



AGENDA REPORT

Meeting Date: June 17, 2008
Item Number: F-11
To: Honorable Mayor & City Council
From: David Schirmer, Chief Information Officer
Subject: **AMENDMENT NO. 6 TO AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND INTERNATIONAL BUSINESS MACHINES CORPORATION FOR ONGOING MAINTENANCE AND SUPPORT SERVICES FOR THE CITY'S DATA CENTER; AND, APPROVAL TO ISSUE A CHANGE ORDER IN THE AMOUNT OF \$99,000.00**

Attachments: 1. Amendment

RECOMMENDATION

Staff recommends that the City Council approve Amendment No. 6 to the existing Agreement between the City and International Business Machines Corporation (IBM), and approve a change order for payment of those additional services.

INTRODUCTION

The existing maintenance and support agreement between the City and IBM ensures ongoing maintenance and support for the City's computing infrastructure related to maintenance and support services for hardware and software systems comprising the server and storage environment, repairs and upgrades.

DISCUSSION

This amendment provides for additional services related to the planned upgrades to the server and storage environment, which will create a sufficient scalable infrastructure for the City's use of new technologies. The City has identified these upgrades as necessary to support the growing number of software applications and online services that the City is providing to user departments and to the public. Specific focus will be placed on environment upgrades to the City's back-up-and-restore system, and document management infrastructure to incorporate elements of "total lifecycle management" best practices. This effort will directly benefit the City's Community Video Security archiving process.

FISCAL IMPACT

Staff requests authorization of a change order in the amount of \$99,000, for a total not-to-exceed amount of \$654,273.02 during FY 2007-2008. Funding is provided in Information Technology's Data Center budget for maintenance and repair within the Data Center program.



Finance Approval



David Schirmer, Chief Information Office
Approved By

AMENDMENT NO. 6 TO AN AGREEMENT BETWEEN THE CITY
OF BEVERLY HILLS AND INTERNATIONAL BUSINESS MACHINES
CORPORATION FOR ONGOING MAINTENANCE AND SUPPORT
SERVICES FOR THE CITY'S DATA CENTER

NAME OF CONSULTANT:	International Business Machines Corporation ("IBM")
RESPONSIBLE PRINCIPAL OF CONSULTANT:	Bryan Tutton, Project Manager
CONSULTANT'S ADDRESS:	600 Anton Boulevard Costa Mesa, CA 92626
CITY'S ADDRESS:	City of Beverly Hills 455 N. Rexford Drive Beverly Hills, CA 90210 Attention: David Schirmer Chief Information Officer
COMMENCEMENT DATE:	December 2, 2003
TERMINATION DATE:	June 16, 2009
CONSIDERATION:	Not to exceed \$654,273.02

AMENDMENT NO. 6 TO AN AGREEMENT BETWEEN THE CITY
OF BEVERLY HILLS AND INTERNATIONAL BUSINESS MACHINES
CORPORATION FOR ONGOING MAINTENANCE AND SUPPORT
SERVICES FOR THE CITY'S DATA CENTER

This Amendment No. 6 is to that certain agreement entitled "Agreement Between the City of Beverly Hills and International Business Machines Corporation for Maintenance and Support Services" between the City of Beverly Hills, a municipal corporation (hereinafter called "City"), and International Business Machines Corporation, a New York corporation (hereinafter "Consultant"), dated December 2, 2003, and identified as Contract No. 372-03 for maintenance and support services in connection with the City's Data Center (the "Agreement").

R E C I T A L S

- A. On December 2, 2003, City entered into the Agreement with Consultant for ongoing maintenance and support services in connection with the City's Data Center, as described more fully in the Agreement.
- B. On November 16, 2004, the Parties entered into that certain Amendment No. 1 to the Agreement entitled "Amendment No. 1 to Agreement Between the City of Beverly Hills and International Business Machines Corporation for Ongoing Maintenance and Support Services for the City's Data Center" to modify the scope of services and to extend the term of the Agreement.
- C. On July 5, 2005, the Parties entered into that certain Amendment No. 2 to the Agreement entitled "Amendment No. 2 to Agreement Between the City of Beverly Hills and

International Business Machines Corporation for Ongoing Maintenance and Support Services for the City's Data Center" to modify the scope of services and to extend the term of the Agreement.

D. On July 11, 2006, the Parties entered into that certain Amendment No. 3 to the Agreement entitled "Amendment No. 3 to Agreement Between the City of Beverly Hills and International Business Machines Corporation for Ongoing Maintenance and Support Services for the City's Data Center" to modify the scope of services and to extend the term of the Agreement.

E. On July 10, 2007, the Parties entered into that certain Amendment No. 4 to the Agreement entitled "Amendment No. 4 to Agreement Between the City of Beverly Hills and International Business Machines Corporation for Ongoing Maintenance and Support Services for the City's Data Center" to modify the scope of services and to extend the term of the Agreement.

F. On May 6, 2008, the Parties entered into that certain Amendment No. 5 to the Agreement entitled "Amendment No. 5 to Agreement Between the City of Beverly Hills and International Business Machines Corporation for Ongoing Maintenance and Support Services for the City's Data Center" to modify the scope of services, extend the term of the Agreement and increase the consideration.

G. City and Consultant desire to further modify the Agreement to amend the scope of services, the term of the Agreement and the consideration.

NOW, THEREFORE, the parties hereto do amend the Agreement as follows:

Section 1. The Termination Date shall be amended as set forth above.

Section 2. The Consideration shall be amended as set forth above.

Section 3. The Scope of Services is hereby amended to include the attached Statement of Work for Data Center Services, attached hereto as Exhibit A, and incorporated herein by this reference.

Section 4. Except as expressly modified by this Amendment No. 6, all of the provisions of the Agreement shall remain in full force and effect.

EXECUTED the ____ day of _____, 200 __ at Beverly Hills, California.

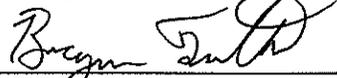
CITY OF BEVERLY HILLS
A Municipal Corporation

BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:

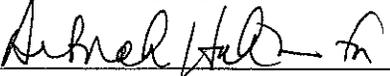
BYRON POPE
City Clerk

VENDOR: INTERNATIONAL
BUSINESS MACHINES
CORPORATION



BRYAN TUTTON
Project Manager

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

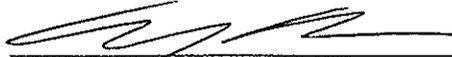
APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

[Signatures continue]



DAVID SCHIRMER
Chief Information Officer



KARL KIRKMAN
Risk Manager

EXHIBIT A

A SERVICES PROPOSAL FOR

City of Beverly Hills

to provide:

Hourly Technical Consulting Services

submitted by

IBM

600 Anton Boulevard
Costa Mesa, CA 92626

June 17, 2008 – June 16, 2009

Executive Summary

IBM Global Services is pleased to present this Statement of Work for hourly consulting assistance at City of Beverly Hills (City).

Based on the successful deployment of IBM xSeries and pSeries Systems and Storage Area Management (SAN), along with Tivoli Storage Manager (TSM), IBM shall now support changes and additional services from June 17, 2008 to June 16, 2009 with a pool of 380 consulting hours.

The benefits that City will gain from this proposal include:

- Easy access to consulting resources
- Rapid resource allocation based on specific needs
- If available, the IT Specialist that knows your account will be the first to assist with needed services.

Statement of Work

This Statement of Work defines the scope of work to be accomplished by IBM under the terms and conditions of the IBM Customer Agreement (*Agreement*) or equivalent. The tasks to be performed by IBM are defined and an Estimated Schedule is provided. In addition, the responsibilities of City of Beverly Hills (City) are listed.

The Statement of Work includes the following subsections:

- Scope of Services
- Key Assumptions
- IBM Responsibilities
- City of Beverly Hills Responsibilities
- Other Terms and Conditions
- Estimated Schedule
- Deliverable Materials
- Completion Criteria
- Charges

No cost changes to this Statement of Work will be processed in accordance with the procedure described in Appendix B, "Project Change Control Procedure". The investigation and the implementation of changes may result in modifications to the Estimated Schedule, Charges, or other terms of this Statement of Work. Any change to this Statement of Work that would exceed the amount in section 1.7 of this Statement of Work requires a new Statement of Work to be executed by IBM and City.

For purposes of this Statement of Work and any subsequent no cost changes to this Statement of Work, "project" shall be defined as any project management and technical services authorized by City to be performed by IBM, as described in Section 1.0, Scope of Services.

The following are incorporated in and made part of this Statement of Work:

- Appendix A, "Deliverable Guidelines"
- Appendix B, "Project Change Control Procedure"

1.0 Scope of Services

IBM will provide up to three hundred and eighty (380) hours of project management and technical consulting services to City through June 16, 2009 in the following areas:

- IBM xSeries and pSeries servers
- Storage Area Network (SAN)
- Tivoli Storage Manager (TSM)

The allocation of these hours to specific engagements will be determined by City and agreed to by IBM.

1.1 Key Assumptions

This Statement of Work and IBM's estimates to perform are based on the following key assumptions. Deviations that arise during the proposed project will be managed through the procedure described in Appendix B, "Project Change Control Procedure".

1. This Statement of Work addresses only City location at Beverly Hills, CA.
2. Some IBM activities on this project may be performed on IBM premises. The time spent on these contract-related IBM activities will be billable to City.
3. Some of the Services may be performed by an IBM subcontractor.

4. IBM will provide Services under this Statement of Work during normal business hours, 8:00 a.m. to 5:00 p.m. (local time) Monday through Friday, except IBM holidays, unless otherwise specified.

1.2 IBM Responsibilities

The specific Services to be provided by IBM under this Statement of Work are described in this section.

1.2.1 Project Management

Description: The objective of this task is to provide an individual ("IBM Project Manager") to provide direction to and control of IBM project personnel, and to establish a framework for project communications, reporting, procedural and contractual activity. The major sub tasks are:

1. Maintain project communications through the City Project Manager.
2. Establish documentation and procedural standards for the development of this project.
3. Prepare a project plan at the onset of this project for performance of this Statement of Work. The project plan will define tasks, schedule and responsible person(s) or organization for each milestone.
4. Conduct project status meetings.
5. Prepare and submit monthly Status Reports.
6. Review and administer Project Change Control with the City Project Manager.

Completion Criteria: This activity will be complete when the other activities described as IBM Responsibilities have been completed, according to their completion criteria, or IBM has met the criteria defined in the Completion Criteria section of this Statement of Work.

Deliverables: Monthly Status Reports

1.2.2 Engagement Kickoff and Project Planning Meeting

Description: An engagement kickoff and project planning meeting between IBM and City will occur as soon as possible after a specific request from an authorized City representative. This meeting may be held via telephone conference call. The purpose of this meeting is to give the IBM team member(s) a high level understanding of City's objectives and system environment, to develop an engagement plan, and to complete a project plan for a specific engagement when required. The typical engagement agenda might include:

1. Expectations for this engagement
2. Development of an engagement plan and schedule
3. Confirmation of the engagement schedule

Completion Criteria: This task will be complete when the requested engagement is kicked off.

Deliverable: None.

1.2.3 Document Findings and Recommendations for each Engagement

Description: IBM will summarize key findings and conclusions and provide recommendations to assist City in understanding how specific changes will impact the future of equipment and applications. These changes will be related to fine tuning the City's current environment with respect to the systems indicated in Section 1.0 of this Scope of Services.

Completion Criteria: This task is complete when IBM has reported its findings to the City Project Manager.

Deliverable: Summary of Findings and Recommendations.

1.3 City of Beverly Hills Responsibilities

The responsibilities listed in this section are in addition to those responsibilities specified in the *Agreement* and are to be provided by City at no charge to IBM.

1.3.1 City of Beverly Hills Project Manager

Prior to the start of this Statement of Work under the *Agreement*, City will designate a person, called the City Project Manager, to whom IBM communications will be addressed and who has the authority to act for City in all aspects of the contract.

The City Project Manager shall:

1. Serve as the interface between IBM and all City departments, organizations and sites participating in this project.
2. With the IBM Project Manager, develop the project plan prior to implementation for each engagement.
3. With the IBM Project Manager, administer the Project Change Control Procedures.
4. Attend project status meetings.
5. Obtain and provide information, data, decisions and approvals, within five (5) working days of IBM's request, unless both IBM and City agree to an extended response time.
6. Help resolve project issues and escalate issues within City's organization, as necessary.

1.3.2 Office Space and Other Facilities

City shall:

1. Provide suitable office space, office supplies, furniture, telephone and other facilities equivalent to those provided to City employees for the IBM project team while working on City premises.
2. Provide necessary clerical and reproduction services for project staff while working on City premises.
3. Provide necessary machine time, related services, and supplies for project planning, tracking, documentation, and reporting activities.
4. Ensure access to the site for IBM personnel. Most of the work involved in this project will be performed during normal working hours (8:00am to 5:00pm). However, on some occasions, City may need to provide access to facilities outside of these hours.

1.4 Other Terms and Conditions

1. City is solely responsible for the actual content of any data file, selection and implementation of controls on its access and use, and security of the stored data.
2. City agrees to allow IBM and its entities to store and use City contact information, including names, phone numbers, and e-mail addresses, anywhere IBM does business. Such information will be processed and used in connection with the IBM and City business relationship, and may be provided to contractors, Business Partners, and assignees of IBM and its entities for uses consistent with their collective business activities, including communicating with City (for example, for processing orders, for promotions, and for market research).
3. City will identify and make the interpretation of any applicable federal, state and local laws, regulations and statutes and ensure that deliverables of the project meet those requirements.
4. Required Approvals. Where agreement, approval, acceptance, or consent by either party is required by any provision of this Statement of Work or the *Agreement*, such action shall not be unreasonably delayed or withheld, which, unless otherwise specified herein, shall mean not withheld or denied for more than ten (10) business days.
5. Indemnification. IBM shall indemnify, hold harmless and defend City, City Council and each member thereof, and every officer, employee and agent of City (collectively "City"), while acting within the scope of their duties as such, from and against any and all claims, demands or causes of action of any kind or character (including reasonable attorney's

fees and any amounts paid in settlement agreed to by IBM) in an amount finally awarded by a court, to the extent resulting from violation of laws, rules or regulations, bodily injury, death, or damage to real and tangible personal property caused by IBM under this Statement of Work and the Agreement. The foregoing indemnity applies provided that City promptly notifies IBM in writing following receipt of notice of any such claim, suit or proceeding and shall give IBM such information and cooperation as is reasonable under the circumstances. IBM shall have the duty to keep City informed of the progress of each such matter but shall have sole authority to defend or settle the same at IBM's sole cost and expense.

6. Intellectual Property Indemnification. IBM shall indemnify, hold harmless and defend City, City Council and each member thereof, and every officer, employee and agent of City (collectively "City"), from and against any and all claims, demands or causes of action of any kind or character (including reasonable attorney's fees and any amounts paid in settlement agreed to by IBM) in an amount finally awarded by a court, resulting from, arising out of or in any way related to any claim that the Deliverables or Services, in part or in whole and solely to the extent caused by IBM pursuant to the terms of this Scope of Work and the Agreement, infringe any rights of any third party in or to any U.S. patent, trademark, copyright, service mark, trade name, trade secret or similar proprietary rights conferred by contract or by common law or by any law of the United States or any state therein. The foregoing indemnity applies provided City promptly notifies IBM in writing following its receipt of notice of any such claim, suit or proceeding and shall give IBM such information and cooperation as is reasonable under the circumstances. IBM shall have the duty to keep City informed of the progress of each such matter but shall have the sole authority to defend or settle the claim at IBM's sole cost and expense. IBM's obligation to indemnify City under this Section shall only apply if: (a) City has made all payments to IBM required by this Statement of Work and the Agreement and complied with all applicable provisions of this Section and the Agreement; and (b) the infringement alleged in any such claim, suit or proceeding does not result from any of the following: (i) any modification of the Deliverables provided under this SOW or the equipment and/or software specified in Section 1.0 of this Statement of Work by City, or use of the specified equipment and/or software in other than its specified operating environment;(ii) incorporation into the Deliverables or the specified equipment and/or software of anything City provides or IBM's compliance with any designs, specifications, or instructions provided by City or by a third-party on behalf of City; (iii) infringement by non-Consultant product(s) alone; or (iv) the combination, operation, or use of the Deliverables or the specified equipment and/or software with other Products not provided by IBM as part of the Deliverables provided under this SOW or the equipment and/or software specified in Section 1.0 of this Scope of Services, or the combination, operation, or use of the Deliverables or the specified equipment and/or software with any product, data, or apparatus that IBM did not provide.

7. Limitation of Liability. Circumstances may arise where, because of a default on IBM's part or other liability, City is entitled to recover damages from IBM. In each such instance, regardless of the basis on which City is entitled to claim damages from IBM (including fundamental breach, negligence, or other contract or tort claim), IBM is liable for no more than:

- a) The payments referred to in subsection 6 above regarding Intellectual Property Indemnification;
- b) Damages for bodily injury (including death) and damage to real property and tangible personal property; and
- c) The amount of any other actual direct damages, up to the greater of \$100,000 or the compensation IBM received under this Statement of Work and the Agreement.

IBM shall not be liable for any of the following, even if informed of their possibility: (a) loss of, or damages to, records or data; (b) special, incidental, or indirect damages; (c) any economic consequential damages; or (d) lost profits, business, revenue, goodwill, or anticipated savings. The limitations set forth in this Section shall also apply to any of IBM's subcontractors and Program Developers and represent the maximum for which IBM and its subcontractors and Program developers are collectively responsible.

1.5 Estimated Schedule

Estimated Start Date = June 17, 2008

Estimated End Date = June 16, 2009

Reasonable effort shall be made to keep the schedule dates intact.

IBM shall not be responsible for delays or additional requirements imposed by any government agencies, labor disputes, fire, unavoidable casualties, or unforeseen conditions.

1.6 Deliverable Materials

The following items will be delivered to City under this Statement of Work. See Appendix A, "Deliverables Guidelines", for a description of each deliverable.

- Status Report
- Summary of Findings and Recommendations

1.7 Completion Criteria

IBM shall have fulfilled its obligations under this Statement of Work when any one of the following first occurs:

1. IBM accomplishes the IBM tasks described under "IBM Responsibilities" in accordance with the mutually agreed to requirements.
2. IBM provides the number of hours of Services specified under "Charges" or any subsequent Change Authorization.
3. Either IBM or City terminates this Statement of Work under the terms of the Agreement.
4. The Estimated End Date is reached.

1.8 Charges

The charges for the Services described in this Statement of Work are estimated as follows:

IBM will provide the Services described in this Statement of Work for up to three hundred and eighty (380) hours at an hourly rate of \$225.00. The total estimated funding requirements for these tasks, including an estimated travel budget of \$13,500, is \$99,000. The hours authorized by City and specified here do not imply or commit a fixed-price contract. If IBM determines that it is necessary to exceed the hours or the Estimated End Date, the parties may revise this Statement of Work in accordance with the procedures set forth in Appendix B. If City alternatively chooses to terminate IBM's Services, City agrees to pay IBM for actual hours expended and any travel and living expenses incurred by IBM up to the date of written notification by City.

The Total Charge for the services provided under this Statement of Work is an amount that will not exceed \$99,000, including a travel budget in an amount that will not exceed \$13,500, unless otherwise authorized and mutually agreed to in writing through the Project Change Control Procedure described in Appendix B.

City will be invoiced monthly for actual hours and travel and living expenses incurred during the previous month. Travel and living expenses are included in the above estimates.

Invoices are payable within 30 days of receipt in accordance with City's standard practice.

IBM agrees to provide the Services described in this SOW provided City accepts this SOW, without modification, by signing in the space below on or before June 30, 2008.

Each party agrees that the complete agreement between IBM and City about these Services consists of 1) this Statement of Work and 2) the IBM Customer Agreement (or any equivalent agreement signed by both parties).

Agreed to:

City of Beverly Hills

By: _____
Authorized signature

Name (type or print):

Date:

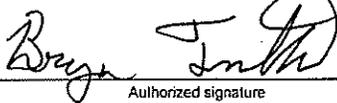
Customer number: 1782976

Customer address:

455 North Rexford Drive
Beverly Hills, CA 90210

Agreed to:

International Business Machines Corporation

By:  _____
Authorized signature

Name (type or print): Bryan Tutton

Date: 6/9/08

Agreement Number: HQ12291

Statement of Work number:

IBM Office address:

IBM Corporation
600 Anton Boulevard
Costa Mesa, CA 92626