



City of **Santa Monica**

Public Works Department
1685 Main Street, Room 116
Santa Monica, CA 90401
Tel: 310-458-8221
Fax: 310-576-3598

Request for Proposal

Capital Improvement Program Software

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1.0 GOALS AND OBJECTIVES

The City of Santa Monica is seeking to implement a software solution to assist with the development of the City's capital improvement program.

The primary purpose of the capital improvement program software is to assist the City in the development a long-range capital improvement plan and manage the implementation of the plan's associated projects.

The following Request for Proposal (RFP) is seeking qualified companies to submit detailed proposals covering system functionality, experience, and abilities in implementing and maintaining a capital improvement program management system.

2.0 BACKGROUND

The City of Santa Monica is an international tourist destination coastal city located in the western portion of Los Angeles County. The City of Santa Monica serves a diverse population of nearly 90,000 residents and 15,000 businesses in approximately 8.2 square miles. The City is a full-service Charter City, providing a wide array of services including City-owned and operated transit services, solid waste services, a cemetery, general aviation airport and public safety. The City is bordered by the City of Los Angeles on the north, south and east.

The City of Santa Monica annually develops a five-year Capital Improvement Program (CIP). Capital projects for the City can be large in scale and scope and take multiple years to complete. Currently these projects are being managed with a variety of tools, without consistency across Department or Fund. The City would like to have a single source for managing capital projects that allows for centralized data collection and consistency in the quality of financial control. An institutionalized and systematic process would also allow for data and knowledge retention and transfer beyond a project cycle or a particular individual. During the annual budget process an interdepartmental CIP Committee reviews CIP submissions and prepares funding recommendations for the City Manager. In developing the program, ongoing capital needs are funded from ongoing revenues while one-time projects are funded with one-time monies. The City's FY2010-11 Capital Improvement Program budget is \$135.9 million. Additional information on this year's program can be viewed online at <http://santa-monica.webdev/finance/budget/2010-11/Budget%20Book%20Breakdown/12%20cip.pdf>. In addition to reviewing the current year's budget online please review the attachment titled CIP Sample Reports for examples of our existing reports.

3.0 SCOPE OF WORK

The City of Santa Monica, herein after referred to as the City, has the right, at its sole discretion, to add, delete, or change any specifications or requirements to meet its needs.

The City intends to acquire a web-based enterprise class software application to manage the City's capital improvement program. The software should provide tools for planning and managing all aspects of the capital improvement program, including but not limited to tracking all aspects of the City's five-year capital plan, capital budgets and funding plans, actual project expenditures, and project schedules.

The objective of the software is to develop an interface for multiple users in various departments and funds to track and manage complex, multiyear capital projects , and create a centralized database of project information and financial data.

The City is seeking to implement a Capital Improvement Project management system that enables the City to develop a long-range capital improvement plan and to provide management information to project managers through completion of the project.

The software should support the organization of the information by City defined levels. The system for developing the Capital Improvement Program should include the ability for all users to submit capital project requests and shall collect all data and information required to rank and evaluate projects and to create a Capital Improvement Plan document for budget and reporting purposes.

The system should have definable work flow capabilities to automate the approval process of the projects included in the plan. It should also have flexible templates to assist users in project cost development.

The system should also interface with the City's financial system, downloading cost information for the projects. It should maintain multi-year cost information for projects that span more than one fiscal year. The system should provide tools, or support third party tools such as "Microsoft Project", for managers to administer their project budgets.

The system should provide document management and retention for all documents related to a specific project. Specific scope of work elements expected from the contractor will include:

- Customized software package particular to City Funds and Departments.
- Capital Project Planning interface that allows end-users to track, manage, analyze, and report on projects across various fields.
- Creation of databases for capturing information for future use.
- Integration with existing systems and training for end-users.

The interested and eligible vendor shall provide the City of Santa Monica with a fully functional Capital Improvement Program budgeting and planning software system with customization requirements to meet the set of performance features described in Section 4.0 of this Request for Proposal.

4.0 SPECIFICATIONS AND REQUIREMENTS

The capital improvement program software solution will enable the City to improve the overall planning, management, and fiscal accountability of all capital projects. The software solution needs to be a robust, full functioning application that can be configured to manage citywide capital projects from initial

planning through completion. The core functionality of the system must be the ability to retrieve and aggregate data, “rollup” and “drilldown” from numerous sources and present a common set of results in a uniform, structured, and user-friendly manner. The software solution must be proven to be able to plan and manage capital projects across multiple years and multiple funding sources in the public sector.

The software solution must be configurable for a variety of users to maximize transparency of information. Underlying the system will be a common financial and project management data structure that contains attributes, behaviors, and “rollup/ drilldown” linkage rules enabling management at both the program and project level.

Responses must clearly show compliance with the specifications as outlined in Exhibit 1 System Functionality Requirements.

The City reserves the right to reject without further consideration those responses that are not clearly responsive to the following specifications:

4.1 General System Requirements

1. All servers should preferably run under the Microsoft Hyper-V and VMware clustered environment.
 2. All tiers of each layer such as the application layer (including the database) and presentation layer must provide secure encryption through the network.
 3. If physical servers are required, the physical servers that comprise the system must be rack mounted with a size of 1u blade.
 4. All servers should preferably support SAN storage.
 5. Database server must run on a Microsoft SQL Server (MS SQL 2005 and above).
 6. All thin client portals must be compatible with all browsers which includes but not limited to IE 7, IE 8, Firefox v 3.6, and Safari v 5.
 7. The system must integrate seamlessly with the JDE OneWorld system provided by Oracle.
 8. The City prefers an all-thin client environment. If a thick client must be deployed, it must support MSI for ease of deployment.
 9. The system must fully implement the Microsoft Windows graphical user interface standards. The City currently operates desktop computers running Windows 7 and Windows XP Professional. The City operates Windows 2003 and Windows 2008 SR2 servers running Microsoft SQL 2003 r2 and Microsoft SQL 2008 R2.
 10. The system must have database administration capabilities that will allow the system administrator to manage user access and provide for the development of user accounts and provide for password protection. Multiple levels of user security must be available that provides for read-only, read-write, update, and full-control access. Database
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administration functions should provide the ability to selectively “lock” certain database tables/records.

11. The vendor must be able to provide software engineering, custom programming, and database development support, if necessary to meet the needs of the City or to interface seamlessly with existing software products.
12. The system must be under client-server architecture and multi-user functionality.
13. The system must be able to enable site-specific configuration through user definable codes and parameters.
14. The system must provide user-friendly and flexible reports. All reports must be customizable to the City’s particular needs. A developer license for Crystal Reports must be included to create further customized reports.
15. Database structure and field definitions shall be provided that will allow the users to create customized reports utilizing third-party software.
16. The City prefers a site/enterprise licensing model that allows for unlimited client licenses.
17. Custom reports developed via Crystal shall be able to be published to the system’s report module for widespread use.

4.2 Features and Functionality – Please also see Exhibit 1 and 2

In addition to being able to produce the reports detailed in Exhibit 2, the software solution must provide the features specific to facilitate CIP planning, budgeting, project financials, contract management, and construction project management. Desirable modules include:

- Project request management and scoping
- Project ranking based on multiple ranking criteria
- Budget management
- Fund management linking funding sources to various allocation structures
- Multiple scenario creation and analysis
- Multiple standard reports for all aspects of capital program phases
- Project management which is interactive with other modules
- Dashboards
- Scheduler and workflow
- Contract and bid management
- Customizable forms and reports
- Document management

Full functional requirements are detailed in Exhibit 1.

5.0 RFP REVIEW CRITERIA

Proposals that are received and meet the specifications and requirements as defined in section 4.0 of this Request for Proposal will be reviewed by the an Evaluation Committee comprised of staff from various Departments within the City. The Evaluation Committee will compare, rate, and rank the submitted Proposals based on but not necessarily limited to the following criteria:

- Understanding of the project and responsiveness to project requirements,
- Knowledge of and experience providing similar system for other cities,
- Project costs.

The Evaluation Committee will schedule interviews with the most qualified firms to provide an opportunity for product demonstrations. In addition to scheduled product demonstrations, the City may request access to an active demonstration copy of the product software so that City staff can test the product's capabilities.

Following the evaluation process, a recommendation will be made to the City Manager and City Council to select the Bidder that submitted the most responsive proposal as determined by the Evaluation Committee.

6.0 RFP RESPONSE FORMAT

The following Request for Proposal response format is required and has been designed to facilitate comparison among proposals submitted:

1. COVER LETTER – INTRODUCTION

Provide a summary of the proposal and demonstrate that the company understands the project, including a general approach responding to the City's requirements. This should also include an introduction to the Bidder as well as the name of a contact person.

2. QUALIFICATIONS AND EXPERIENCE

Provide a summary of the Bidder's qualifications and experience with Capital Improvement Program management software. Include specifics regarding qualification and experience in similar projects. Demonstrate the Bidder's acceptance and industry expertise by providing five valid references of similar sized customers using the products specified in this Request for Proposal. Customer references represent a valuable resource used to substantiate various claims made by a vendor's literature. References also provide valuable insight determining expected benefits, ongoing system support, and system upgrades. The City prefers a vendor who has a customer base of at least twelve municipalities, with preferably at least six agencies which have financial systems software and project management software interfaces incorporated into their custom software program and whose product has been on the market

for at a minimum of three years. In addition Bidder should be able to demonstrate their product and its capabilities and functionality of interfaces.

3. PROJECT SCOPE

Describe the proposed software system. Describe the tools and/or software applications that are used to produce and edit standard, user defined, and ad-hoc reports.

4. PROJECT SCHEDULE

The Bidder must provide a detailed project schedule, including but not limited to system configuration, setup, installation, training, testing, and acceptance. The project schedule must provide a week-by-week schedule and include a listing of key activities, deliverables, and dates. Microsoft Project is preferred to illustrate the length of each major task. The project timetable will be reviewed with the selected vendor prior to beginning the project as part of the contract negotiation process.

5. PROJECT COSTS

The Bidder must provide detailed costs for the system delineating any configuration, setup, and implementation costs from system usage costs. The City prefers a plan that offers unlimited utilization of the system.

The vendor must provide a detailed itemized cost breakdown of the following categories:

1. Software licensing.
2. Hardware costs.
3. Professional services for installation/configuration.
4. On-site training (specify costs for system administrator training and end-user training).
5. Annual service and maintenance for five years.
6. All other miscellaneous costs not listed above.

The City reserves the right to select any or all of the components above, or that are included in the proposal.

6. EQUIPMENT SPECIFICATIONS

If the Bidder proposes a solution that includes or requires any on-premise hardware, the Bidder must provide detailed specifications of all of the equipment listed in their proposal. The Bidder must include cut sheets of all equipment proposed.

Within fifteen (15) calendar days after award of Contract by the City, the proposer to whom the Contract is to be awarded will be notified of the award by telephone or electronic mail. The City and vendor shall then work together to negotiate and execute Purchase and Maintenance Agreements.

The award of the Contract, if it is awarded, will be to the responsible Bidder complying with the instructions contained in this Request for Proposal. The City, however, reserves the right to select the schedules under which the proposals are to be compared, to reject any and all proposals, and to waive any irregularity in proposals received.

The City shall have sixty (60) days after the opening of proposals within which to accept or reject the proposals.

Within fifteen (15) calendar days after award of Contract by the City Council, the proposer to whom the Contract is to be awarded will be notified of the award by telephone or electronic mail. The City and vendor shall then work together to negotiate and execute Purchase and Maintenance Agreements. Shortly thereafter, a Notice of Award will be mailed, including the negotiated Contract for execution.

A copy of a sample contract is contained in Attachment E. The City Attorney may require some amendments to this form contract to fit the particulars of the project. Please include any changes to this form contract that the firm believes to be necessary.

7.0 RFP SUBMITTAL

Submit five (5) signed copies of your entire Proposal and one (1) electronic copy in Microsoft Word format or Adobe PDF format in a sealed envelope by 5:00 pm on Thursday, December 16, 2010. The envelope must be marked in the upper left hand corner with the name and address of the proposer. Proposals shall be sent to:

City of Santa Monica
Public Works Department
Attention: Terese Toomey
1685 Main Street, Room 113
Santa Monica, California 90401
e-mail: terese.toomey@smgov.net

A proposal will not be accepted after the date and time designated above. It is the sole responsibility of the Bidder to see that the proposal is delivered and received in proper time. Any proposal received after said designated date and time shall be returned to the proposer unopened.

By submitting a response to this Request for Proposal, the Bidder waives all rights to protest or seek any legal remedies whatsoever regarding any aspect of this Request for Proposal. The City reserves the right to select any number of qualified finalists. In addition, the City reserves the right to issue written notice to all Bidders of any changes in the proposal submission schedule, should the City determine in its sole and absolute discretion that such changes are necessary. Acceptance of any proposal submitted pursuant to this Request for Proposal shall not constitute any implied intent to enter into a Contract for

execution. The City reserves the right to reject any and all proposals. The vendor selected will be under contract to the City of Santa Monica.

8.0 RFP SCHEDULE

RFP Release	Monday, November 22, 2010
Vendor Inquiries Due	Tuesday, November 30, 2010 by 5:00 pm
City Response to Vendor Inquiries Posted	Tuesday, December 7, 2010 by 5:00 pm
Deadline for Proposal Submittal	Thursday, December 16, 2010 by 5:00 pm

9.0 INFORMATION AND INQUIRIES

All inquiries must be submitted via electronic mail to the staff listed in Section 9 of this RFP. Inquiries will be acknowledged via electronic mail, upon receipt. Responses to inquiries will be made available along with this RFP at <http://vendors.planetbids.com/SantaMonica/QuickSearch.cfm>.

For further information, please contact the following City of Santa Monica staff member:

Terese Toomey
Acting Assistant Public Works Director
Telephone: (310) 434-2621
E-mail: terese.toomey@smgov.net

EXHIBIT 1 – SYSTEM FUNCTIONALITY REQUIREMENTS

Feature Availability Code

- 1 – Standard, included in the base package no additional programming or costs
- 2 – Requires configuration at time of installation (no adjustment to source code); please identify additional system requirements and/or costs if applicable
- 3 – Optional feature that requires custom programming; identify additional system requirements and/or costs if applicable
- 4 – Will be available as an enhancement in the future; identify additional system requirements and/or costs if applicable
- 5 – Not available and cannot be implemented in the proposed version

REQUIRED FEATURES

General System

Code	Indicate availability of each feature in the quoted system by inserting the applicable code 1 –5 listed above.
	Ability to support the City of Santa Monica (City) Chart of Accounts and Finance System classification structure (i.e. funds, business units, GL codes, project numbers)
	Ability to perform real-time updates and recalculation of summary data following modifications to individual projects
	Ability to perform real-time updates and recalculation of summary data following modifications to individual projects and maintain historical values
	Ability to upload and download information from various Microsoft desktop applications such as Excel, Word, Access, Project, Publisher and other data sources
	Ability to export GIS data into ArcGIS v 10.0
	Ability to store documents such as contracts and architectural plans
	Ability to upload and download information from City's JDE OneWorld financial system
	Ability to provide multiple levels and types of user access for data entry and online review of information
	Ability for system administrator to add or delete user defined fields at all screens
	Ability to create unique user accounts to staff deemed authorized users by the City, as well as to create accounts grouped by class of user, department, etc.
	Ability to provide granular user rights and roles, restricting data access and administrative oversight to the appropriate staff members and/or groups as determined by the City
	Ability to vary profiles and permissions depending on user
	Ability to perform Simple Mail Transfer Protocol (SMTP) for outbound mail
	Provides product training to all levels of the organization
	Ability to demonstrate user-friendliness of system allowing various levels of the organization access
	Provides user-friendly search engine by data field or keyword

	Ability to track community outreach and all related activity for project
	Ability to migrate data from current systems verifying functionality of current systems
	Ability to create user-definable dashboards with drill-down capacity and ability to save settings
	Ability to query project milestones and deliverables due by various selection criteria
	To minimize ongoing maintenance costs, the system architecture should be consistent with common City and ISD information technology architecture including:
	Ability to provide document management with versioning
	Ability to store and attach photos, MS Office documents, PDFs, and other electronic file types
	Ability to track change orders and progress payments

Capital Project Request Development

Code	<i>Indicate availability of each feature in the quoted system by inserting the applicable code 1 –5 listed above.</i>
	Ability for Departments to enter capital expenditure data into a template/form using fields including:
	Department and business unit (5 to 6 digit object code)
	Facility (location description)
	Project title
	Project number (4 digit)
	Department contact and information
	City's Chart of Accounts and Financial System classification structure (up to 14 digit)
	Objectives/goals of project (pre-defined list that may vary by department or program)
	Fund Source Type (general fund, enterprise fund, grant, federal, state, etc.)
	Ability of system to produce Proposal Management Module, which controls the workflow from submittal through evaluation/ ranking and funding recommendations
	Ability to support narrative descriptions at the fund type
	Ability to forecast expenditures (inflating current costs by CPI or other multiplier)
	Ability to create "what-if" scenario budgets at the program level
	Ability to add project related photo and/or GIS location map
	Ability to create user-defined fields for data input which are part of project cost calculations (example: cost/sqft)
	Ability for projects to be ranked/scored by different attributes by multiple reviewers
	Ability to store project submittal information from one year to the next year

Budget Analysis and Approval

Code	<i>Indicate availability of each feature in the quoted system by inserting the applicable code 1 –5 listed above.</i>
	Ability to support (user-defined) multiple year (up to at least 10 years) and individual budget year capital projects
	Ability for users to summarize and analyze capital project requests by any Chart of Accounts classification and any financial management system classification
	Ability to support current year forecasting and cycle or carry over data into future capital improvement plan years
	Ability to track multi-year projects by project name/number/project manager
	Ability to track capital project budgets by revenue source and fund including all prior years and project to date expenditures
	Ability to track projects by level of approval status
	Ability to support (user-defined) multiple year (up to at least 10 years) and individual budget year capital projects
	Ability to maintain history of prior years' budgets, adjustments, and expenditures maintained in JDE for reporting and query processes

Document Production

Code	<i>Indicate availability of each feature in the quoted system by inserting the applicable code 1 –5 listed above.</i>
	Ability to produce capital budget reports/documents, page numbered and indexed, in Microsoft Excel, Word, Access, Publisher, and PDF format
	Ability for historical, current year projections, proposed budget, and multiple year capital improvement plan data to be published at any level of City's Chart of Accounts and Financial System classification structure
	Ability to roll up data to executive summary levels for presentations to policy makers and the general public

Reporting

Code	<i>Indicate availability of each feature in the quoted system by inserting the applicable code 1 –5 listed above.</i>
	Ability to provide the following information individually or combined:
	Multiple years of historical CIP data
	Year-to-date and project-to-date actual expenditures based on data imported from other systems
	Current year capital budget
	Anticipated year-end expenditures
	Next year's base budget

	Next year's proposed capital project
	Next year's approved capital project
	Each year of the multiple year capital improvement plan
	Operating costs of projects coming online
	Ability to display and report capital project history to date from project inception by year
	Ability to create ad hoc queries and reports by:
	User defined date range
	Any City's Chart of Accounts and Financial System classification structure
	Any level of capital improvement plan hierarchy
	Ability create standard monthly/quarterly reports
	Ability to report on project timelines which can overlap with multiple projects
	Ability to integrate custom designed Crystal reports into product report menu
	Ability to have ad-hoc report writing with menu driven fields with the ability to sort and sum data and import into Microsoft Office tools for graphing and presentation
	Ability to query project milestones and deliverables due by various selection criteria
	Ability to retain project related data for funded and unfunded projects
	Ability to add narratives describing project changes
	Ability to generate graphical reports, including bar charts, pie charts, graphs, etc.

Project Management

Code	<i>Indicate availability of each feature in the quoted system by inserting the applicable code 1 –5 listed above.</i>
	Ability to organize projects/data by Fund/Department/Funding Source/Year/Location/Type etc.
	Ability to track numerous projects that are part of a larger project or have parent/child relationships
	Interface with the City's financial and accounting systems
	Ability to allocate or track individual's time spent by project
	Ability to have customizable workflow processes with routing capacity and/or approval routes
	Ability to send e-mail/notifications at critical points in the process
	Ability to track programmatic or financial project changes

	Import and export text and numerical data to/from Microsoft Project
	Provide layered reporting capacity at all levels or groupings (e.g. Program/Department/Fund Type)
	Ability to drill down in detail to actual transactions if necessary from any report grouping
	Capacity for user development and manipulation of report formats and styles
	Ability to incorporate into reports various project schedules, graphs, and tables produced by either Microsoft Project, Publisher, or Access
	Ability to auto-populate fields from existing projects
	Ability to provide cost verification tools
	Ability to archive completed projects
	Ability to track change orders and progress payments via JDE Interface
	Ability to migrate data from Primavera Contract Manager and provide basic functionality of that product
	Reporting:
	Ability to generate reports to document capital budget decisions
	Ability for users to drill down to lower level data in “real-time” (most current)

Fund Management

Code	<i>Indicate availability of each feature in the quoted system by inserting the applicable code 1 –5 listed above.</i>
	Ability to create, implement and save “what-if” scenarios by department, program, project, for current and future budget years
	Ability to track capital project spending by revenue (fund) source using imported data on actual expenditures
	Ability to track changes in the capital plan as the capital plan is approved during the various phases of the annual budget process
	Ability to prioritize projects through user-defined criteria at multiple levels (e.g. program level, department level, general fund departments, enterprise fund departments, and Citywide)
	Ability to identify fund eligibility by project type
	Ability to create invoices for grant-funded projects which are reimbursed by outside funding sources
	Reporting:
	Ability to generate reports to document capital budget decisions as it relates to revenue (fund) source
	Ability for users to drill down to lower level data in “real-time” (most current)
	Ability to allocate and track project funding

ATTACHMENT A – INSURANCE REQUIREMENTS AND VERIFICATION

Vendor's Insurance

Prior to commencing work, the Vendor shall procure and maintain at Vendor's own cost and expense for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Vendor, his agents, representatives, employees, or subcontractors. The cost of such insurance shall be included in Vendor's bid.

Without in any way affecting the indemnity provided, the Vendor shall secure before commencement of the work and throughout the contract the following types and amounts of insurance:

Minimum Limits of Insurance

Vendor shall obtain insurance of the types and in the amounts described below:

- 1) **Commercial General Liability Insurance**
Vendor shall maintain commercial general liability (CGL) with a limit of not less than \$1,000,000 each occurrence/\$2,000,000 in the annual aggregate.
- 2) **Business Auto and Umbrella Liability Insurance**
Vendor shall maintain business auto liability with a limit of not less than \$1,000,000 each accident.
- 3) **Workers' Compensation and Employer's Liability Insurance**
Vendor shall maintain workers' compensation insurance as required by the State of California and Employer's Liability Insurance in the amount of \$1,000,000 per accident for bodily injury or disease.

Minimum Scope of Insurance

- 1) CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent Vendors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.
 - 2) Business Auto Insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on Insurance Services Office form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
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Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Santa Monica. At the option of the City of Santa Monica, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Santa Monica, its officers, officials, employees, or volunteers; or the Vendor shall provide a financial guarantee satisfactory to the City of Santa Monica guaranteeing payment of losses and related investigation, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 1) City of Santa Monica, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Vendor; and with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts or equipment furnished in connection with such work or operations. Under the CGL policy, using the Insurance Services Office additional insured endorsement form CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. City and other additional insureds mentioned in this paragraph shall not, by reason of their inclusion as additional insureds, become liable for any payment of premiums to carriers for such coverage.
- 2) For any claims related to this project, the Vendor's insurance coverage shall be primary as respects the City of Santa Monica, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Santa Monica, its officers, officials, employees, or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.
- 3) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of Section 2782 of the Civil Code.

Workers' Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the City of Santa Monica, its officers, officials, employees, and volunteers for losses arising from activities and operations of Vendor in the performance of services under the contract.

All Coverages

- 1) Each insurance required by this clause shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given (add user department and specify specific individual and title) to the City.
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- 2) If Vendor, for any reason, fails to maintain insurance coverage which is required pursuant to this Contract, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Contract and obtain damages from the Vendor resulting from said breach. Alternatively, City may purchase such coverage (but has no special obligation to do so), and without further notice to the Vendor, City may deduct from sums due to the Vendor any premium costs advanced by the City for such insurance.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:6 unless otherwise approved by the City's Risk Manager.

Verification of Coverage

Vendor shall furnish the City of Santa Monica with original certificates and amendatory endorsements effecting coverage required by this section. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements should be on forms provided by the City of Santa Monica or on other than the City of Santa Monica's forms, provided those forms and endorsements conform to the requirements. All certificates and endorsements are to be received and approved by the City of Santa Monica before work commences. The City of Santa Monica reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

ATTACHMENT B – NON-DISCRIMINATION POLICIES

Discrimination.

Discrimination in the provision of services may include, but not be limited to the following:

- (a) Denying any person any service, or benefit or the availability of a facility.
 - (b) Providing any service, or benefit to any person which is not equivalent, or in a non-equivalent manner or at a non-equivalent time, from that provided to others.
 - (c) Subjecting any persons to segregation or separate treatment in any manner related to the receipt of any service.
 - (d) Restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.
 - (e) Treating any person differently from others in determining admission, enrollment, quota, eligibility, membership, or any other requirement or condition which persons must meet in order to be provided any service or benefit.
- (1) Consultant shall take affirmative action to ensure that intended beneficiaries of this Agreement are provided services without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability.
 - (2) Consultant shall further establish and maintain written procedures under which any person applying for or receiving services hereunder, may seek resolution from Consultant of a complaint with respect to any alleged discrimination in the provision of services by Consultant's personnel.

At any time any person applies for services under this Agreement, he or she shall be advised by Consultant of these procedures. A copy of these procedures shall be posted by Consultant in a conspicuous place, available and open to the public, in each of Consultant's facilities where services are provided hereunder.

B. Non-discrimination in Employment.

- (1) Consultant certifies and agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability in accordance with the requirements of City, State or Federal law. Consultant shall take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with the requirements of City, State and Federal law. Such shall include, but not be limited to, the following:
 - (a) Employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.
 - (b) Selection for training, including apprenticeship.
-

- (2) Consultant agrees to post in conspicuous places in each of Consultant's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this non-discrimination policy.
 - (3) Consultant shall, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with the requirements of City, State or Federal law.
 - (4) Consultant shall send to each labor union or representative coworkers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Consultant's commitments under this non-discrimination policy.
 - (5) Consultant certifies and agrees that it will deal with its subconsultants, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability, in accordance with the requirements of City, State and Federal law.
 - (6) In accordance with applicable State and Federal law, Consultant shall allow duly authorized representatives of the County, State, and Federal government access to its employment records during regular business hours in order to verify compliance with this non-discrimination policy. Consultant shall provide other information and records as the representatives may require in order to verify compliance with this non-discrimination policy.
 - (7) If City finds that any of the provisions of this non-discrimination policy have been violated, the same shall constitute a material breach of agreement upon which City may determine to cancel, terminate, or suspend this Agreement. While City reserves the right to determine independently that this non-discrimination policy has been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Consultant has violated State or Federal non-discrimination laws shall constitute a finding by City that Consultant has violated the provisions of this non-discrimination policy.
 - (8) The parties agree that in the event Consultant violates any of the non-discrimination policies set forth herein, City shall be entitled, at its option, to the sum of five hundred dollars (\$500) pursuant to Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating or suspending this Agreement.
 - (9) Consultant hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by applicable Federal Regulations, and all guidelines and interpretations issued pursuant thereto, to the end that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Consultant receiving Federal Financial Assistance.
-

ATTACHMENT C – SAMPLE PURCHASE AGREEMENT

HARDWARE AND SOFTWARE PURCHASE AGREEMENT

This Hardware and Software Purchase Agreement (“Agreement”) entered into on _____, 2010 (“Execution Date”), by and between CITY OF SANTA MONICA, a California municipal corporation (“City”) and _____ (“Vendor”), is made with reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. City seeks to purchase hardware and software products _____ (“System”) for use by the City of Santa Monica’s _____. The System will allow for _____.
- C. Vendor is a _____ corporation licensed to do business in the _____ that markets and supports certain software applications described herein. Vendor has submitted a Sales Quotation (“Sales Quote”), which is attached hereto as Exhibit A and incorporated herein by reference.
- D. Concurrently with this Agreement, City and Vendor have entered into a Hardware and Software Maintenance and Support Agreement (“Maintenance Agreement”) which is incorporated by reference.
- E. City and Vendor desire to enter into this Agreement upon the terms and conditions set forth below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

SECTION 1. DEFINITIONS

The following definitions shall apply to the terms as they appear in this Agreement:

- A. “Vendor” means and refers to _____.
 - B. “City” means and refers to the City of Santa Monica.
 - C. “Software Product” or “Products” means and refers to the computer software and associated media and printed materials, and may include “online” or electronic documentation as listed in Vendor’s Sales Quote attached hereto and incorporated herein by reference.
-

- D. “Server Software” means and refers to the Software Product to be used on a shared computer referred to as the “Server”.
- E. “Client Software” means and refers to the Software Product to be used on individual user workstations.
- F. “Hardware” or “Hardware Products” means and refers to _____ as described in Exhibit X.

SECTION 2. PURCHASE OF HARDWARE AND SOFTWARE RIGHTS

In consideration of the City’s promises contained in this Agreement, Vendor agrees to sell and City agrees to buy, subject to the terms and conditions set forth in this Agreement, the Hardware and Software Products necessary for the System. Such Hardware and Software Products are more particularly described in Vendor’s Sales Quote, System Description and Project Schedule, attached hereto as Exhibits A, and B respectively and incorporated herein by reference. City shall have all title and ownership interest in the Hardware purchased hereunder, which shall include all manufacturer warranty rights. City shall have perpetual, non-exclusive and non-transferable rights to use the Software Products. Specifically, City is hereby granted rights to: (i) install and use the Server Software; and (ii) install and use Client Software on City-owned servers and desktop computers. Vendor represents that it possesses all rights and interest in the Software Products to enter into this Agreement.

SECTION 3. SOFTWARE USE AND RESTRICTIONS.

- A. City shall not copy the Software Products or allow their use by others without the written permission of Vendor except for City’s production, backup, archival, and in-house disaster recovery purposes. City will reproduce and include the copyright, trade secret or other restrictive and proprietary legends from the original on all copies. All copies will be subject to the terms of this Agreement. The Software Products may be used only by City, and not for the benefit of any third party.
 - B. City shall not (i) reverse engineer any part of the Software Products; (ii) distribute, sell or otherwise transfer any part of the Software Products; and (iii) remove the patent, copyright, trade secret or other proprietary protection legends or notices which appear on or in the Software Products.
 - C. City shall not create any derivative work or products based on or derived from the Software Products or documentation or modify any Software Products or documentation without the prior written consent of Vendor. In the event of a breach of this provision (and without limiting Vendor’s remedies) said modification, derivative work or product based on the Software Products or documentation is hereby deemed assigned to Vendor.
-

SECTION 4. HARDWARE AND SOFTWARE SERVICES.

- A. Vendor shall provide the Hardware and Software Products and the services (“Services”) as outlined in the Sales Quote and the System Description. Such Services include project consulting and implementation, annual service and maintenance, onsite training, software set-up and installation.
- B. Vendor will determine and City shall review qualifications and approve or reasonably disapprove the key personnel to be assigned to perform the services under this Agreement, an engagement letter, scope of work, exhibit or other written amendment. Vendor shall be required to provide additional functional and technical resources as required to provide the services required hereunder. In the event of any changes to the Vendor’s staff, Vendor will notify the City immediately in writing. Vendor agrees that any replacement of any listed individuals will be made with individuals of comparable or higher experience, and that the composition of Vendor’s employees or subcontractors assigned to this Agreement will be maintained in a manner that provides the same or higher level of services to the City. The City reserves the reasonable right to approve or disapprove any individuals proposed by Vendor to be included as part of Vendor’s staff assigned to this Agreement. In the event of any additional staffing or personnel changes by Vendor, Vendor agrees to absorb all expenses and costs associated with such change and shall not charge the City with such expenses or costs under this Agreement.
- C. Either party may request at any time the removal of any individual performing Services if that party: (i) reasonably believes that individual is not qualified to perform the Services or does not meet appropriate professional standards; and (ii) previously provided the other party with written notice of the problem and a reasonable opportunity to remedy the situation.

SECTION 5. TRAINING AND DOCUMENTATION

A. Training. As part of the purchase price of the System, Vendor shall provide the City with training sessions in accordance with the Training Outline and Training Exercises set forth in Exhibit X.

The training will include System maintenance and administration training for a designated group of City’s System support staff.

B. User Documentation Delivery.

Vendor will supply full user documentation for the System. The documentation will instruct users in all aspects of the System, including a reference guide for Users, a reference guide for Administrators and complete System manuals for Users and Administrators. Vendor will provide City with printed copies of the user documentation as well as an electronic copy.

SECTION 6. HARDWARE AND SOFTWARE INSTALLATION AND SYSTEM ACCEPTANCE

Vendor will install the Hardware and Software Products within five (5) days of execution of this Agreement. After completion of training, System acceptance ("System Acceptance") will occur in accordance with the acceptance testing criteria ("Acceptance Testing Criteria") set forth in Exhibit X.

SECTION 7. PURCHASE PRICE FOR SYSTEM HARDWARE AND SOFTWARE; TRAINING, MAINTENANCE & SUPPORT SERVICES; EXTENDED WARRANTIES

A. Purchase Price. City shall pay to Vendor an amount not to exceed _____ ("Purchase Price") which amount includes applicable taxes as set forth in Exhibit X. The Purchase Price includes all Hardware, Software rights, training maintenance and support services ("Maintenance and Support Services") and extended warranties as described below:

1. Training. All training described in Section 5 of this Agreement is included as part of the Purchase Price.
2. Software Support. Maintenance and Support Services for the Software are included in the Purchase Price during the Software Warranty Period (commencing on System Acceptance and continuing for 90 days.

Future Software Maintenance and Support Services will be provided on an annual basis if City chooses to extend the term of the Maintenance Agreement at the rate set forth in Exhibit X.

3. Hardware Support. Maintenance and Support Services for the Hardware shall be provided as follows:
_____ Agreement is renewed by City, the extended warranty terms and conditions set forth in Exhibit X ("Extended Warranties"), will apply.

B. Payment Schedule. Vendor shall be paid according to the following schedule:

- (1) The sum of _____ will be payable upon execution of this Agreement.
- (2) The sum of _____ will be payable upon Software and Hardware delivery and successful installation
- (3) The balance of _____ will be payable upon successful completion of Acceptance Testing Criteria for the System as set forth in Exhibit C.

SECTION 8. COPYRIGHT AND OTHER RESTRICTIONS

The rights to use the Software Products are not transferable. Title and copyrights in and to the Software Products, excluding City data (including any images, photographs, video, audio, and text incorporated into the Software Products), accompanying printed material, and any copies permitted to be made herein are owned by Vendor and are protected by United States copyright laws and international treaty provisions.

SECTION 9. LIMITED WARRANTY; EXTENDED WARRANTY PERIODS

- A. Software Products. Vendor warrants the Software Products shall be free from defects in materials and workmanship for _____ calendar days commencing from System Acceptance ("Software Warranty Period") as set forth in Section 6 above
- A. Hardware Products. Vendor warrants that: _____ shall be free from defects in material and workmanship for a period of _____ days from System Acceptance
- B. Extended Warranty Periods. During any period when City has renewed the Maintenance Agreement, the Vendor warrants that the Software and Hardware Products shall be free from defects in materials and workmanship.

During both the limited and extended warranty periods, the Hardware and Software Products are warranted to conform to the Hardware manufacturer specifications and Vendor's product specifications for the Software. Vendor also agrees to provide City a refund of all monies paid (excluding installation costs) if City is not satisfied with the Hardware and Software Products within 30 days of System installation.

- D. The Hardware and Software Products shall continue to perform in accordance with all applicable manufacturers' specifications as well as Vendor's most current documentation, which may be modified from time to time, so long as the City remains a subscriber to the Maintenance Agreement between the parties.
- E. There is no program code, other than as specified in Vendor's documentation that will restrict the City's use of the Software Products upon payment in full.
- F. Any modification or enhancement of the Software Products shall satisfy the warranties and conditions set forth in this Section, so long as the City is a subscriber to the Maintenance Agreement between the parties.
- G. The Hardware and Software Products will be free of any errors which severely effect the operation of the system or keep the system from production use.

This Section shall survive the termination of this Agreement.

SECTION 10. RESPONSE TIME

The warranty period for the Software and Hardware Products shall extend for a period of _____ days from date of System Acceptance. The warranties will be extended for any maintenance period as long as payments are kept current. During the warranty period, in the event that the City encounters an error and/or malfunction whereby the Software does not conform to the description in the reference guides, users Manuals and other supporting documentation, Vendor will respond in accordance with the following Priority Levels:

“A” Priority - A Level “A” Priority shall mean and refer to a software error that renders the entire system inoperable. Vendor shall assign resources within the first hour. Vendor shall continue to work on the problem until the problem is resolved. Average resolution time shall be no less than eight (8) hours.

“B” Priority - A Level “B” Priority shall mean and refer to the detection of a software error for a system module which seriously impairs system operations, but does not render it “down.” Vendor shall assign resources within four hours and continue to work on the problem until the problem is resolved.

“C” Priority - A Level “C” Priority shall mean and refer to a minor problem, but of sufficient severity to warrant correction before the next production software release or service pack. Generally completed within thirty (30) days.

“D” Priority - A Level “D” Priority shall mean and refer to minor problems that do not severely affect the operation of the system and generally will be incorporated in the next production of the software.

SECTION 11. CONTRACT DOCUMENTS

Exhibits X (Sales Quote), X (System Description), X and X-1 (Training Outline and Training Exercises) and X (Acceptance Testing Criteria) and Exhibit X (Extended Warranties) are made a part of this Agreement.

SECTION 12. INSURANCE

Vendor’s Insurance

Prior to commencing work, the Vendor shall procure and maintain at Vendor’s own cost and expense for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Vendor, his agents, representatives, employees, or subcontractors. The cost of such insurance shall be included in Vendor’s bid.

Without in any way affecting the indemnity provided, the Vendor shall secure before commencement of the work and throughout the contract the following types and amounts of insurance:

Minimum Limits of Insurance

Vendor shall obtain insurance of the types and in the amounts described below:

1) Commercial General Liability Insurance

Vendor shall maintain commercial general liability (CGL) with a limit of not less than \$1,000,000 each occurrence/\$2,000,000 in the annual aggregate.

2) Business Auto and Umbrella Liability Insurance

Vendor shall maintain business auto liability with a limit of not less than \$1,000,000 each accident.

3) Workers’ Compensation and Employer’s Liability Insurance

Vendor shall maintain workers' compensation insurance as required by the State of California and Employer's Liability Insurance in the amount of \$1,000,000 per accident for bodily injury or disease.

Minimum Scope of Insurance

CGL insurance shall be written on Insurance Services Office form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and explosion, collapse and underground hazards.

Business Auto Insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on Insurance Services Office form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Santa Monica. At the option of the City of Santa Monica, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Santa Monica, its officers, officials, employees, or volunteers; or the Vendor shall provide a financial guarantee satisfactory to the City of Santa Monica guaranteeing payment of losses and related investigation, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- 4) City of Santa Monica, its officers, officials, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Vendor; and with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts or equipment furnished in connection with such work or operations. Under the CGL policy, using the Insurance Services Office additional insured endorsement form CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. City and other additional insureds mentioned in this paragraph shall not, by reason of their inclusion as additional insureds, become liable for any payment of premiums to carriers for such coverage.
 - 5) For any claims related to this project, the Vendor's insurance coverage shall be primary as respects the City of Santa Monica, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Santa Monica, its officers, officials,
-

employees, or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.

- 6) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of Section 2782 of the Civil Code.

General Liability, Workers' Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the City of Santa Monica, its officers, officials, employees, and volunteers for losses arising from activities and operations of Vendor.

All Coverages

- 1) Each insurance required by this clause shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given (add user department and specify specific individual and title) to the City.
- 2) If Vendor, for any reason, fails to maintain insurance coverage which is required pursuant to this Contract, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Contract and obtain damages from the Vendor resulting from said breach. Alternatively, City may purchase such coverage (but has no special obligation to do so), and without further notice to the Vendor, City may deduct from sums due to the Vendor any premium costs advanced by the City for such insurance.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:6 unless otherwise approved by the City's Risk Manager.

Verification of Coverage

Vendor shall furnish the City of Santa Monica with original certificates and amendatory endorsements effecting coverage required by this section. The certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements should be on forms provided by the City of Santa Monica or on other than the City of Santa Monica's forms, provided those forms and endorsements conform to the requirements. All certificates and endorsements are to be received and approved by the City of Santa Monica before work commences. The City of Santa Monica reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Subcontractors

Vendor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

SECTION 13. INDEMNIFICATION

- A. During the period any portion of the Hardware and Software Products are in transit and prior to System installation, Vendor shall have sole responsibility for all risk of loss or damage to the Hardware and Software Products.
- B. Vendor shall indemnify, defend and hold harmless City from and against any and all claims, damages, losses, expenses or liabilities, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the following: (i) Vendor's performance of or failure to perform its obligations under this Agreement; (ii) arising from the willful misconduct or the negligent acts, errors or omissions of Vendor, its officers, agents, and employees in the performance of its services under this Agreement, including, but not limited to the installation of the Hardware and Software Products and the training hereunder; and (iii) any patent, copyright and other infringement claim by any third party in connection with the Software Products.
- C. Vendor further agrees that if City is prevented from using the Software Products due to an actual or claimed infringement of any patent, copyright or other intellectual property right, then at Vendor's option, Vendor shall promptly either:
 - 1) Procure for City, at Vendor's expense, the right to continue to use the Software Products.
 - 2) Replace or modify the Software Products, at Vendor's expense, so that the Software Products become non-infringing; or
 - 3) Terminate the Agreement and return City's Purchase Price for the infringing Software Products in the event that neither (i) nor (ii) are reasonably feasible.

The indemnity obligations set forth in this Section 13 shall survive the termination of this Agreement.

SECTION 14. NOTICES

All notices, demands, requests or approvals to be given under this Agreement, shall be given in writing and shall be deemed served when delivered personally or on the third business day after the deposit thereof in the United States mail, postage prepaid, registered or certified, addressed as hereinafter provided.

To City: City of Santa Monica
 1685 Main Street
 Santa Monica, CA 90401

To Vendor:

SECTION 15. COSTS OF LITIGATION

If any legal action or proceeding is necessary to enforce any provision of this Agreement or for breach of this Agreement, the prevailing party shall be entitled to receive from the opposing party all costs and expenses and such amount as may be adjudged to be reasonable attorney's fees. The prevailing party's attorneys' fees shall be paid whether or not the action is prosecuted to judgment. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by the prevailing party as well as any attorneys' fees paid to outside attorneys in connection with the action.

SECTION 16. ASSIGNMENT

Vendor shall not assign, hypothecate or transfer this Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City, which may be withheld at the City's sole discretion. Any attempt to do so without the City's consent shall be null and void, and any assignee, sublessee, hypothecatee or transferee shall acquire no right or interest by reason of such attempted assignment, sublease, hypothecation or transfer.

SECTION 17. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of California.

SECTION 18. RIGHTS UPON TERMINATION

A. If either party materially breaches this Agreement, the other party may give written notice of its desire to terminate and the specific grounds for termination and, if such default is capable of cure and the party in default fails to cure the default within thirty (30) days of the notice, the other party may terminate this Agreement. If such default is incapable of cure, the other party may terminate this Agreement immediately upon written notice of its desire to terminate.

B. Upon termination, the rights to use the Software Products shall be immediately revoked and all Software Products, related documentation, Software Tools, and supporting materials will be returned to Vendor or destroyed.

SECTION 19. INTEGRATED AGREEMENT

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modifications of this Agreement will be effective only by written execution signed by both City and Vendor and approved as to form by the City Attorney. This Agreement is the product of negotiation and compromise between the parties. Accordingly, notwithstanding California Civil Code Section 1654, in the event of uncertainty, the language shall not be construed against the party causing the uncertainty.

SECTION 20. PERMITS AND LICENSES

Vendor, at its sole expense, shall obtain and maintain during the term of this Agreement, all required business and professional permits, licenses and certificates.

SECTION 21. COMPLIANCE WITH LAW

Vendor shall comply with all federal, state and local laws, including all ordinances, rules and regulations.

SECTION 22. NONDISCRIMINATION

In rendering services under this Agreement, Vendor shall not discriminate based upon race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status, AIDS or disability and shall comply with the requirements of all federal, state and local law.

SECTION 23. CONFIDENTIALITY.

Vendor agrees that all information disclosed by the City during the term of this Agreement for the performance of Vendor's services, including, but not limited to, customer data, customer information, or any other information (collectively referred to as the "City Information"), shall be confidential and protected from disclosure to the maximum extent protected by law. Vendor agrees as follows: (i) City Information shall not be disclosed to any persons other than employees, agents, officers or representatives of Vendor who have a need to know; and (ii) City Information shall be held in the strictest of confidence and shall not be disclosed, disseminated or revealed to any other third party. Vendor shall ensure that its employees, officers, agents or representatives who are involved with this Agreement will be advised of the terms of this confidentiality clause and will be instructed that they are bound by this confidentiality clause. The provisions of this Section 23 shall survive the termination of this Agreement

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

CITY OF SANTA MONICA
a municipal corporation

By: _____
ROD GOULD
City Manager

APPROVED AS TO FORM:

By: _____
MARSHA JONES MOUTRIE
City Attorney

Vendor
By: _____

Title:

ATTEST:

By: _____
MARIA STEWART
City Clerk

ATTACHMENT D – LIVING WAGE CERTIFICATION

**CITY OF SANTA MONICA
Living Wage Certification for Providers of Services to the
City of Santa Monica
(Fiscal Year 2010-11 – July 1, 2010 through June 30, 2011)**

**TO BE COMPLETED BY ALL CONTRACTORS PROVIDING SERVICES TO
THE CITY OF SANTA MONICA IN EXCESS OF \$54,200**

The City of Santa Monica Municipal Code Chapter 4.65, Living Wage Ordinance (LWO) establishes a Minimum Wage of **\$13.27** per hour for certain employees of contractors providing services to the City.

The LWO requires a contractor providing services to City of Santa Monica to pay at least the Minimum Wage to any Employee working on that contract for work done on the contract if the contract for services exceeds \$54,200. The requirements of the LWO do not apply to government agencies, City grantees and other non-profit corporations. An Employee is any person who does not actually work as a manager, supervisor, or confidential employee, and who is not required to possess an occupational license. Contractors with bona fide collective bargaining agreements covering those employees assigned to contract are exempt from the wage requirements of the Living Wage Ordinance only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

Please prepare the following certification if you are a contractor engaging in a contract for services with the City of Santa Monica in excess of \$54,200.

Your signature on this certification grants the City permission to review any and all payroll books and records to assure compliance with the LWO during the term of the contract.

Please direct any questions regarding applicability of the Ordinance to City of Santa Monica Finance Department, 1717 4th Street, Suite 250, Santa Monica, CA 90401 or e-mail finance.mailbox@smgov.net

IF YOU ARE A CONTRACTOR PROVIDING SERVICES TO THE CITY UNDER A CONTRACT EXCEEDING \$54,200, YOU ARE REQUIRED TO CERTIFY THAT ALL EMPLOYEES WORKING ON THIS CONTRACT ARE PAID AT LEAST THE MINIMUM WAGE. Please fill out the Certification that follows and return to Contract Administration Office, 1717 4th Street, Suite 250, Santa Monica, CA 90401. If you are exempt for a reason noted above, please note below why you are exempt and return the Certification to the Contract Administration Office, 1717 4th Street, Suite 250, Santa Monica, CA 90401.

**TO BE COMPLETED BY ALL CONTRACTORS PROVIDING SERVICES TO THE
CITY OF SANTA MONICA IN EXCESS OF \$54,200
(Fiscal Year 2010-11 – July 1, 2010 through June 30, 2011)**

Please read, complete, and sign the following:

THIS CONTRACT **IS** SUBJECT TO THE LIVING WAGE ORDINANCE. ☐

THIS CONTRACT **IS NOT** SUBJECT TO THE LIVING WAGE ORDINANCE. ☐

Contractor is exempt as a (please check one):

- (a) ☐ Government agency
- (b) ☐ City grantee
- (c) ☐ Non-profit corporation.
- (d) ☐ Employees covered by a bona fide collective bargaining agreement where the waiver is explicitly set forth in an agreement in clear and unambiguous terms (please provide copy of collective bargaining agreement).
- (e) ☐ Corporations providing banking services

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Santa Monica's Living Wage Ordinance (LWO), and the applicability of the LWO, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the LWO, as mandated in the Santa Monica Municipal Code, Chapter 4.65. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the Director of Finance in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract, which shall be grounds for termination. City shall have the right to examine all books and records of the contractor as they relate to compliance with the LWO. Payroll records shall at a minimum include full name of each employee performing labor or providing services under the contract, job classification and rate of pay.

These statements are made under penalty of perjury under the laws of the State of California.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Contractor: _____

Contract Description: _____

ATTACHMENT E – OAKS INITIATIVE NOTICE

Oaks Initiative Notice

CITY OF SANTA MONICA

NOTICE TO APPLICANTS, BIDDERS, PROPOSERS

AND OTHERS SEEKING DISCRETIONARY PERMITS, CONTRACTS, OR OTHER BENEFITS FROM THE CITY OF SANTA MONICA

Santa Monica’s voters adopted a City Charter amendment commonly known as the Oaks Initiative. It prohibits a public official from receiving specified personal benefits from a person or entity after the official votes, or otherwise takes official action, to award a “public benefit” to that person or entity. Examples of a “public benefit” include public contracts to provide goods or services worth more than \$25,000 or a land use approval worth more than \$25,000.

The Oaks Initiative requires the City to provide this note and information about the Initiative’s requirements. An information sheet on the Oaks Initiative is attached. You may obtain a full copy of the Initiative’s text from the City Clerk.

In order to facilitate compliance with the requirements of the Oaks Initiative, the City compiles and maintains certain information. That information includes the name of any person who is seeking a “public benefit.” If the “public benefit” is sought by an entity, rather than an individual person, the information includes the name of every: (a) trustee, (b) director, (c) partner, (d) officers, or (e) ten percent interest in the entity. Therefore, if you are seeking a “public benefit” covered by the Oaks Initiative, you must supply that information on the attached form.

City of Santa Monica

Oaks Initiative Disclosure Form

All persons or entities receiving public benefits defined below from the City of Santa Monica shall provide the names of trustees, directors, partners and officers and names of those with more than a 10% equity, participation or revenue interest. This information is required by City Charter Article XII—Taxpayer Protection.

Name of Entity: _____

NAME OF PERSONS OR ENTITIES RECEIVING PUBLIC BENEFIT:

NAME(S) OF TRUSTEES, DIRECTORS, PARTNERS, AND OFFICERS:

NAMES OF THOSE WITH MORE THAN A 10% EQUITY, PARTICIPATION OR REVENUE INTEREST:

Public benefits include:

1. Personal services contracts in excess of \$25,000 over any 12-month period;
2. Sale of material, equipment or supplies to the City in excess of \$25,000 over a 12-month period;
3. Purchase, sale or lease of real property to or from the City in excess of \$25,000 over a 12-month period;
4. Non-competitive franchise awards with gross revenue of \$50,000 or more in any 12-month period;
5. Land use variance, special use permit, or other exception to an established land use plan, where the decision has a value in excess of \$25,000;
6. Tax “abatement, exception, or benefit” of a value in excess of \$5,000 in any 12-month period; or
7. Payment of “cash or specie” of a net value to the recipient of \$10,000 in any 12-month period.

Prepared by: _____ Signature: _____

Date: _____ Title: _____

FOR CITY USE ONLY:

Bid/PO/Contract # _____ Permit # _____

ATTACHMENT F – ARIZONA-BASED BUSINESSES

NOTICE:

CITY POLICY ON DOING BUSINESS WITH ARIZONA FIRMS

CITY OF SANTA MONICA

**NOTICE TO APPLICANTS, BIDDERS, PROPOSERS AND OTHERS SEEKING TO DO BUSINESS WITH THE CITY
OF SANTA MONICA**

The City Council of the City of Santa Monica adopted Resolution No. 10479 (CCS) on May 25, 2010, which requires a review of all current and likely future agreements and contracts with Arizona-based businesses to examine the feasibility of acquiring such products and services elsewhere while the Arizona law remains in effect.

Additionally, vendors offering goods or services to the City of Santa Monica must complete and sign the attached disclosure form; this applies to all solicitations, including but not limited to, bids and proposals. Please review, sign and submit the form with your bid packet prior to the closing date of bid.

Failure to return this form or inability to certify as to its provisions will render your bid or proposal non-responsive.

State of Arizona Disclosure Form - see next page.

**CITY OF SANTA MONICA
STATE OF ARIZONA DISCLOSURE FORM**

**TO BE COMPLETED BY ALL VENDORS PROVIDING GOODS AND SERVICES TO THE CITY OF
SANTA MONICA**

I certify that (check all that apply):

- ☐ Our company has no presence, interest or professional business relationships with or in the State of Arizona nor conducts business with individual subcontractors located within the State of Arizona.
- ☐ Our company's headquarters are located in the State of Arizona.
- ☐ Our company's branch offices, warehouses or manufacturing facilities are located in the State of Arizona.

Number of branch offices, warehouses or manufacturing facilities: _____
If more than one, attach a list of additional locations, including the physical address of each location.

Name of Location: _____
☐ Branch Office ☐ Warehouse ☐ Manufacturing Facility ☐ Other _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

- ☐ Products or services will be manufactured or performed by a subcontractor whose business is located within the State of Arizona.

***** PORTION BELOW TO BE COMPLETED BY ALL VENDORS *****

Please list any and all subcontractors that your company conducts business with.

If more than one, attach a list of additional subcontractors, including the physical address of each location.

- ☐ Our company does not work with ANY subcontractors.

Name of Subcontractor: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed: _____ Date: _____

Printed name: _____ Title: _____

Name of Company: _____

Street Address of Headquarters: _____

City: _____ State: _____ Zip Code: _____

Telephone # (including area code): _____ Email: _____