



## AGENDA REPORT

**Meeting Date:** August 16, 2016  
**Item Number:** D-11  
**To:** Honorable Mayor & City Council  
**From:** Nicole McClinton, Senior Management Analyst  
David Schirmer, Chief Information Officer  
**Subject:** 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  
  
AUTHORIZE A PURCHASE ORDER IN AN AMOUNT NOT TO EXCEED \$154,330.50 FOR THE SERVICES  
  
**Attachments:** 1. Agreement

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### **RECOMMENDATION**

Staff recommends that the City Council approve an Agreement between the City and International Business Machines Corporation (IBM) for ongoing maintenance and support of the City's computing infrastructure, and authorize issuance of a purchase order for the services in an amount not to exceed \$154,330.50.

### **INTRODUCTION**

The annual maintenance and support agreement between the City and IBM ensures ongoing maintenance and support services for the City's computing infrastructure.

### **DISCUSSION**

The City's computing infrastructure is comprised of hardware and software components for the City's server and storage environment, and is primarily located in the IT Data Center, with components at offsite disaster recovery locations. Restructuring of the City's Data Center as detailed in the Department's FY 2015-16 and FY 2016-17 budget

work plans has commenced. Based on this restructuring, a significant portion of IBM hardware, including all storage systems in the Data Center, have been retired and replaced with more efficient and cost effective alternatives. Consequently, this year's annual IBM maintenance costs have decreased by almost \$100,000.

**FISCAL IMPACT**

Staff requests authorization of a purchase order in the not-to-exceed amount of \$154,330.50 for the 2016-2017 fiscal year. The funds are budgeted for this fiscal year in the IT Administration account for maintenance and repair non-auto (41001501 – 730300).



David Schirmer, Chief Information Office  
Approved By

# **Attachment 1**



# IBM Customer Agreement

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This IBM Customer Agreement (called the "Agreement") governs transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services (including, without limitation, customized development and support, business consulting, and maintenance Services) from International Business Machines Corporation ("IBM").

## 1. General Terms

### 1.1 Agreement Structure

This Agreement is organized in six Parts:

**Part 1 – General Terms** includes terms regarding Agreement Structure, Definitions, Acceptance of Terms, Delivery, Charges and Payment, Changes to Agreement Terms, IBM Business Partners, Intellectual Property Protection, Limitation of Liability, Compliance Verification, General Principles of Our Relationship, Agreement Termination, and Geographic Scope and Governing Law.

**Part 2 – Warranties** defines applicable Warranties for IBM Machines, ICA Programs, IBM Services, and Systems, and terms regarding Extent of Warranty.

**Part 3 – Machines Terms** includes Machine terms regarding Production Status, Title and Risk of Loss, and Installation.

**Part 4 – Licenses for Machine Code and Other Internal Licensed Code** includes the License for Machine Code and the License for Other Internal Licensed Code.

**Part 5 – License for ICA Programs** includes ICA Program terms regarding License, Distributed System License Option, Program Services, Compliance Verification, and License Termination.

**Part 6 – Services Terms** includes terms regarding Personnel, Materials Ownership and License, Customer Resources, Service for Machines (during and after warranty), Maintenance Coverage, Automatic Service Renewal, and Termination and Withdrawal of a Service.

### 1.2 Attachments and Transaction Documents

Additional terms for Products and Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one Product or Services transaction, while Transaction Documents (such as a statement of work, supplement, schedule, invoice, exhibit, change authorization, or addendum) contain specific details and terms related to each individual transaction. Customer may receive one or more Transaction Documents for a single transaction. Attachments and Transaction Documents are part of this Agreement only for those transactions to which they apply. Each transaction is separate and independent from other transactions.

If there is a conflict among the terms of this Agreement, Attachments, and Transaction Documents, those of an Attachment prevail over those of this Agreement, and the terms of a Transaction Document prevail over those of both this Agreement and an Attachment.

### 1.3 Definitions

**Authorized Built-in Capacity** -- the Built-in Capacity for a Covered Machine that was Properly Acquired and Activated and is used in accordance with the AUT. For purposes of this definition, "Activated" means when IBM causes, directly or indirectly, the Authorized Built-in Capacity to be made available for Customer's use on a Covered Machine.

**Authorized Use Table (AUT)** -- the "IBM Authorized Use Table for Machines" that is provided at the following address: [www.ibm.com/systems/support/machine\\_warranties/machine\\_code/aut.html](http://www.ibm.com/systems/support/machine_warranties/machine_code/aut.html) and is in effect for a Covered Machine as of the acquisition date of the Covered Machine or, if there are one or more Machine Upgrades on the Covered Machine, then as of the acquisition date of the most recently acquired Machine Upgrade. The AUT is incorporated by reference into this Agreement.

**Built-in Capacity** -- the type and quantity of all resources and capabilities that IBM provides for a Machine, the access or use of which IBM has the ability to restrict by contract or Technological Measures. Built-In Capacity includes, without limitation, the type and quantity of the following: 1) processors, cores, processing capacity, processor performance setting and interactive processing capacity and capabilities; 2) memory; 3) storage; 4) cryptographic capability; 5) input/output ports, and 6) workload-specific resources and capabilities (including, for example, System z mainframe specialty processors such as zIIPs, zAAPs and IFLs, and other limited purpose products (including "appliances"). Built-in Capacity is either Authorized Built-in Capacity or Unauthorized Built-in Capacity.

**Circumvent** -- to, directly or indirectly, by or through any means, alter, avoid, disrupt, subvert, go around, or otherwise interfere with.

**Covered Machine** -- the specific Machine (as identified by serial number or order number on a Transaction Document or other similar contract document issued by IBM) for which use of Machine Code is licensed. A Covered Machine that receives a Machine Upgrade remains a Covered Machine and a Machine that receives a Machine Upgrade becomes a Covered Machine.

**Customer-set-up Machine** – an IBM Machine that Customer is responsible for installing according to instructions provided with it.

**Date of Installation** –

- a. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;
- b. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
- c. for a Program --
  - (1) basic license, the second business day after the Program's standard transit allowance period,
  - (2) copy, the date (specified in a Transaction Document) on which IBM authorizes Customer to make a copy of the Program, and
  - (3) chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.

**Designated Machine** – a Machine of a type specified in the Mainframe Exhibits provided at the following address: <http://www.ibm.com/systems/z/resources/swprice/reference/exhibits/hardware.html>.

**Engineering Change** – an update to modify certain aspects of the design of an installed Machine, including without limitation the design of a certain Machine part or Machine Code.

**Enterprise** – any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in the United States.

**IBM Machine** – a Machine bearing an IBM logo.

**IBM Product** – an IBM Machine, ICA Program, or Other IBM Program.

**ICA Program** – an IBM Program licensed under Part 5 of this Agreement.

**Licensed Internal Code (called "LIC")** – another term for Machine Code commonly used for certain IBM product lines, such as for IBM System z Machines. LIC and Machine Code are interchangeable terms that have the same meaning.

**Machine** – a hardware device, including its resources, capabilities, features, conversions, Machine Upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment).

**Machine Code** – all of the following: (i) all code provided for an IBM Machine (including, without limitation, a Machine's firmware and microcode), excluding code that is licensed under a license agreement other than the license agreement governing use of Machine Code (for example, IBM operating system and middleware products); and (ii) records, data, and structures created, used or relied on by the code in item (i) (for example, IBM System z Machine LIC configuration control records and passwords that help restrict access or use of the code in item (i)). The term Machine Code specifically includes any whole or partial copy of Machine Code, and any fix, patch, or replacement provided for Machine Code.

**Machine Upgrade** – the following changes that IBM sells for installation on a Machine: a hardware or Machine Code change to modify, add, remove, enable or disable certain Built-in Capacity or other resources and capabilities. Each such change can be accomplished through a Machine conversion, or through the conversion, addition, removal, or exchange of a Machine's feature(s).

**Materials** – literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to Customer as part of a Service. The term "Materials" does not include Programs, Machine Code, or other items available under their own license terms or agreements.

**Non-IBM Program** – a Program licensed under a separate third party license agreement.

**Other IBM Program** – an IBM Program licensed under a separate IBM license agreement (e.g., IBM International Program License Agreement).

**Other Internal Licensed Code** – code for a Covered Machine that is separately provided by IBM and licensed by a third party.

**Product** – a Machine or a Program.

**Program** – the following, including the original, any portion thereof, and all whole or partial copies:

- a. one or more sequences of instructions suitable for processing by a computer;
- b. control data (such as control blocks, event logs, configuration files) defined within or generated by the execution of such sequence(s) of instructions. Control data includes without limitation data that is designed to (i) manage or limit the operation of programs, or (ii) help monitor, record, manage, or limit the consumption of software or hardware resources, including, without limitation, data used in IBM's implementation of Technological Measures;
- c. components;
- d. audio-visual content (such as images, text, recordings, or pictures) defined within or generated by the execution of, such sequence(s) of instructions; and
- e. related licensed materials such as publications and other documentation.

The term "Program" includes any ICA Program, Other IBM Program, or Non-IBM Program, and any fix, patch or replacement that IBM may provide for a Program. The term does not include Machine Code or Materials.

**Service** – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer.

**Specifications** – information specific to a Product. IBM Machine Specifications are in a document entitled "Official Published Specifications." ICA Program Specifications are in a document entitled "Licensed Program Specifications."

**Specified Operating Environment** – the Machines and Programs with which an ICA Program is designed to operate, as described in its Licensed Program Specifications.

**Technological Measures** – all means, methods, systems, processes, checks, tests, monitoring, validations, instruments, and other measures that IBM implements for the purpose of: (i) protecting, controlling, limiting, and restricting the use of Machine Code; (ii) protecting, controlling, limiting, and restricting the access to or use of Built-in Capacity (including, for clarity, both Unauthorized Built-in Capacity and Authorized Built-in Capacity); and (iii) monitoring and reporting use of the Machine Code, Authorized Built-in Capacity, and Unauthorized Built-In Capacity, including for the purpose of calculating usage-based charges for IBM Products. Without limiting the generality of the preceding sentence, Technological Measures may be implemented, in whole or in part, in Machine Code, IBM Programs, other code, other IBM technology, and in the data created, used or relied upon by such Machine Code, IBM Programs, other code, and IBM technology.

**Unauthorized Built-in Capacity** -- all Built-in Capacity for a Covered Machine other than Authorized Built-in Capacity. For example and for the avoidance of any doubt, each of the following is Unauthorized Built-In Capacity: (i) in the case of a processor authorized to operate at less than its full processor performance setting, the capability to operate the processor at a greater processor performance setting, and (ii) in the case of a System z Machine specialty processor, the capability to use the specialty processor for anything other than the "Authorized Uses" as such term is defined in the AUT.

## 1.4 Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by signing them (by hand or electronically).

A Product or Service becomes subject to this Agreement when IBM accepts Customer's order by i) sending Customer a Transaction Document, ii) shipping the Machine or making the Program available to Customer, or iii) providing the Service.

Any Attachment or Transaction Document will be signed by both parties if requested by either party.

## 1.5 Delivery

Delivery dates and ship dates are estimates unless otherwise specifically agreed in a Transaction Document. Transportation charges, if applicable, will be specified in a Transaction Document. For

Programs IBM provides to Customer in tangible form, IBM fulfills its shipping and delivery obligations upon the delivery of such Programs to the IBM-designated carrier, unless otherwise agreed to in writing by Customer and IBM.

## **1.6 Charges and Payment**

### **1.6.1 Charges**

A Transaction Document specifies the amount payable for Products or Services, based on one or more of the following types of charges: one-time, recurring, time and materials, or fixed price. Additional charges may apply (such as special handling or travel related expenses). IBM will inform Customer in advance whenever additional charges apply.

Recurring charges for a Product begin on its Date of Installation. Charges for Services are billed as specified in a Transaction Document, which may be in advance, periodically during the performance of the Service, or after the Service is completed. Unless otherwise provided in this Agreement (including any applicable Attachment or Transaction Document): i) Services for which Customer prepays must be used within the applicable contract period; and ii) IBM does not give credits or refunds for any prepaid or other charges already due or paid.

If a Transaction Document provides an estimated total charge for time and materials or for usage charges, the estimate is for planning purposes only. For non-fixed price Products or Services, IBM invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.

### **1.6.2 Usage Charges**

One-time and recurring charges may be based on measurements of actual or authorized use (for example, authorized capacity for Machines, number of users or processor size for Programs, or meter readings for maintenance Services). Customer agrees to provide actual usage data as described in an Attachment or Transaction Document.

If Customer makes changes to its environment that impact usage charges, Customer agrees to promptly notify IBM and pay any applicable charges. Recurring charges will be adjusted accordingly. In the event that IBM changes the basis of measurement, its terms for changing charges will apply.

### **1.6.3 Changes to Charges**

Unless provided for otherwise in a Statement of Work, from time to time, IBM may change its charges. Customer receives the benefit of a decrease in charges for amounts that become due on or after the effective date of the decrease.

Unless provided otherwise in an Attachment or Transaction Document, IBM may increase recurring charges for Products and Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer three months' written notice. An increase applies on the first day of the invoice or charging period on or after the effective date IBM specifies in the notice.

IBM may increase one-time charges without notice. However, an increase to one-time charges does not apply to Customer if i) IBM receives the order before the announcement date of the increase and ii) one of the following occurs within three months after IBM's receipt of the order:

- a. IBM ships Customer the Machine or makes the Program available to Customer;
- b. Customer makes an authorized copy of a Program or distributes a chargeable component of a Program to another Machine; or
- c. a Program's increased use charge becomes due.

### **1.6.4 Payment**

IBM will invoice Customer upon acceptance by Customer of the applicable Service or work in accordance with the acceptance criteria contained in the Statement of Work. Amounts are due upon receipt of invoice and payable within 30 days or as specified in a Transaction Document. Customer agrees to pay accordingly. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

### **1.6.5 Taxes**

If any authority imposes upon any transaction under this Agreement a duty, tax, levy, or fee, excluding those based on IBM's net income, then Customer agrees to pay that amount as specified in an invoice, unless Customer supplies exemption documentation. Customer is responsible for any personal property taxes for each Product from the date IBM ships it to Customer. For Programs that IBM delivers

electronically to Customer and for which Customer claims a state sales and use tax exemption, Customer and IBM agree that no tangible personal property (e.g., media and publications) is transferred to Customer.

Additional taxes and tax related charges may apply if IBM personnel are required to perform Services outside their normal tax jurisdiction. The need for such additional charges must be agreed to in advance by the parties and reflected in the applicable Statement of Work. As practical, IBM will work to mitigate such additional tax and tax-related charges.

## **1.7 Changes to the Agreement Terms**

In order to maintain flexibility in our business relationship, IBM may change the terms of this Agreement by providing Customer at least three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, on-going transactions that do not expire, and transactions with a defined renewable contract period. For transactions with a defined renewable contract period, Customer may request that IBM defer the change effective date until the end of the current contract period.

Changes to charges are implemented as described in the Charges and Payment section above.

For a change to be valid, authorized representatives from both the Customer and IBM must sign it.

## **1.8 IBM Business Partners**

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. Customer may order Products or Services that are promoted or marketed to Customer by IBM Business Partners or other suppliers, however, i) this Agreement applies only if a Transaction Document subject to this Agreement is provided for the specific transaction, and ii) such Business Partners and suppliers remain independent and separate from IBM. IBM is not responsible for the actions or statements of IBM Business Partners or other suppliers, any obligations either has to Customer, or any products or services that they supply to Customer under their agreements.

## **1.9 Intellectual Property Protection**

For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

### **1.9.1 Third Party Claims**

If a third party asserts a claim against Customer that an IBM Product that IBM provides to Customer under this Agreement infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's sole expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations; and
- c. is and remains in compliance with the Product's applicable license terms and Customer's obligations under section 1.9.2 (Remedies) below.

### **1.9.2 Remedies**

If a patent or copyright claim is made or appears likely to be made, IBM may either i) enable Customer to continue to use the Product, ii) modify it, or iii) replace it with one that is at least functionally equivalent; provided, however, that Customer must agree in writing to such modification or replacement. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to:

- a. for a Machine, Customer's net book value calculated according to generally-accepted accounting principles;
- b. for an ICA Program, the amount Customer paid IBM for the Program's license or 12 months' charges (whichever is less); and
- c. for Materials, the amount Customer paid IBM for the creation of the Materials.

### **1.9.3 Claims for Which IBM is Not Responsible**

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, to the extent a claim could have been avoided by using the current release or version;
- c. any modification of a Product made by Customer or by a third party on Customer's behalf or the combination, operation, or use of a Product with any other Product, hardware device, program, data, apparatus, method, or process;
- d. the distribution, operation or use of a Product outside Customer's Enterprise;
- e. running or executing an ICA Program on other than a Designated Machine; or
- f. a non-IBM Product or an Other IBM Program.

This Intellectual Property Protection section states IBM's entire obligation and Customer's exclusive remedy regarding any third party intellectual property claims.

## **1.10 Limitation of Liability**

### **1.10.1 Items for Which IBM May Be Liable**

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Product or Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$100,000 or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim, plus the amounts referred to in subsections a. and b. below, as applicable. For purposes of this Limitation of Liability section, the term "Product" also includes Materials and Machine Code.

This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

### **1.10.2 Items for Which IBM Is Not Liable**

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

## **1.11 Compliance Verification**

Upon reasonable notice, IBM may verify the usage data and other information affecting the calculation of charges under this Agreement. Such verification will be conducted in a manner that minimizes disruption to Customer's business and may be conducted on Customer's premises, during Customer's normal business hours. Customer agrees to i) provide records, system tools outputs, and other electronic or hard copy system information reasonably necessary for such verification, and ii) promptly pay any additional, valid charges and other liabilities determined as a result of such verification.

IBM's right to verify Customer's usage data and other information affecting the calculation of charges also includes the right to verify Customer's compliance with all other terms of this Agreement (including applicable Attachments and Transaction Documents). IBM may use an independent auditor to assist with such verification, provided IBM has a written confidentiality agreement in place with such auditor.

Customer agrees to create, retain, and provide to IBM and its auditors written records, system tools outputs, and other system information sufficient to provide auditable verification that Customer's installation and running or executing ICA Programs complies with the Agreement terms, including IBM's applicable licensing and pricing terms. IBM will notify Customer in writing if any such verification indicates that Customer is not in compliance with Agreement terms. The rights and obligations in this section remain in effect during the period any ICA Programs are licensed to Customer and for two years thereafter.

#### **1.11.1 Circumvention of Technological Measures**

Customer will not (i) Circumvent or attempt to Circumvent any Technological Measures in an IBM Product or use a third party or third party product to do so, or (ii) in any way access, use, or attempt to access or use, Unauthorized Built-in Capacity.

### **1.12 General Principles of Our Relationship**

#### **1.12.1 Notices and Communications**

Written communications, including notices to the receiving party's designated representative, are to be sent to the address (physical, e-mail or facsimile) specified in an applicable Attachment or Transaction Document. The parties consent to the use of electronic means and facsimile transmissions to send and receive communications in connection with our business relationship arising out of this Agreement, and such communications are acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

#### **1.12.2 Assignment and Resale**

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other, which consent shall not be unreasonably withheld. Any attempt to assign without consent is void. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.

Customer agrees not to resell any Service without IBM's prior written consent. Any attempt to do so is void.

Customer agrees to acquire each Machine with the intent to use it as designed and in the form it was sold within Customer's Enterprise and not for reselling, leasing, or transferring it, in whole or in part, to a third party, unless either of the following applies:

- a. Customer is arranging lease-back financing for the Machine; or
- b. Customer has paid IBM's list price or reference price, as applicable for the Machine, and does not remarket it in competition with IBM or IBM's authorized remarketers.

#### **1.12.3 Compliance with Laws**

IBM will comply with laws applicable to IBM generally as a provider of information technology Products and Services. IBM is not responsible for determining the requirements of laws applicable to Customer's business, including those relating to Products and Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Products or Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

Each party will comply with all applicable export and import laws, regulations, and associated embargo and sanction regulations, including prohibitions on export for certain end uses or to certain end users.

#### **1.12.4 Dispute Resolution**

Each party will allow the other party reasonable opportunity to comply before it claims that the other has not met its obligations under this Agreement. The parties will attempt in good faith to resolve all disputes, disagreements, or claims between the parties relating to this Agreement. Unless otherwise required by applicable law without the possibility of contractual waiver or limitation, i) neither party will bring a legal action, regardless of form, arising out of or related to this Agreement or any transaction under it more than two years after the cause of action arose; and ii) after such time limit, any legal action arising out of this Agreement or any transaction under it and all respective rights related to any such action lapse.

#### **1.12.5 Other Principles of Our Relationship**

- a. Neither party grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
- b. The exchange of any confidential information will be made under a separate, signed confidentiality agreement. However, to the extent confidential information is exchanged in connection with any Product or Service under this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Agreement.
- c. This Agreement and any transaction under it do not create an agency, joint venture, or partnership between Customer and IBM. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- d. Each party grants only the licenses and rights specified in this Agreement. No other licenses or rights (including licenses or rights under patents) are granted either directly, by implication, or otherwise. The rights and licenses granted to Customer under this Agreement may be terminated if Customer fails to fulfill its applicable payment obligations.
- e. Customer agrees that IBM may process the business contact information of Customer's employees and contractors and information about Customer as a legal entity (contact information) in connection with IBM Products and Services or in furtherance of IBM's business relationship with Customer. This contact information can be stored, disclosed internally and processed by International Business Machines Corporation and its subsidiaries, Business Partners and subcontractors wherever they do business, solely for the purpose described above provided that these companies comply with applicable data privacy laws related to this processing. Where required by applicable law, Customer has notified and obtained the consent of the individuals whose contact information may be stored, disclosed internally and processed and will forward their requests to access, update, correct or delete their contact information to IBM who will then comply with those requests.
- f. No right or cause of action for any third party is created by this Agreement or any transaction under it, nor is IBM responsible for any third party claims against Customer except as described in the Intellectual Property Protection section above, Section 1.16 Indemnification below, or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable to that third party.
- g. Customer is responsible for selecting the Products and Services that meet its needs and for the results obtained from the use of the Products and Services, including Customer's decision to implement any recommendation concerning Customer's business practices and operations.
- h. Where approval, acceptance, consent or similar action by either party is required under this Agreement, such action will not be unreasonably delayed or withheld.
- i. Neither party is responsible for failure to fulfill any non-monetary obligations due to events beyond its control.
- j. As reasonably required by IBM to fulfill its obligations under this Agreement, Customer agrees to provide IBM with sufficient and safe access (including remote access) to Customer's facilities, systems, information, personnel, and resources, all at no charge to IBM. IBM is not responsible for any delay in performing or failure to perform caused by Customer's delay in providing such access or performing other Customer responsibilities under this Agreement.
- k. Customer shall not be obligated or liable under this Agreement to any party other than IBM.

#### **1.13 Agreement Termination**

Either party may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations under this Agreement, including any applicable Attachment or Transaction Document.

Either party may terminate this Agreement if the other does not comply with any material terms, provided the one who is not complying is given written notice and reasonable time to cure. License termination and termination of a Services transaction are described in Parts 5 and 6, respectively.

Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

## **1.14 Geographic Scope and Governing Law**

The rights, duties, and obligations of each party are valid only in the United States except that all licenses are valid as specifically granted.

Both parties agree to the application of the laws of the State of California to govern, interpret, and enforce all of Customer's and IBM's respective rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

## **1.15 Insurance**

IBM shall at all times during the term of a Statement of Work or other applicable Transaction Document carry, maintain, and keep in full force and effect, insurance as follows:

- a. A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts of IBM.
- b. A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by IBM in performing the Statement of Work or other applicable Transaction Document required by this Agreement.
- c. Workers' compensation insurance as required by the State of California.

IBM shall require any subcontractors engaged on a Statement of Work or other applicable Transaction Document with the Customer to maintain insurance coverage consistent with the requirements in this section 1.15.

The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+:VII in the latest edition of Best's Insurance Guide.

IBM agrees that if it does not keep the aforesaid insurance in full force and effect during the period of performance of a Statement of Work or other applicable Transaction Document, Customer may terminate this Agreement for its convenience in accordance with the provisions herein.

At all times during the performance period of a Statement of Work or other applicable Transaction Document, IBM shall maintain on file with Customer a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts. IBM shall, prior to commencement of work under a Statement of Work or other applicable Transaction Document, file with the Beverly Hills City Clerk such certificate or certificates. The Comprehensive General Liability and Comprehensive Vehicle Liability Insurance shall contain an endorsement naming the City of Beverly Hills as an additional insured. IBM will provide Customer with thirty (30) days prior written notice of cancellation of coverage.

The Comprehensive General Liability and Comprehensive Vehicle Liability Insurance provided by IBM shall be primary and non contributory to any coverage available to Customer, only with respect to liability arising out of this Agreement. The Comprehensive General Liability and Comprehensive Vehicle Liability Insurance shall include provisions for waiver of subrogation.

## **1.16 Indemnification**

IBM agrees to indemnify and hold harmless the City of Beverly Hills, the City Council and each member thereof, and every officer and employee of the City of Beverly Hills by defending them from and against any third party claims for damages for bodily injury (including death) and damage to real property or tangible personal property for which IBM is legally liable to that third party, and pay all costs, damages and attorney's fees that a court finally awards or that are included in a settlement approved by IBM, provided that the City shall give IBM prompt written notice of any such claim and allow IBM to control the defense and shall cooperate in the defense and any related settlement negotiations.

## **2. Warranties**

### **2.1 The IBM Warranties**

#### **2.1.1 Warranty for IBM Machines**

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine is a fixed period, specified in a Transaction Document. For Machines, unless otherwise specified, the Date of Installation is the Warranty Start Date.

During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

Additional terms regarding Service for Machines during and after the warranty period are in Part 6.

#### **2.1.2 Warranty for ICA Programs**

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after Customer obtains its license and IBM is unable to make it do so, Customer may return the ICA Program and the charges Customer paid for the license will be refunded. To be eligible, Customer must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program. Additional terms regarding Program Services are contained in Part 5.

#### **2.1.3 Warranty for IBM Services**

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

#### **2.1.4 Warranty for Systems**

When IBM specifies in an Attachment or Transaction Document that it is providing Products to Customer that are intended to operate together as a system, IBM warrants that those Products are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

### **2.2 Extent of Warranty**

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any Unauthorized Built-in Capacity or Circumvention of Technological Measures), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels.

For a Machine that IBM is responsible to install, if Customer elects to install the Machine itself or have a third party install the Machine, IBM may inspect the Machine at Customer's expense before providing warranty Service on the Machine. If the Machine is not in an acceptable condition for warranty Service, as solely determined by IBM, Customer may request that IBM restore it to an acceptable condition for Service or Customer may withdraw its request for warranty Service. IBM, at its sole discretion, will determine if restoration is possible. Restoration is provided as a billable Service.

**THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.**

### **2.2.1 Items Not Covered by Warranty**

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects.

IBM will identify IBM Machines and ICA Programs that it does not warrant.

IBM's Warranty for ICA Programs does not extend to an ICA Program that is run or executed on other than a Designated Machine.

Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials, non-IBM Products (including those provided with, or installed on, an IBM Machine at Customer's request), and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

## **3. Machines Terms**

### **3.1 Production Status**

Each IBM Machine is manufactured from parts that may or may not be new. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's applicable warranty terms described in Part 2 apply.

### **3.2 Title and Risk of Loss**

When IBM accepts Customer's order, IBM agrees to sell Customer the Machine described in a Transaction Document. IBM transfers title to Customer or, if applicable, Customer's lessor when the Machine is shipped to Customer or its designated location. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a feature, conversion, or Machine Upgrade involving the removal of parts that become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. Customer authorizes IBM to file appropriate documents to permit IBM to perfect its security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to Customer or Customer's designated location. Thereafter, Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for Customer, covering the period until it is delivered to Customer or Customer's designated location. For any loss or damage, Customer must i) report the loss or damage in writing to IBM within 10 business days of delivery and ii) follow the applicable claim procedure.

### **3.3 Installation**

#### **3.3.1 Machine Installation**

Customer agrees to provide an environment meeting the requirements for the Machine as specified in its published documentation.

Within 30 calendar days of the shipment of a Machine, Customer agrees to install the Machine or, if IBM is responsible for the installation, to allow IBM to install the Machine. IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which Customer defers installation or a Customer-set-up Machine) installed. For a Machine that IBM is responsible to install, if the Machine is not made available for IBM to install within six months from shipment, installation will be subject to an installation charge.

Customer is responsible for installing a Customer-set-up Machine and a non-IBM Machine according to instructions provided by IBM or the Machine's manufacturer.

#### **3.3.2 Machine Upgrades and Engineering Changes**

IBM sells Machine Upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Within 30 calendar days of the shipment of a Machine Upgrade, Customer agrees to install the Machine Upgrade or, if IBM is responsible for the installation, to allow IBM to install the Machine Upgrade. Certain Machine Upgrade orders may be terminated at IBM's discretion if not made available for IBM to install within 30 calendar days of shipment, in which case Customer must return the Machine Upgrade to IBM at Customer's expense. In all cases, if the Machine Upgrade is not made available for IBM to install within six months from the date IBM ships the Machine Upgrade, installation will be subject to an installation charge.

Customer agrees to allow IBM to install mandatory Engineering Changes (such as those required for safety) on a Machine within 30 calendar days of IBM's notice to Customer unless otherwise agreed to by the parties.

Many Machine Upgrades and Engineering Changes require the removal of parts and the transfer of ownership and possession of the removed parts to IBM. Customer is responsible for the return of all removed parts to IBM upon installation of the Machine Upgrade or Engineering Change. As applicable, Customer represents that Customer has permission from the owner and any lien holders to i) install Machine Upgrades and Engineering Changes and ii) transfer ownership and possession of removed parts to IBM. Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part.

#### **4. Licenses for Machine Code and Other Internal Licensed Code**

Customer acknowledges that each Covered Machine contains Machine Code and may also contain Other Internal Licensed Code. Regardless of the source from which Customer acquires an IBM Machine, IBM's license terms regarding Machine Code and Other Internal Licensed Code included with the Machine apply.

##### **4.1 License for Machine Code**

Customer's use of Machine Code on a Covered Machine is governed by the terms of the applicable IBM License Agreement for Machine Code provided at [http://www.ibm.com/systems/support/machine\\_warranties/machine\\_code.html](http://www.ibm.com/systems/support/machine_warranties/machine_code.html)

##### **4.2 License for Other Internal Licensed Code (OILC)**

OILC is licensed under, and Customer's use is governed by, the terms of the applicable license agreement(s) for such OILC provided at: [http://www.ibm.com/servers/support/machine\\_warranties/support\\_by\\_product.html](http://www.ibm.com/servers/support/machine_warranties/support_by_product.html)

#### **5. License for ICA Programs**

##### **5.1 License**

When IBM accepts Customer's order, IBM grants Customer a nonexclusive license to use the ICA Program only within Customer's Enterprise in the United States. ICA Programs are owned by International Business Machines Corporation, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

###### **5.1.1 Authorized Use**

Under each license, IBM authorizes Customer to:

- a. run or execute the ICA Program only on the Designated Machine specified by the Customer to IBM under the terms of Section 5.1.2 below;
- b. use the ICA Program to the extent of authorizations Customer has obtained;
- c. solely in support of the level of use authorized by IBM, make and install copies of the ICA Program on the following: (i) the Designated Machine, and (ii) on an additional Designated Machine, for backup purposes, if the ICA Program is not performing productive work (including, without limitation, production, development, test, program maintenance, mirroring, etc.) on such additional Designated Machine; provided that Customer reproduces the copyright notices and any other legends of ownership on each copy or partial copy; and
- d. use any portion of the ICA Program IBM i) provides in source form, or ii) marks restricted (for example, marked "Restricted Materials of IBM") only to:
  - (1) resolve problems related to the use of the ICA Program, and
  - (2) modify the ICA Program so that, while not otherwise violating the terms of this Agreement, it will work together with other products.

###### **5.1.2 Customer's Additional Obligations**

For each ICA Program, Customer agrees to:

- a. provide its IBM representative with the type/model and serial number of the Designated Machine, and provide advance written notice and the effective date of any change from one Designated Machine to another Designated Machine;

- b. comply with any additional or different terms in its Licensed Program Specifications or another Attachment or Transaction Document;
- c. ensure that anyone who uses it (accessed either locally or remotely) does so only for Customer's authorized use and complies with IBM's terms regarding ICA Programs; and
- d. maintain a record of all copies and provide it to IBM at its request.

### **5.1.3 Actions Customer May Not Take**

For each ICA Program, Customer agrees not to:

- a. modify the ICA Program except as IBM expressly allows in this Agreement;
- b. reverse assemble, reverse compile, otherwise translate, or reverse engineer the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or
- c. sublicense, assign, rent, or lease the ICA Program or transfer it outside Customer's Enterprise.

## **5.2 Distributed System License Option**

For some ICA Programs, Customer may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, Customer agrees to do the following while licensed under a DSLO:

- a. have a Basic license for the ICA Program;
- b. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
- c. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

## **5.3 Program Services**

IBM provides Program Services for warranted ICA Programs. If IBM can reproduce Customer's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides Program Services i) on an on-going basis (with at least six months' written notice before IBM terminates Program Services), ii) until the date IBM specifies, or iii) for a period IBM specifies.

## **5.4 License Termination**

Customer may terminate the license for an ICA Program at any time on 30 calendar days' written notice to IBM.

IBM may terminate Customer's license for an ICA Program if Customer fails to comply with:

- a. the terms of this Section 5,
- b. the license terms for Machine Code applicable to the Designated Machine to which the ICA Program is licensed, or
- c. Section 1.11 of this Agreement as such Section pertains to the ICA Program or the Designated Machine to which the ICA Program is licensed.

For each ICA Program license that Customer acquired for a one-time charge, a replacement license may be acquired for an upgrade charge, if available. When Customer obtains a license for such replacement ICA Program, the license of the replaced ICA Program is terminated when charges become due, unless IBM specifies otherwise.

If an ICA Program's license is terminated, Customer's authorization to use the ICA Program is also terminated.

Customer agrees to promptly destroy all copies of the Program after either party has terminated the license.

# **6. Services**

## **6.1 Personnel**

Each party will assign personnel that are qualified to perform the tasks required of such party under this Agreement and is responsible for the supervision, direction, control, and compensation of its personnel. Subject to the foregoing, each party may determine the assignment of its personnel and its contractors.

IBM may engage subcontractors to provide or assist in providing Services, in which case IBM remains responsible for the fulfillment of its obligations under this Agreement and for the performance of the Services.

## **6.2 Materials Ownership and License**

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

Each party agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.

## **6.3 Customer Resources**

If Customer is making available to IBM any facilities, software, hardware or other resources in connection with IBM's performance of Services, Customer agrees to obtain any licenses or approvals related to these resources that may be necessary for IBM to perform the Services and develop Materials. IBM will be relieved of its obligations that are adversely affected by Customer's failure to promptly obtain such licenses or approvals. Customer agrees to reimburse IBM for any reasonable costs and other amounts that IBM may incur from Customer's failure to obtain these licenses or approvals.

Unless otherwise agreed in an Attachment or Transaction Document, Customer is responsible for i) any data and the content of any database Customer makes available to IBM in connection with a Service under this Agreement, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery of the database and any stored data. IBM's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by the Attachments and Transaction Documents applicable to the particular Services Transaction (which prevail over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in this Agreement.

## **6.4 Service for Machines (during and after warranty)**

### **6.4.1 Service for Machines**

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform Customer of the available types of Service for a Machine. At its discretion, IBM will i) either repair or exchange the failing Machine and ii) provide the Service either at Customer's location or a service center. IBM manages and installs selected Engineering Changes that apply to IBM Machines and may also perform preventive maintenance.

Any feature, conversion, or Machine Upgrade IBM Services must be installed on a Machine which is i) the designated, serial-numbered Machine, if applicable, and ii) at an Engineering-Change level compatible with the feature, conversion, or Machine Upgrade.

When the type of Service requires that Customer deliver the failing Machine to IBM, Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will deliver it to Customer at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is i) in IBM's possession or ii) in transit in those cases where IBM is responsible for the transportation charges.

Customer agrees:

- a. to obtain authorization from the owner to have IBM service a Machine that Customer does not own;
- b. where applicable, before IBM provides Service, to --
  - (1) follow the problem determination and service request procedures that IBM provides,
  - (2) secure all programs, data, and funds contained in a Machine, and
  - (3) inform IBM of changes in a Machine's location.
- c. to follow the Service instructions that IBM provides (which may include installing Machine Code and other software updates either downloaded from an IBM Internet Web site or copied from other electronic media); and
- d. when Customer returns a Machine to IBM for any reason --
  - (1) to securely erase from any Machine all programs not provided by IBM with the Machine and data, including without limitation, the following: i) information about identified or identifiable individuals or legal entities ("Personal Data") and ii) Customer's confidential or proprietary information and other data. If removing or deleting Personal Data is not possible, Customer agrees to transform such information (e.g., by making it anonymous) so that it no longer qualifies as Personal Data under applicable law;
  - (2) to remove all funds from Machines returned to IBM. IBM is not responsible for any funds, programs not provided by IBM with the Machine, or data contained in a Machine that Customer returns to IBM; and
  - (3) IBM may ship all or part of the Machine or its software to other IBM or third party locations around the world to perform its responsibilities under this Agreement, and Customer authorizes IBM to do so.

#### **6.4.2 Replacements**

When Service involves the exchange of a part or Machine, the item IBM replaces becomes IBM's property and the replacement becomes Customer's. Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a part or Machine, Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. Customer also agrees to i) ensure that the part or Machine is free of any legal obligations or restrictions that prevent its exchange and ii) transfer ownership and possession of removed parts to IBM.

Service for some IBM Machines involves IBM providing Customer with an exchange replacement for installation by Customer. Such exchange replacements may be i) a part of a Machine (called a Customer Replaceable Unit, or "CRU," e.g., keyboard, memory, or hard disk drive), or ii) an entire Machine. Customer may request IBM to install the replacement CRU or Machine, however, Customer may be charged for the installation. IBM provides information and replacement instructions with Customer's Machine and at any time on Customer's request. IBM specifies in the materials shipped with a replacement whether the failing CRU or Machine must be returned to IBM. When return is required, return instructions and a container are shipped with the replacement, and Customer may be charged for the replacement if IBM does not receive the failing CRU or Machine within 15 calendar days of Customer's receipt of the replacement.

#### **6.4.3 Items Not Covered**

Repair and exchange Services do not cover:

- a. accessories, supply items, consumables (such as batteries and printer cartridges), and structural parts (such as frames and covers);
- b. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by Customer or a third party;
- c. Machines with removed or altered Machine or parts identification labels;
- d. failures caused by a product for which IBM is not responsible;
- e. service of Machine alterations; or
- f. service of a Machine on which Customer is using capacity or capability, other than that authorized by IBM in writing.

## 6.5 Warranty Service Upgrade

For certain Machines, Customer may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

Customer may not terminate the Service upgrade or transfer it to another Machine during the warranty period.

When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service Customer selected for warranty Service upgrade.

## 6.6 Maintenance Coverage

When Customer orders maintenance Service for Machines, IBM will inform Customer of the date on which maintenance Service will begin. IBM may inspect the Machine within one month following that date. If the Machine is not in an acceptable condition for service, Customer may have IBM restore it for a charge or Customer may withdraw its request for maintenance Service. However, Customer will be charged for any maintenance Service that IBM has performed at Customer's request.

## 6.7 Automatic Service Renewal

Renewable Services shall renew for a same length contract period upon mutual written agreement of the parties, unless either party provides written notification (at least one month prior to the end of the current contract period) to the other of its decision not to renew.

During an automatic renewal period, Customer may terminate the Service on one month's written notice, and IBM will provide Customer a prorated credit for any unused Services for which Customer has paid in advance.

## 6.8 Termination and Withdrawal of a Service

Either party may terminate a Service transaction if the other materially fails to meet its obligations concerning the Service.

Customer may terminate a Service, on notice to IBM provided Customer has met all minimum requirements and paid any adjustment charges specified in the applicable Attachments and Transaction Documents.

For a maintenance Service, Customer may terminate without adjustment charge, provided any of the following circumstances occur:

- a. Customer permanently removes the eligible Product, for which the Service is provided, from productive use within Customer's Enterprise;
- b. the eligible location, for which the Service is provided, is no longer controlled by Customer (for example, because of sale or closing of the facility); or
- c. the Machine has been under maintenance Service for at least one year and Customer gives IBM one month's written notice prior to terminating the maintenance Service.

Customer may also terminate this Agreement without cause by providing IBM with thirty (30) days advance written notice. Any Statement of Work that is in progress at the time of such termination will terminate concurrently with the termination of this Agreement.

Customer agrees to pay IBM for i) all charges for Services IBM provides and any Products and Materials IBM delivers through Service termination, and ii) reimbursable expenses IBM incurs through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges and for expenses IBM incurs as a result of such termination (which IBM will take reasonable steps to mitigate).

IBM may withdraw a Service or support for an eligible Product on three months' written notice to Customer. If IBM withdraws a Service for which Customer has prepaid and IBM has not yet fully provided it to Customer, IBM will give Customer a prorated refund.

Any terms that by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

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This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer purchases Machines, licenses ICA Programs, obtains Program licenses, and acquires Services from IBM, and replaces all prior oral or written communications, representations, understandings, warranties, promises, covenants, and commitments between Customer and IBM. In entering into

this Agreement, including each Attachment and Transaction Document, neither party is relying on any representation that is not specified in this Agreement. Additional or different terms in any written communication from Customer (such as a purchase order) are void.

Each party accepts, on behalf of its Enterprise, the terms of this Agreement by signing this Agreement (or another document that incorporates it by reference) by hand or electronically. Once signed, i) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, electronic image, photocopy or facsimile) is considered an original and ii) all Products and Services ordered under this Agreement are subject to it.

Agreed to:

City of Beverly Hills:

Agreed to:

International Business Machines Corporation

By \_\_\_\_\_



Authorized signature

Title: CHIEF INFORMATION OFFICER

Name (type or print): DAVID SCHIRMER

Date: 8/1/16

Customer number: 178296

Enterprise number:

Customer address: 455 N. REXFORD DR  
BEVERLY HILLS, CA  
90210

By \_\_\_\_\_



Authorized signature

Title: NICK BARBU

Name (type or print):

Date: 7/14/16

Agreement number: HQ12291

IBM address: 600 ANTON BLVD.  
COSTA MESA, CA  
92626

CITY OF BEVERLY HILLS  
A Municipal Corporation

---

JOHN A. MIRISCH  
Mayor of the City of Beverly Hills

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

Attest:

---

BYRON POPE  
City Clerk

APPROVED AS TO FORM:



---

LAURENCE S. WEINER  
City Attorney

APPROVED AS TO CONTENT:

---

MAHDI ALUZRI  
City Manager



---

SHARON L'HEUREUX DRESSEL  
Interim Risk Manager



# IBM Schedule for ServiceElite

**Enterprise Total for Charge Period by Customer Number Inclusive of MES:**

Customer No.	Customer Name	Customer Location	Charges <sup>4</sup>
01782812	CITY OF BEVERLY HILLS	9355 CIVIC CENTER DR, COMPUTER ROOM, BEVERLY HILLS CA 90210-3427	7,661.40
01782976	CITY OF BEVERLY HILLS	455 N REXFORD DR, IT DEPT, BEVERLY HILLS CA 90210-4817	1,363.00
01783202	CITY OF BEVERLY HILLS	9355 CIVIC CENTER DR, SUPPORT GROUP, BEVERLY HILLS CA 90210-3427	46,032.64
<b>Total</b>			<b>55,057.04</b>

**Note: One Time Charges are not included in the Total**

# IBM Schedule for ServiceElite

## Maintenance Machine List

--Eligible Machine Description-- A Machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date. Reinstating Maintenance Services after a lapse in Services may require payment of additional charges.

Mfg	Type	Mod/Feat	Add/Rem	Order/Serial Number	Related Order/Serial Number	Product Description	Qty.	Type of Svc <sup>2</sup>	Maint. Svc <sup>3</sup>	Charges <sup>4</sup>	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
				<b>Specified Location: 01783202</b>		<b>City, State: BEVERLY HILLS CA 90210-3427</b>						
IBM	1814	52A		0078K16DC		EXP520 EXPANSION UNIT	1	B	1	2,657.00 H		
IBM	1814	52A		0078K16DD		EXP520 EXPANSION UNIT	1	B	1	2,657.00 H		
IBM	1814	52A		0078K16DF		EXP520 EXPANSION UNIT	1	B	1	2,657.00 H		
IBM	1814	52A		0078K16DG		EXP520 EXPANSION UNIT	1	B	1	2,657.00 H		
<b>Subtotal Without MES</b>										<b>10,628.00</b>		
<b>Subtotal With MES</b>										<b>10,628.00</b>		
				<b>Specified Location: 01782812</b>		<b>City, State: BEVERLY HILLS CA 90210-3427</b>						
IBM	1746	E2A		0013D00Z8		SYSTEM STORAGE EXP3512	1	B	1	190.13 PH	04/04/2017	
IBM	1746	E2A		0013D00ZA		SYSTEM STORAGE EXP3512	1	B	1	190.13 PH	04/04/2017	
IBM	1746	E2A		0013D00ZD		SYSTEM STORAGE EXP3512	1	B	1	190.13 PH	04/04/2017	
IBM	1746	E2A		0013D00ZF		SYSTEM STORAGE EXP3512	1	B	1	190.13 PH	04/04/2017	
IBM	1746	E2A		0013D010W		SYSTEM STORAGE EXP3512	1	B	1	190.13 PH	04/04/2017	
IBM	1746	C2A		0013D01WY		SYSTEM STORAGE DS3512	1	B	1	70.52 PH	06/23/2017	
IBM	1746	E2A		0013D020K		SYSTEM STORAGE EXP3512	1	B	1	190.13 PH	04/04/2017	
IBM	1746	E2A		0013D03CP		SYSTEM STORAGE EXP3512	1	B	1	58.50 PH	06/25/2017	
IBM	1746	E2A		0013D03DM		SYSTEM STORAGE EXP3512	1	B	1	58.50 PH	06/25/2017	
IBM	1746	E2A		0013D03KX		SYSTEM STORAGE EXP3512	1	B	1	58.50 PH	06/25/2017	
IBM	1746	E2A		0013D04NH		SYSTEM STORAGE EXP3512	1	B	1	97.50 PH	06/01/2017	
IBM	1746	E2A		0013D04P1		SYSTEM STORAGE EXP3512	1	B	1	97.50 PH	06/01/2017	
IBM	1746	E2A		0013D04P7		SYSTEM STORAGE EXP3512	1	B	1	97.50 PH	06/01/2017	
IBM	1746	E2A		0013D04PB		SYSTEM STORAGE EXP3512	1	B	1	97.50 PH	06/01/2017	
IBM	1746	E2A		0013D04PG		SYSTEM STORAGE EXP3512	1	B	1	97.50 PH	06/01/2017	
IBM	1746	E2A		0013D04PL		SYSTEM STORAGE EXP3512	1	B	1	97.50 PH	06/01/2017	
IBM	1746	E2A		0013D0BWH		SYSTEM STORAGE EXP3512	1	B	1	0.00 PH	08/09/2017	
IBM	1746	C2A		0013D1FTH		SYSTEM STORAGE DS3512	1	B	1	668.00 H		
IBM	1746	C2A		0013D2HFA		SYSTEM STORAGE DS3512	1	B	1	191.13 WPH	04/18/2017	

See Legend for Details

# IBM Schedule for ServiceElite

## Maintenance Machine List

--Eligible Machine Description-- A Machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date. Reinstating Maintenance Services after a lapse in Services may require payment of additional charges.

Mfg	Type	Mod/Feat	Add/Rem	Order/Serial Number	Related Order/Serial Number	Product Description	Qty.	Type of Svc <sup>2</sup>	Maint. Svc <sup>3</sup>	Charges <sup>4</sup>	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
IBM	1746	E2A		0013D2K0H		SYSTEM STORAGE EXP3512	1	B	1	167.38 WPH	04/18/2017	
IBM	1746	E2A		0013D2K5Y		SYSTEM STORAGE EXP3512	1	B	1	167.38 WPH	04/18/2017	
IBM	1746	E2A		0013D2K61		SYSTEM STORAGE EXP3512	1	B	1	167.38 WPH	04/18/2017	
IBM	1746	E2A		0013D2K63		SYSTEM STORAGE EXP3512	1	B	1	167.38 WPH	04/18/2017	
IBM	1746	E2A		0013D2K66		SYSTEM STORAGE EXP3512	1	B	1	167.38 WPH	04/18/2017	
IBM	1746	E2A		0013D2K68		SYSTEM STORAGE EXP3512	1	B	1	167.38 WPH	04/18/2017	
IBM	1746	E2A		0013D2K69		SYSTEM STORAGE EXP3512	1	B	1	167.38 WPH	04/18/2017	
IBM	1746	E2A		0013D2K74		SYSTEM STORAGE EXP3512	1	B	1	167.38 WPH	04/18/2017	
IBM	1746	E2A		0013D2KGX		SYSTEM STORAGE EXP3512	1	B	1	167.38 WPH	04/18/2017	
IBM	1746	E2A		0013D2KHZ		SYSTEM STORAGE EXP3512	1	B	1	167.38 WH	04/18/2017	
IBM	1746	C2A		0013K0YYM		SYSTEM STORAGE DS3512	1	B	1	450.93 PH	11/28/2016	
IBM	1746	E2A		0013K0Z5H		SYSTEM STORAGE EXP3512	1	B	1	394.87 PH	11/28/2016	
IBM	1746	E2A		0013K0Z62		SYSTEM STORAGE EXP3512	1	B	1	394.87 PH	11/28/2016	
IBM	3573	L4U		0078P1470		TS3200 TAPE LIBRARY	1	A	1	1,916.00 H		
<b>Subtotal Without MES</b>										<b>7,661.40</b>		
<b>Subtotal With MES</b>										<b>7,661.40</b>		
				<b>Specified Location: 01782976</b>	<b>City, State: BEVERLY HILLS CA 90210-4817</b>							
IBM	8231	E2B		0000B033P		POWER 710 AND POWER 730	1	B	1	1,026.00 H		
IBM	7998	60X		00064DC0A		7998 60X JS12 EXPRESS	1	B	1	337.00 H		
<b>Subtotal Without MES</b>										<b>1,363.00</b>		
<b>Subtotal With MES</b>										<b>1,363.00</b>		
				<b>Specified Location: 01783202</b>	<b>City, State: BEVERLY HILLS CA 90210-3427</b>							
IBM	1814	52A		0078K0WD5		EXP520 EXPANSION UNIT	1	B	1	2,657.00 H		

See Legend for Details

# IBM Schedule for ServiceElite

## Maintenance Machine List

--Eligible Machine Description-- A Machine is only considered "Eligible" if it is operational and in conformance with its official published specifications on the contract start date. Reinstating Maintenance Services after a lapse in Services may require payment of additional charges.

Mfg	Type	Mod/ Feat	Add/ Rem	Order/ Serial Number	Related Order/ Serial Number	Product Description	Qty.	Type of Svc <sup>2</sup>	Maint. Svc <sup>3</sup>	Charges <sup>4</sup>	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
IBM	1814	20A		0078K0WD6		DS5020 MIDRANGE DISK	1	B	1	5,577.00 H		
IBM	1818	RS2		007800632		DS RSM MODEL RS2	1	B	1	708.00 H		
IBM	1818	D1A		0078K10BN		EXP5000 EXPANSION UNIT	1	B	1	2,412.00 H		
IBM	1818	D1A		0078K10BR		EXP5000 EXPANSION UNIT	1	B	1	2,412.00 H		
IBM	1818	D1A		0078K10BT		EXP5000 EXPANSION UNIT	1	B	1	2,412.00 H		
IBM	1818	D1A		0078K10BV		EXP5000 EXPANSION UNIT	1	B	1	2,412.00 H		
IBM	1818	D1A		0078K10BW		EXP5000 EXPANSION UNIT	1	B	1	2,412.00 H		
IBM	1818	51A		0078K10C6		DS5100 MIDRANGE DISK	1	B	1	7,152.00 H		
IBM	7998	60X		000655E5A		7998 60X JS12 EXPRESS	1	B	1	337.00 H		
IBM	7998	60X		000655E6A		7998 60X JS12 EXPRESS	1	B	1	337.00 H		
IBM	7998	60X		000655E7A		7998 60X JS12 EXPRESS	1	B	1	337.00 H		
IBM	7998	60X		0010192CA		7998 60X JS12 EXPRESS	1	B	1	337.00 H		
IBM	7998	60X		0010192DA		7998 60X JS12 EXPRESS	1	B	1	337.00 H		
IBM	7998	60X		0010192EA		7998 60X JS12 EXPRESS	1	B	1	337.00 H		
IBM	8203	E4A		0000717F4		POWER SYSTEM 520	1	B	1	1,692.00 H		
IBM	8203	E4A		00007B9C5		POWER SYSTEM 520	1	B	1	1,692.00 H		
<b>Subtotal Without MES</b>										<b>33,560.00</b>		
<b>Subtotal With MES</b>										<b>33,560.00</b>		
<b>Total Charge Period Charges for Maintenance Machine List Without MES</b>										<b>\$53,212.40</b>		
<b>Total Charge Period Charges for Maintenance Machine List With MES</b>										<b>\$53,212.40</b>		

See Legend for Details

# IBM Schedule for ServiceElite

**Services List**

Customer Technical Contact Name (if applicable):  
 Customer Primary Technical Contact name :  
 Customer Primary Technical Contact phone number :

-----Eligible Machine Description-----

Type	Model	Serial/ Order Number	Support Service	Product Group / Service Option	Qty.	Charges <sup>4</sup>	Services Start	Charges Start <sup>5</sup>	Charges Stop <sup>5</sup>
			<b>Specified Location: 01783202</b>	<b>City, State: BEVERLY HILLS CA 90210-3427</b>					
			SWMA FOR AIX STD EDITION	SOFTWARE MAINTENANCE D5		922.32			
				CHARGEABLE PROCESSORS FULL SHIFT	2				
8203	E4A	0000717F4			1				
			SWMA FOR AIX STD EDITION	SOFTWARE MAINTENANCE D5		922.32			
				CHARGEABLE PROCESSORS FULL SHIFT	2				
8203	E4A	00007B9C5			1				
<b>Subtotal</b>						<b>1,844.64</b>			
<b>Total Charge Period Charges for Services List</b>						<b>\$ 1,844.64</b>			

**Note: One Time Charges are not included in these totals.  
 See Legend for Details**

# IBM Schedule for ServiceElite

## Legends:

<sup>1</sup>Charge adjustments related to inventory and Service changes will be accumulated and invoiced with your next standard invoicing cycle (may be sooner for annual or semiannual payment plans)

### <sup>2</sup>TYPE OF SERVICE

- A) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, next business day
- B) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day.
- C) On-Site Repair/Exchange Services, Monday through Friday (excluding holidays), 8am to 5pm, 4 hour response objective  
This type of repair Service includes a response objective and is not a guarantee.
- D) On-Site Repair/Exchange Services, 7 days a week, 24hrs/day, 2 hour response objective.  
This type of repair Service includes a response objective and is not a guarantee.
- X) EasyServe (remotely delivered services)

### <sup>3</sup>MAINTENANCE SERVICES

- 1) Maintenance of IBM Machines
- 2) Maintenance of Non-IBM Machines
- 3) Warranty Service Upgrade
- 4) Maintenance of Non-IBM Machines - Cisco Products
- 5) Maintenance of IBM Machines - Enhanced Service Response
- 6) Service for Machines Withdrawn from IBM Maintenance
- 7) Non-IBM Service for Machines Withdrawn from IBM Maintenance
- 8) Maintenance of IBM Machines (Labor Only)
- 9) Non-IBM Memory Exchange
- 10) Enhanced Parts Inventory
- 11) Spare Machine
- 12) Key Operator Support
- 13) Maintenance of non-IBM Machines during the Manufacturer's Warranty Period
- 16) IBM Maintenance Services - First Line Maintenance for Wincor Nixdorf ATMs
- 17) IBM Maintenance Services - Applications Maintenance Services for Wincor Nixdorf ATMs
- 18) Post Installation Coverage (PIC) Service Upgrade, for selected Non-IBM Machines

### <sup>4</sup>Charges shown are for the Charge Period

- A (C) indicates a Machine that will have usage charges billed separately.
- An (E) indicates a Machine that has been announced as withdrawn from generally available Maintenance Service.
- An (F) indicates an assumptive Product included in the total Charge Period Price that has a manually inserted serial number and configuration provided by the customer.
- An (H) identifies a Machine on an existing ServiceElite/ServiceSuite/ ServiceElect CHIS contract with duplicate Maintenance Services coverage.
- A (K) indicates assumptive Products included in the total Charge Period Price that are based on the customer provided configuration.
- An (M) indicates a Miscellaneous Equipment Specification (MES) on order is not installed and applicable pricing not included.
- An (N) indicates that the Product is a non-GSA Schedule item .
- An (O) indicates a one time charge.
- A (P) indicates a Machine or Service with coverage on a non-CHIS contract.
- An (R) indicates the usage charge rate (feet, hours, or impressions) for a Machine under a usage plan.
- An (S) indicates a manual order installation date change.
- A (U) indicates usage charges which are measured in either feet, hours, or impressions.
- A (W) indicates a Machine under warranty.
- An (X) indicates On-order Products which are shown for planning purposes only.
- A (Y) indicates On-order MES Products which are shown for planning purposes only. These charges are included in the related Machine.

<sup>5</sup>Charges Start/Stop dates shown are those that differ from the Contract Period Start/End Dates

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**A SERVICES PROPOSAL FOR**

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**City of Beverly Hills**

to provide:

**Hourly Technical Consulting Services**

June 16, 2016

submitted by

**IBM**

600 Anton Boulevard  
Costa Mesa, CA 92626

Service dates

July 1, 2016 – June 30, 2017

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## 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 for the City's fiscal year 2016 - 2017 with a pool of 100 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.

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# 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 one hundred (100) hours of project management and technical consulting services to City through June 30, 2017 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 = July 1, 2016

Estimated End Date = June 30, 2017

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 one hundred (80) hours at an hourly rate of \$240.00. The total estimated funding requirements for these tasks are \$19,200, plus an estimated travel budget of \$5,800, for a grand total of \$25,000. 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 \$25,000, including a travel budget in an amount that will not exceed \$5,800, 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.

Amounts are due upon receipt of invoice and are payable within thirty (30) days.

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, 2016.

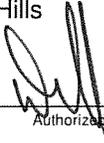
Each party agrees that the complete agreement between IBM and City about these Services consists of 1) this Statement of Work and 2) the IBM Customer Agreement (or any equivalent agreement signed by both parties).

**Please Provide Hard Copy of Purchase Order:** \_\_\_\_\_

**Agreed to:**

City of Beverly Hills

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



Authorized signature

Name (type or print): DAVID SCHIRMER

Date: 8/11/16

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): NICK BARBIL

Date: 7/14/16

Agreement Number: HQ12291

Statement of Work number: FA-WOLYBFQ

IBM Office address:

IBM Corporation  
600 Anton Boulevard  
Costa Mesa, CA 92626

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## Appendix A. Deliverable Guidelines

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### Appendix A. Deliverable Guidelines

#### Status Report

**Purpose:** IBM will provide a Status Report during the project to describe the activities which took place during that period. Significant accomplishments, milestones, and problems will be described.

**Delivery:** One hard copy will be delivered to the City Project Manager within five working days following the reporting period.

**Content:** The report will consist of the following, as appropriate:

- Activities performed during the reporting period
- Activities planned for the next reporting period
- Project change control activity
- Problems, concerns, and recommendations
- Hours summary

#### Summary of Findings and Recommendations

**Purpose:** IBM will provide a summary of key findings and conclusions and provide recommendations to assist City in understanding how specific changes will impact the future of City's equipment and applications.

**Delivery:** One hard copy will be delivered to the City Project Manager.

**Content:** The report will consist of the following, as appropriate:

- Key findings and conclusions
- Recommendations

## **Appendix B. Project Change Control Procedure**

When both parties agree to a change in this Statement of Work, a written description of the agreed change (called a "Change Authorization") will be prepared, which both parties must sign. The Change Authorization will describe the change, the rationale for the change, and specify any change in the charges, estimated schedule, or other terms, and will take the form attached hereto. Depending on the extent and complexity of the requested changes, IBM may charge for the effort required to analyze it. When charges are necessary in order to analyze a change, IBM will provide a written estimate and begin the analysis on written authorization. The terms of a mutually agreed upon Change Authorization will prevail over those of this Statement of Work or any previous Change Authorization.

# Sample PCR Document

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## Change Authorization for Project Management and Technical Consulting Services

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This Change Authorization ("PCR") is to modify the existing Statement of Work dated July 1, 2016 between the City of Beverly Hills ("City") and International Business Machines Corporation ("IBM").

The Scope of Services is amended as follows: See Attached Pages

Except as set out herein, all other terms & conditions remain unchanged and in full force and effect.

IBM agrees to provide the Services described in this PCR, provided City accepts this PCR, without modification, on or before MM/DD/YY by signing in the space provided below.

---

Each of us agrees that the complete agreement between us about these Services consists of

- 1) this Change Authorization,
- 2) the referenced Statement of Work, and
- 3) the IBM Customer Agreement or IBM Agreement for Services, as applicable.

*Agreed to:*

**City of Beverly Hills**

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

Authorized signature

Name (type or print):

Date:

Customer Number:

Customer Address: **455 North Rexford Dr.**

**Beverly Hills, CA 90210**

Project Name or Identifier:

*Agreed to:*

**International Business Machines Corporation**

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

Authorized signature

Name (type or print):

Date:

Reference Agreement Number:

Reference Statement of Work Number:

Change Authorization Number:

IBM Office Number:

IBM Office Address:

# International Business Machines Corporation

International Business Machines Corporation, PO Box 643600, Pittsburgh, PA 15264-3600



## IBM Software Subscription and Support Renewal Quote Information Details

Note: If you will be placing your renewal order with an authorized Business Partner, please provide your partner with a copy of this Software Subscription and Support Renewal Quote to obtain final pricing and for fulfillment.

The prices quoted are only applicable if the total specified quantity of each and every designated part number is ordered. The prices are only effective up to the specified start date of the renewal part number.

### Renewal Contact

Attn: Nicole McClinton  
CA City of Beverly Hills  
455 North Rexford Drive  
BEVERLY HILLS CA 90210-4817  
UNITED STATES

### Passport Advantage Contact

Attn: Mark Hobson  
CA City of Beverly Hills  
455 North Rexford Drive  
BEVERLY HILLS CA 90210-4817  
UNITED STATES

### Technical Contact

Attn: David Schirmer  
CA City of Beverly Hills  
455 North Rexford Drive  
BEVERLY HILLS CA 90210-4817  
UNITED STATES

### Passport Advantage Customer Information

Quotation Number: 26772269  
Passport Advantage Agreement Number: 130144  
Passport Advantage Site Number: 7199797  
IBM Customer Number: 0985895  
Anniversary Date: 01-August-2016  
Relationship SVP Level: GV  
Quotation SVP Level: GV

### IBM Renewal Contact Information

IBM Renewal Representative: Darren Libman  
Phone Number: ++1-888-771-7705 x333487  
eMail Address: dlibman@ca.ibm.com

### Product Information

Unit SVP Price: Is the IBM Suggest Volume Price for 12 months of coverage.

Unit Price: Is the price established for a full renewal, completed prior to the quote expiration date. This price may be lower than the Unit SVP price and is only effective up to the specified start date of the renewal part number.

Item No.	Part Number	Quantity	IBM Order Reference No.	Total Points	Coverage Starts	Coverage Ends	Months	Unit SVP Price	Unit Price	Extended Amount
Prior year partner not determined										
IBM Spectrum Protect Extended Edition 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal										
010	E0LWGLL	600		42.00	01-Aug-2016	31-Jul-2017	12	14.03	14.03	8,418.00
Subtotal (USD)				42.00						8,418.00
IBM Corporation 7199797										

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Item No.	Part Number	Quantity	IBM Order Reference No.	Total Points	Coverage Starts	Coverage Ends	Months	Unit SVP Price	Unit Price	Extended Amount
IBM Cognos Impromptu Administrator Authorized User Annual SW Subscription & Support Renewal										
001	E063PLL	1	55392975	1.48	01-Aug-2016	31-Jul-2017	12	282.20	282.20	282.20
IBM Cognos Impromptu Web Reports Authorized User Annual SW Subscription & Support Renewal										
002	E063RLL	30	55392975	35.40	01-Aug-2016	31-Jul-2017	12	226.10	54.73	1,641.90
IBM Cognos Impromptu Web Reports Limited Use Processor Value Unit (PVU) Annual SW Subscription & Support Renewal										
003	E063SLL	200	55392975	332.00	01-Aug-2016	31-Jul-2017	12	317.10	77.31	15,462.00
IBM Rational Application Developer for WebSphere Software Authorized User Annual SW Subscription & Support Renewal										
004	E01MJLL	1	55392975	5.02	01-Aug-2016	31-Jul-2017	12	960.50	960.50	960.50
IBM DB2 Enterprise Server Edition Processor Value Unit (PVU) Annual SW Subscription & Support Renewal										
005	E020CLL	260	55392975	117.00	01-Aug-2016	31-Jul-2017	12	86.70	86.70	22,542.00
IBM WebSphere Application Server Network Deployment Processor Value Unit (PVU) Annual SW Subscription & Support Renewal										
006	E025SLL	300	55392975	60.00	01-Aug-2016	31-Jul-2017	12	37.40	37.40	11,220.00
IBM Integration Designer per Authorized User Annual SW Subscription & Support Renewal										
007	E0BRLLL	1	55392975	4.40	01-Aug-2016	31-Jul-2017	12	841.50	841.50	841.50
IBM Spectrum Protect 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal										
*008	E0LVGLL <sup>A1</sup>	10	55392975	0.40	01-Aug-2016	31-Jul-2017	12	7.79	7.79	77.90
IBM Spectrum Protect for Mail 10 Processor Value Units (PVUs) Annual SW Subscription & Support Renewal										
*009	E0LVVLL <sup>B1</sup>	80	55392975	11.20	01-Aug-2016	31-Jul-2017	12	26.86	26.86	2,148.80
Subtotal (USD) 7199797				566.90						55,176.80
Total Points & SVP Amount (USD)				608.90						63,594.80

Pricing not inclusive of applicable sales taxes.

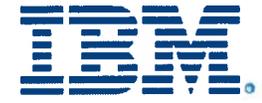
## Product/Part Replacement Information Footnote(s)

Current quoted product replaces purchased product (purchased part, purchased qty) on effective replacement date

A1 Spectrum Protect 10 PVU ( E0LVGLL ) replaces Tivoli Storage Mgr 10 VU ( E029KLL , 10 ) effective 09/08/2015

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B1 SP for Mail 10 PVU ( E0LVLL ) replaces Tiv Stor Mgr Mail 10 VU ( E02B6LL , 80 ) effective 09/08/2015

# International Business Machines Corporation

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We recommend that you renew IBM Software Subscription and Support for all of the in service authorized use of all IBM programs installed at your site to ensure continued access to new software versions and releases and 24x7 technical support.

Please follow the steps below to renew your IBM Software Subscription and Support.

1. Review your IBM Software Subscription and Support renewal quote and IBM Software Subscription and Support Renewal Quote Information Details. If you have questions, please contact either an authorized IBM Business Partner or your IBM renewal representative referenced above.
2. Choose one of the following options to renew before your anniversary date:
  - Contact an authorized IBM Business Partner for final pricing and fulfillment
  - Contact me at ++1-888-771-7705 x333487 or dlibman@ca.ibm.com
  - Sign in to <https://www.ibm.com/software/howtobuy/passportadvantage/paocustomer/eorder/eRenewal?rquotenum=0026772269> and renew.
3. If you do not renew your IBM Software Subscription and Support by 08/01/2016, it will expire. If at a later date, you wish to reinstate your IBM Software Subscription and Support, you may do so, however, the cost of reinstatement will be as much as three times greater than your annual renewal rate.

**Note:**

Your renewal order will be governed by and is subject to the terms of your IBM International Passport Advantage Agreement or the IBM International Passport Advantage Express Agreement, as applicable, against which this transaction will be placed.