTOR failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

#### **ARTICLE 40 – CONTRACTOR PERFORMANCE EVALUATION ORDINANCE**

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

#### **ARTICLE 41 – MUNICIPAL LOBBYING ORDINANCE**

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

#### **ARTICLE 42- FIRST SOURCE HIRING ORDINANCE**

The CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 et seq., as amended from time to time. Any subcontract entered into by CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

#### **ARTICLE 43- COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12) FOR MEASURE H/CONTRACTOR CONTRIBUTIONS/FUNDRAISING**

Unless otherwise exempt, if this CONTRACT is valued at \$100,000 or more and requires approval by an elected CITY office, the CONTRACTOR, CONTRACTOR's principals, and the CONTRACTOR's SUBCONTRACTORS expected to receive at least \$100,000 for performance under the CONTRACT, and the principals of those SUBCONTRACTORS (the "Restricted Persons") shall comply with Charter Section 470(c)(12) and LAMC Section

49.7.35. Failure to comply entitles the CITY to terminate this CONTRACT and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected CITY officials or candidates for elected CITY office for twelve months after this CONTRACT is signed. Additionally, a CONTRACTOR subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any CONTRACTOR subject to Charter Section 470(c)(12) shall include the following notice in any contract with any SUBCONTRACTOR expected to receive at least \$100,000 for performance under this CONTRACT:

"Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #\_\_\_\_\_.

Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles ("CITY") officials and candidates for elected CITY office for twelve months after the CITY Contract is signed. You are required to provide the names and contact information of your principals to the CONTRACTOR and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found

online at [ethics.lacity.org](http://ethics.lacity.org) or by calling the Los Angeles City Ethics Commission at (213) 978-1960."

#### **ARTICLE 44 - COMPLIANCE WITH THE IRAN CONTRACTING ACT OF 2010**

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with the CITY for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit." (EXHIBIT M)

#### **ARTICLE 45 - INTEGRATED CONTRACT**

This CONTRACT sets forth all of the rights and duties of the parties with respect to the subject matter of this CONTRACT, and replaces any and all previous contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of Article 12 hereof.

#### **ARTICLE 46 – DATA PROTECTION**

- A. The CONTRACTOR shall protect, using the most secure means and technology that is commercially available, CITY-provided data or consumer-provided data acquired in the course and scope of this CONTRACT, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). The CONTRACTOR shall notify the CITY in writing as soon as reasonably

feasible, and in any event within seventy-two (72) hours, of the CONTRACTOR's discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. The CONTRACTOR shall begin remediation immediately. The CONTRACTOR shall provide daily updates, or more frequently if required by the CITY, regarding findings and actions performed by the CONTRACTOR until the Data Breach or Security Incident has been effectively resolved to the CITY's satisfaction. The CONTRACTOR shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with the CITY. At the CITY's sole discretion, the CITY and its authorized agents shall have the right to lead or participate in the investigation. The CONTRACTOR shall cooperate fully with the CITY, its agents and law enforcement.

- B. If the CITY is subject to liability for any Data Breach or Security Incident, then the CONTRACTOR shall fully indemnify and hold harmless the CITY and defend against any resulting actions.

#### **ARTICLE 47 – LOCAL BUSINESS PREFERENCE ORDINANCE (INAPPLICABLE)**

The CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an

identical provision.

**ARTICLE 48 – CONTRACTOR’S USE OF CRIMINAL HISTORY FOR  
CONSIDERATION OF EMPLOYMENT APPLICATIONS**

The CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by the CONTRACTOR for work to be performed under this CONTRACT must include an identical provision.

**ARTICLE 49 – COMPLIANCE WITH IDENTITY THEFT LAWS AND PAYMENT  
CARD DATA SECURITY STANDARDS**

The CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. The CONTRACTOR also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, the CONTRACTOR shall verify proper truncation of receipts in compliance with FACTA.

**ARTICLE 50 – COMPLIANCE WITH CALIFORNIA PUBLIC RESOURCES CODE  
SECTION 5164**



California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, the CONTRACTOR shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by the CITY. The CONTRACTOR is required to have all employees, volunteers and SUBCONTRACTORS (including all employees and volunteers of any SUBCONTRACTOR) of the CONTRACTOR working on premises to pass a fingerprint and background check through the California Department of Justice at the CONTRACTOR's sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

## **ARTICLE 51 – POSSESSORY INTERESTS TAX**

Rights granted to the CONTRACTOR by the CITY may create a possessory interest. The CONTRACTOR agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, the CONTRACTOR shall pay the property tax. The CONTRACTOR acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

## **ARTICLE 52 – CONFIDENTIALITY**

All documents, information and materials provided to the CONTRACTOR by the CITY or developed by the CONTRACTOR pursuant to this CONTRACT (collectively "Confidential Information") are confidential. The CONTRACTOR shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by the CITY or as required by law. The CONTRACTOR shall immediately notify the CITY of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this CONTRACT.

## **ARTICLE 53 – COUNTERPARTS**

This AGREEMENT may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original

but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by the CITY) and sent by e-mail shall be deemed original signatures.

#### **ARTICLE 54– LIMITATION OF LIABILITY**

Except as otherwise required under Section 13.1, the aggregate liability of the Contractor for claims in any way arising out of the services performed under this AGREEMENT shall be limited to and not exceed the amount of \$4,400,000, except that claims for, related to, or associated with injury, including personal injury and injury to a third party, death, intellectual property, and/or data breach, shall not be subject to such limitation in amount.

#### **ARTICLE 55 – COVID-19 VACCINATION REQUIREMENTS**

Employees of CONTRACTOR and/or persons working on its behalf, including, but not limited to, subcontractors (collectively, "Contractor Personnel"), while performing services under this AGREEMENT and prior to interacting in person with CITY employees, contractors, volunteers, or members of the public (collectively, "In-Person Services") must be fully vaccinated against the novel coronavirus 2019 ("COVID-19"). "Fully vaccinated" means that 14 or more days have passed since Contractor Personnel have

received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Contractor Personnel to perform In-Person Services, CONTRACTOR shall obtain proof that such Contractor Personnel have been fully vaccinated. CONTRACTOR shall retain such proof for the document retention period set forth in this AGREEMENT. CONTRACTOR shall grant medical or religious exemptions ("Exemptions") to Contractor Personnel as required by law. If CONTRACTOR wishes to assign Contractor Personnel with Exemptions to perform In-Person Services, CONTRACTOR shall require such Contractor Personnel to undergo weekly COVID-19 testing, with the full cost of testing to be borne by CONTRACTOR. If Contractor Personnel test positive, they shall not be assigned to perform In-Person Services or, to the extent they have already been performing In-Person Services, shall be immediately removed from those assignments. Furthermore, CONTRACTOR shall immediately notify CITY if Contractor Personnel performing In-Person Services (1) have tested positive for or have been diagnosed with COVID-19, (2) have been informed by a medical professional that they are likely to have COVID-19, or (3) meet the criteria for isolation under applicable government orders.

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

**CITY OF LOS ANGELES**

**CONTRACTOR**

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

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

Title: President, Board of Public Works

Title: General Manager

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

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

**APPROVED AS TO FORM:**

Hydee Feldstein Soto, City Attorney

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

Adena Hopenstand

Title: Deputy City Attorney

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

**ATTEST**

Holly Wolcott, City Clerk

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

Title: Deputy City Clerk

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