

AGREEMENT NO. _____

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
ORACLE AMERICA, INC.

THIS AGREEMENT, Oracle reference number US-GMA-428447, ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("Board") and ORACLE AMERICA, INC., a Delaware corporation, 1910 Oracle Way, Reston, Virginia 20190 ("Oracle" or "Contractor").

WHEREAS, the City of Los Angeles Harbor Department ("Department") requires various products, licenses, training and technical support available only through Contractor under the County of Los Angeles contract referenced below; and

WHEREAS, effective on July 28, 2014, the County of Los Angeles entered into an agreement with Contractor, Contract No. MA-IS-1540029-1 (Contractor Contract No. US-GMA-270549) ("LA County Contract") for the services and products required by the Department; and

WHEREAS, the LA County Contract authorizes other California counties and municipalities to utilize the LA County Contract as Participating Entities (as defined in Section 3.19 of the LA County Contract); and

WHEREAS, effective on November 1, 2014, the City entered into an agreement with Contractor, Contract No. 59596 (Contractor Contract No. US-GMA-362233), utilizing the LA County Contract for the same software products and services ("LA City Contract"); and

WHEREAS, for the training and technical support required by this Agreement, City does not employ personnel with the required expertise and the Board has determined that it is not possible for the City to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY CONTRACTOR

A. Contractor hereby agrees to provide to the Department, as an independent contractor, certain products, licenses, technical support, Advanced Customer Support services and training services as set forth in Exhibit A ("LA County Contract") and Exhibit B ("LA City Contract").

B. All orders placed under this Agreement are subject to the terms and conditions of the LA County Contract and the LA City Contract, in addition to the terms

and conditions within this Agreement and the terms stated in the applicable Contractor ordering document. Orders for products and services must be evidenced by a Contractor ordering document signed by both parties. In the event of an inconsistency between the provisions of this Agreement, the LA County Contract and the LA City Contract, the provisions of this Agreement shall take precedence. The terms and conditions in a Contractor ordering document shall prevail over the LA County Contract, the LA City Contract and this Agreement.

C. As between the Department and Contractor, Contractor is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance under this Agreement, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity.

D. Contractor acknowledges and agrees that it lacks authority to perform any services under this Agreement outside those stated in Exhibits A and B. Contractor further acknowledges and agrees that any services it performs outside these Exhibits and any Contractor ordering documents are performed as a volunteer and shall not be compensable under this Agreement, unless separately agreed to in a writing, which is signed by authorized representatives of both parties.

E. Any onsite services provided pursuant to this Agreement shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Contractor or third-parties with whom Contractor has contracted ("Subcontractors"). See also LA County Contract Section 23 (SUBCONTRACTING).

II. SERVICES TO BE PERFORMED BY THE DEPARTMENT

A. The Department shall furnish Contractor, upon its request, all documents and papers in possession of the Department which may lawfully be supplied to Contractor and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for the Department. With respect to the internal business operations of the Department, the Executive Director shall, for the Department, decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Contractor and the acceptable completion of this Agreement and the amount of compensation due. Contractor is not bound by or subject to such Executive Director determinations. The parties agree that the terms and conditions of the Agreement and any ordering documents shall govern.

C. Contractor shall provide Executive Director with reasonable advance written notice if it requires access to premises of the Department. Such advance written notice may be an ordering document signed by the parties for training. Subsequent access rights, if any, shall be granted to Contractor at the sole reasonable discretion of Executive Director, specifying conditions Contractor must satisfy in connection with

such access. Contractor acknowledges that such areas may be occupied or used by tenants or contractors of City and that access rights granted by the Department to Contractor shall be consistent with any such occupancy or use.

III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 373, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Contractor is aware that pursuant to Charter Section 373 and Administrative Code Section 10.5, this Agreement requires approval by City Council prior to becoming effective.

B. This Agreement shall be in full force and effect commencing from the date of execution by the Executive Director and shall terminate after an initial period of five (5) years or upon the termination of the LA County Contract, whichever occurs first, subject to the following:

1. Upon mutual and written agreement of the parties, and coterminous with the term of the LA County Contract, this Agreement may be extended for five (5) consecutive renewal periods of one (1) year each, for a total Agreement term not to exceed ten (10) years from the effective date. Exercise of the option to renew shall be delegated to the Executive Director and made by written notice from the Executive Director to Contractor prior to the end of the then current term of the Agreement, with said notice counter-signed by Contractor; or

2. Either party may terminate this Agreement upon giving the other party a thirty (30) day advance written notice or as provided elsewhere in the Agreement.

IV. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the Department from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof. The Department's issuance of a purchase order to Contractor under this Agreement shall be its representation to Contractor that funds are fully appropriated and presently available for the purchase.

See LA County Contract Section 45 (COUNTY'S OBLIGATION FOR FUTURE FISCAL YEARS).

V. COMPENSATION AND PAYMENT

A. As payment for the provision of products and services required by this Agreement, the Department shall pay and reimburse Contractor according to the fees specified in the applicable ordering document.

B. The maximum payable under this Agreement, including reimbursable expenses (see Exhibits A and B), shall be Six Million Dollars (\$6,000,000).

C. Contractor shall submit one original invoice to the Department following the effective date of each applicable ordering document for products and services.

D. Contractor must provide with invoices submitted for payment its Business Tax Registration Certificate number, as required at Article VIII of this Agreement. No invoice will be processed for payment by the Department without Contractor's current Business Tax Registration Certificate number on file with the City. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and found to be in order shall be paid pursuant to the terms of the applicable ordering document. All invoices are subject to audit.

See also LA County Contract Section 3.18 (ORDERING DOCUMENT).

E. For payment and processing, all invoices should be mailed to the following address:

Accounts Payable Section
Harbor Department, City of Los Angeles
P.O. Box 191
San Pedro, CA 90733-0191

VI. RECORDKEEPING AND AUDIT RIGHTS

See LA County Contract Section 46 (RECORDS AND AUDITS).

VII. INDEPENDENT CONTRACTOR

See LA County Contract Section 29 (INDEPENDENT CONTRACTOR STATUS).

VIII. BUSINESS TAX REGISTRATION CERTIFICATE

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to firms that are doing work for the Department. See Exhibit C.

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IX. INDEMNIFICATION AND INSURANCE

A. Indemnification

See LA County Contract Section 15.1 (BODILY INJURY, TANGIBLE PERSONAL PROPERTY AND REAL PROPERTY).

B. Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Contractor's insurance documents. Contractor's insurance broker or agent shall register with the City's online insurance compliance system Track4LA™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Contractor's behalf.

C. Insurance

See LA County Contract Section 16 (INSURANCE).

Throughout LA County Contract Section 16 where the word "County" appears, for purposes of this Agreement said word shall be substituted with the word "City".

D. Accident Reports

Contractor shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Contractor's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Contractor, its officers or managing agents.

X. TERMINATION PROVISION

See LA County Contract Sections 27 (TERMINATION FOR DEFAULT), 28 (TERMINATION FOR CONVENIENCE), 43 (TERMINATION FOR IMPROPER CONSIDERATION), 44 (TERMINATION FOR GRATUITIES), and 66 (TERMINATION FOR BREACH OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM).

XI. AFFIRMATIVE ACTION

See LA County Contract Sections 50 (FAIR LABOR STANDARDS) and 51 (COMPLIANCE WITH CIVIL RIGHTS LAWS) and Exhibit D.

XII. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code (LAMC) Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement, which does not include publicly traded stock of the Contractor's parent corporation. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement of which it is proven that Contractor had actual knowledge, City may immediately terminate this Agreement by giving written notice thereof.

See LA County Contract Section 48 (CONFLICT OF INTEREST).

XIII. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall at all times in the performance of its obligations under this Agreement make commercially reasonable efforts to comply with all reasonable requests and directions of Executive Director.

See LA COUNTY CONTRACT Section 49 (COMPLIANCE WITH APPLICABLE LAWS).

XIV. GOVERNING LAW / VENUE

See LA County Contract Section 30 (GOVERNING LAW, JURISDICTION AND VENUE).

XV. TRADEMARKS, COPYRIGHTS, AND PATENTS

See LA County Contract Section 15.2 (INTELLECTUAL PROPERTY INDEMNIFICATION).

XVI. CONFIDENTIALITY

See LA COUNTY CONTRACT SECTION 25 (CONFIDENTIALITY)

XVII. NOTICES

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the

respective parties, notice to the Department shall be addressed to Director of Information Technology, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Contractor shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

XVIII. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all Contractors and suppliers of materials and supplies provide a TIN to the party that pays them. Contractor declares that it has an authorized TIN, which shall be indicated on all invoices submitted to the Department or otherwise provided in such sufficient manner as determined by the City so that invoices may be processed and paid. No payments will be made under this Agreement without a valid TIN.

XIX. LIVING WAGE POLICY REQUIREMENTS

See LA City Contract Section GTCF-9 (Living Wage Ordinances).

XX. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Contractor and/or any Subcontractor are obligated to fully comply with all applicable state and federal employment reporting requirements for the Contractor and/or Subcontractor's employees.

The Contractor and/or Subcontractor shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. The Contractor and/or Subcontractor will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Contractor or Subcontractor will maintain such compliance throughout the term of this Agreement.

XXI. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of the Department. Contractor shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Contractor and pursue any and all other legal remedies that may be available. See Exhibit E.

XXII. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Contractor, Subcontractors, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Contractor is required to provide and update certain information to the City as specified by law. Any Contractor subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subcontractor on Harbor Department Agreement No. _____. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subcontractor is required to provide to Contractor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information must be provided to Contractor within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Contractor, Subcontractors, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available. Contractor and any Subcontractors shall complete, sign and submit CEC Form 55. See Exhibit F.

XXIII. IRAN CONTRACTING ACT OF 2010

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The Iran Contracting Act prohibits proposers engaged in investment activities in Iran from submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million (\$1,000,000) or more (PCC § 2203(a)). In accordance with California Public Contract Code Sections 2200-2208, all entities submitting proposals for, entering into or renewing contracts with the Department for goods and services estimated at \$1,000,000

or more are required to complete, sign and submit the Iran Contracting Act of 2010 Compliance Affidavit. See Exhibit G.

XXIV. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Contractor agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

XXV. INTEGRATION

This Agreement, the LA County Contract, the LA City Contract and any applicable ordering documents constitute the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

XXVI. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

XXII. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

XXIII. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

XXIX. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of the parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

XXX. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

XXXI. EXHIBITS; ARTICLES

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to Articles are to Articles of this Agreement unless stated otherwise.

XXXII. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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