√5 sets/total of 13 agreemts 9/19/14 Ⓛ

RUSH – PLEASE SIGN BY 10am ON FRIDAY 9/19/14
DOCUMENT ROUTING FORM

NAME OF DOCUMENT: **SOFTWARE AND SERVICES FOR THE IBM PARTNERSHIP TO DEVELOP A CITY RESOURCE OPTIMIZATION SOLUTION (CROS)**

5 Agreemts – Start of work③, Agr. for Svcs③, Int'l Passport③, Lease/Purch Master②, Lease/Purch Supp②

Approved Comm. Mtg. on **SEPT 3, 2014**   **CAM# 14-0839**   ITEM: **PUR-1**

Routing Origin: ☒ CAO   Also attached: ☒ copy of CAM   ☒copy of document

On 9/18/14, E. Cohen forwarded to: ELIZABETH COHEN, PROCUREMENT

1.) Approved as to Content: _____
Department Director

<div style="float:right; border:1px solid;">
Capital Improvements defined as having a life of at least 10 years and a cost of at least $50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, inc. major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.
</div>

Please Check the proper box: CIP FUNDED ☐ YES ☑ NO
Capital Improvement Projects

2.) Approved as to Funds Available: by _____   Date:_____
Finance Director

Amount Required by Contract/Agreement $ _$1,533,000._   Funding Source:_____

Dept./Div. _____Police_____   Index/Sub-object ITS070101-3199 Project #_____

3.) City Attorney's Office: Approved as to Form:# 3 Originals to City Mgr. By: CAO

Paul Bangel ____

4.) Approved as to content: Assistant City Manager:

By: _____   By: _____
Stanley Hawthorne, Assistant City Manager   Susanne Torriente, Assistant City Manager

---

5.) City Manager: Please sign as indicated and forward 3 originals to Mayor.

6.) City Manager: Please sign as indicated and forward 3 originals to Clerk.

7.) To City Clerk for attestation and City seal.

INSTRUCTIONS TO CLERK'S OFFICE

8.) City Clerk: retains one original document and forwards two originals to:
ELIZABETH COHEN, PROCUREMENT, X5141

☒Original Route form to Elizabeth Cohen, Procurement

C:\Users\ElizabethC\Desktop\IBM document routing form.doc

IBM

Statement of Work RDIN-9JMVPK

for

IBM's Police Operations Planning Solution

Prepared for

City of Fort Lauderdale Police Department

1.   Overview and Approach

IBM is pleased to present this Statement of Work ("SOW") for services to assist with enhancements to City of Fort Lauderdale Police Department's City Resource Optimization Solution ("CROS"), and with the integration and implementation of a Police Operations Planning Solution.

1.1   Background

With significant input from FLPD, IBM developed the City Resource Optimization Solution ("CROS"). The joint IBM Research and Fort Lauderdale development of CROS is considered a First-Of-A-Kind ("FOAK") Project.

CROS assists Fort Lauderdale police planning and operations by analyzing multiple data sources, including 911, crime records, resource staffing, events, and criminal release information to provide:

- **Situation Assessment:** provides a detailed breakdown of crimes committed in the past, which can be analyzed by zone and district. This allows crime distribution to be compared against prior periods of time, location, crime types.

- **Crime Risk Analysis:** predicts crimes by type, time of day, and region to enable FLPD to allocate police resources effectively.

CROS is currently hosted at IBM's Watson lab. End users access CROS via a web browser over the internet. CROS is connected via a site-to-site VPN to Fort Lauderdale's staging database and receives hourly data updates.

IBM's proposed Police Operations Planning Solution will provide enhancements to the Intelligent Operations Center ("IOC")/Intelligent City Planning and Operations ("ICPO") application platform to provide Situation Assessment, Crime Risk Analysis and Action Planning functionality, some of which will build on existing CROS functionality.

2.   IBM Statement of Work

This section describes the work to be provided by IBM (the "Services") to City of Fort Lauderdale Police Department ("Customer", also called "you" and "your" and "FLPD") under the terms and conditions of the agreement identified in the signature block of this SOW, (the "Agreement"). In addition, your responsibilities are listed.

Changes to this SOW will be processed in accordance with the procedure described in Appendix A-1: Project Change Control Procedure. The investigation and the implementation of changes may result in modifications to the Estimated Schedule, Charges, and other terms of this SOW and/or the Agreement.

The following are incorporated in and made part of this SOW:

- Appendix A: Project Procedures
- Appendix B: Materials
- Appendix C: Sample Project Change Request form

To the extent there is any contradiction, inconsistency or ambiguity between the terms of this SOW and the Agreement identified below, this SOW will govern.

2.1   Project Scope

Under this project IBM will:

- a. Integrate new data sources into the existing CROS environment in order to allow its continued use, while working to improve its stability, reliability, and availability; and

- b. deploy the Police Operations Planning Solution to a Production Software as a Service ("SaaS") Environment.

IBM's estimated charges and schedule are based on performance of the activities listed in the "IBM Responsibilities" section below. Deviations that arise during the project will be managed through the procedure described in Appendix A-1: Project Change Control Procedure, and may result in adjustments to the Project Scope, Estimated Schedule, Charges and other terms. These adjustments may include charges on a time-and-materials or fixed-fee basis using IBM's standard rates in effect from time to time for any resulting additional work or waiting time.

IBM and you will each comply with applicable export and import laws and regulations, including those of the United States that prohibit or limit export for certain uses or to certain end users, and each party will cooperate with the other by providing all necessary information to the other, as needed for compliance. Each party will provide the other with advance written notice prior to providing the other party with access to data requiring an export license.

2.2 Facilities and Hours of Coverage

IBM will:

    a.   perform the work remotely, except for any project-related activity which IBM determines would be best performed at your facility in Fort Lauderdale, Florida in order to complete its responsibilities under this SOW.

    b.   provide the Services under this SOW during normal business hours, 8:30 AM to 5:15 PM, Fort Lauderdale time, Monday through Friday, except holidays observed by the City of Fort Lauderdale. If necessary, you will provide after-hours access to your facilities to IBM personnel. Out-of-town personnel may work hours other than those defined as normal business hours to accommodate their travel schedules.

2.3 IBM Responsibilities

Under this SOW, IBM will undertake the following activities:

Activity 1 - Project Management

IBM will provide project management for the IBM responsibilities in this SOW. The purpose of this activity is to provide technical direction and control of IBM project personnel and to provide a framework for project planning, communications, reporting, procedural and contractual activity. This activity is composed of the following tasks:

Planning

IBM will:

    a.   review the SOW and the contractual responsibilities of both parties with your Project Manager;

    b.   maintain project communications through your Project Manager;

    c.   coordinate the establishment of the project environment;

    d.   establish documentation and procedural standards for deliverable Materials;

    e.   assist your Project Manager to prepare and maintain the project plan for the performance of this SOW which will include, where applicable, the activities, tasks, assignments, milestones and estimates; and

    f.   if applicable, review with you the hardware required for the performance of this SOW.

Project Tracking and Reporting

IBM will:

    a.   review project tasks, schedules, and resources and make changes or additions, as appropriate. Measure and evaluate progress against the project plan with your Project Manager;

    b.   review the IBM standard invoice format and billing procedure to be used on the project, with your Project Manager;

    c.   work with your Project Manager to address and resolve deviations from the project plan;

    d.   conduct regularly scheduled project status meetings;

e. report time spent on the project to your Project Manager;

f. administer the Project Change Control Procedure with your Project Manager; and

g. coordinate and manage the technical activities of IBM project personnel.

Completion Criteria:

This is an ongoing activity which will be considered complete at the end of the Services.

Deliverable Materials:

- Status Reports

- High-level Timeline

Activity 2 - Integrate New Data Sources into the Existing FLPD CROS Environment

Under this activity IBM will integrate new data sources defined by FLPD into the existing CROS environment. IBM will perform services which include the following tasks

a. implement changes to the existing custom data import process to consume new data from FLPD's Computer Aided Dispatch ("CAD") from Motorola;

b. implement changes to the existing custom data import process to consume new data from FLPD's new Regional (County) Record Management System ("RMS");

Completion Criteria:

This activity will be considered completed when FLPD is able to select a sample set of documents from the new data sources noted above, as determined by IBM with input from FLPD, and review and validate the conversion of the data source information into the staging database.

Deliverable Materials:

- None

Activity 3 - Deploy the Police Operations Planning Solution to a Production SaaS Environment

Under this activity IBM will:

a. enhance the IOC/ICPO application platform to provide Situation Assessment, Crime Risk Analysis and Action Planning functionality;

b. deploy the Police Operations Planning Solution into a SaaS environment:

1) review current defined CROS users and groups with FLPD to identify an initial set of users and groups to be initialized in the SaaS environment;

2) review current defined CROS data sources with FLPD and identify an initial set of data sources to be imported in the SaaS environment.

3) demonstrate the Police Operations Planning solution to FLPD and assist FLPD personnel in performing tests;

4) coordinate with FLPD's IT & Networking staff to configure a site to site Virtual Private Network ("VPN") from the SaaS environment to the Fort Lauderdale staging database. This network access is a pre-requisite to the Police Operations Planning solution, as the Fort Lauderdale staging database is the primary source of operational data.

Completion Criteria:

This activity will be considered complete when functionality within the Police Operations Planning Solution is confirmed, validated and operational in a production hosted environment.

Deliverable Materials:

- None

2.4 Your Responsibilities

The completion of the proposed scope of work depends on the full commitment and participation of your management and personnel. The responsibilities listed in this section are in addition to those responsibilities specified in the Agreement, and are to be provided at no charge to IBM. You are required to perform your obligations in the Agreement and this SOW without exception. IBM's performance is predicated upon the following responsibilities being managed and fulfilled by you. Delays in performance of these responsibilities may result in additional cost and/or delay of the completion of the project, and will be handled in accordance with Appendix A-1: Project Change Control Procedure.

2.4.1 Your Project Manager

Prior to the start of this project, you will designate a person called your Project Manager who will be the focal point for IBM communications relative to this project and will have the authority to act on behalf of you in all matters regarding this project.

Your Project Manager's responsibilities include the following:

a. manage your personnel and responsibilities for this project;

b. serve as the interface between IBM and all your departments participating in the project;

c. administer the Project Change Control Procedure with the IBM Project Manager;

d. participate in project status meetings;

e. obtain and provide information, data, and decisions within three business days of IBM's request unless you and IBM agree in writing to a different response time;

f. resolve deviations from the estimated schedule, which may be caused by you;

g. help resolve project issues and escalate issues within your organization, as necessary;

h. review with the IBM Project Manager any of your invoice or billing requirements. Such requirements that deviate from IBM's standard invoice format or billing procedures may have an effect on price, and will be managed through the Project Change Control Procedure in Appendix A-1; and

i. create, with IBM's assistance, the project plan for the performance of this SOW which will include the activities, tasks, assignments, milestones and estimates.

2.4.2 Your Other Responsibilities

You will:

a. provide IBM and its personnel with suitable office space, and other accommodations and facilities that IBM may reasonably require to perform the Services, in particular secretarial support, supplies, furniture, computer facilities, telephone/fax communications, high speed internet connectivity and other facilities for IBM personnel while working on this project. The IBM project team will be located in an area adjacent to your subject matter experts and technical personnel, and all necessary security badges and clearance will be provided for access to this area. A lockable four or five drawer cabinet will be provided to IBM personnel in accordance with your security procedures. You will be responsible for ensuring that you have appropriate backup, security and virus-checking procedures in place for any computer facilities you provide or which may be affected by the Services;

b. supply all prerequisite hardware and software to be used during the performance of this SOW. This does not include any hardware or software normally used by IBM consultants in the performance of their day-to-day responsibilities with IBM;

c. ensure that your staff is available to provide such assistance as IBM reasonably requires and that IBM is given reasonable access to your senior management, as well as any members of your staff to enable IBM to provide the Services. You will ensure that your staff has the appropriate skills and experience. If any of your staff fails to perform as required, you will make suitable additional or alternative staff available;

d.   if making available any facilities, software, hardware or other resources, obtain any licenses or approvals related to these resources that may be necessary for IBM and its subcontractors to perform the Services. IBM will be relieved of its obligations that are adversely affected by your failure to promptly obtain such licenses or approvals;

e.   provide all information and materials reasonably required to enable IBM to provide the Services. You agree that all information disclosed or to be disclosed to IBM is and will be true, accurate and not misleading in any material respect. IBM will not be responsible for any loss, damage, delay, or deficiency arising from inaccurate, incomplete, or otherwise defective information or materials supplied by you or your representative;

f.   if you are employing other suppliers whose work may affect IBM's ability to provide the Services, unless specifically agreed to otherwise in writing, you will be responsible for the management of the third parties. Except to the extent IBM specifically agrees otherwise in this SOW, as between IBM and you, you are solely responsible for any third party hardware, software or communications equipment used in connection with the Services;

g.   be responsible for the identification of, interpretation of, and compliance with, any applicable laws, regulations, and statutes that affect your existing systems, applications, programs, or data to which IBM will have access during the Services, including applicable data privacy, export, import laws and regulations, and product safety and regulatory compliance for non-IBM products including those recommended by IBM. You are solely responsible for obtaining advice of competent legal counsel as to the identification and interpretation of any relevant laws, rules and regulations that may affect your business and any actions you may need to take to comply with such laws. IBM makes no representations or warranties with respect to product safety or regulatory compliance of non-IBM products;

h.   agree that IBM may process the business contact information of your employees and contractors (with the exception of undercover officers and confidential informants) and information about you as a legal entity (contact information) in furtherance of IBM's business relationship with you. 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.;

i.   be responsible for i) any data and the content of any database you make available to IBM in connection with a Service, ii) the selection and implementation of procedures and controls regarding access, security, encryption, use, and transmission of data, and iii) backup and recovery and integrity of the database and any stored data. This security will also include any procedures necessary to safeguard the integrity and security of software and data used in the Services from access by unauthorized personnel. IBM's responsibilities regarding such data or database, including any confidentiality and security obligations, are governed by Florida law and the terms of this SOW, including the referenced Agreement and applicable Attachments (which prevails over the terms of any separate confidentiality agreements) and subject to the Limitation of Liability and other terms in the Agreement;

j.   establish and maintain the data sources and staging environments;

k.   validate user access to the SaaS environment and Perform testing of the Police Operations Planning Solution;

l.   Coordinate with IBM to configure a site to site VPN from the new hosted environment to Fort Lauderdale;

m.   remove Criminal Justice Information ("CJI") data from the existing CROS persistent data stores (internal database tables);

n.   make available three (3) "super users" to validate changes and run implementation of ICPO in the SaaS environment;

o.   populate and maintain the staging database with data; and

p.   if IBM requires access to your production systems, provide the required hardware (either an assigned desktop or laptop system) for such access. Any hardware provided for this access will be secured at your location when not in use by IBM.

2.5 Deliverable Materials

IBM will provide you with the tangible items listed in Appendix B, if any, which will be provided as 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.

Type III Materials are those, created during the project, which you will own (including ownership of copyright). No license is granted to IBM with respect to Type III Materials. However, both parties are free to use any ideas, concepts, know-how, or techniques which are developed or provided by the other or jointly by both parties during a project. Both parties are free to enter into similar agreements with others and to develop and provide Materials or Services which are similar to those provide under this Agreement.

2.6 Completion Criteria

IBM will have fulfilled its obligations under this SOW when one of the following first occurs:

a. IBM accomplishes all of the activities set forth in the "IBM Responsibilities" section and delivers to you the Materials listed, if any; or

b. You or IBM terminates the project in accordance with the provisions of this SOW and the Agreement.

2.7 Estimated Schedule

The Services will be provided between a start date to be determined by both parties and currently estimated to be September 1, 2014 ("Start Date"), and an estimated end date of May 30, 2015 ("End Date"), or on other dates mutually agreed to between you and IBM.

The estimated end date referenced is an approximation only and does not represent a commitment on the part of IBM to complete the project by a specific date.

2.8 Charges

The Services will be conducted on a fixed price basis. The fixed price for performing the Services defined in the SOW will be $408,000.00. This fixed price is exclusive of any travel and living expenses and other reasonable expenses incurred in connection with the Services.

All charges are exclusive of any applicable taxes.

Travel and living expenses are not expected for this SOW. Should any travel to your facility under this SOW be required, estimated travel and living expenses will be paid by you in accordance with your Travel Allowance and Subsistence Policy and will be authorized through the procedure described in Appendix A-1: Project Change Control Procedure.

IBM will invoice you for the entire amount upon receipt of a signed SOW, plus applicable taxes, travel and living expenses, and other reasonable expenses incurred in connection with the Services.

Payment is due upon receipt of invoice, payable within 45 days. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties. In the event of late payment, IBM reserves the right to suspend the provision of Services and to charge interest on amounts overdue in accordance with the Florida Local Government Prompt Payment Act. You do not have to pay any amount disputed in good faith while it is being investigated, but you remain obligated to pay any amount not in dispute.

If your customer number indicates that you require a Purchase Order (PO) for payment purposes, the Services under this SOW will not be provided until a PO for the charges specified in the Charges section is received. Any different or added terms contained in any PO or other ordering documents that might be exchanged in relation to activities under this SOW will not be applicable or of any effect. At its sole discretion, IBM may elect to begin delivery of Services after SOW signing, but prior to receipt of, on a limited, case-by-case basis.

2.9 Additional Terms and Conditions

2.9.1 Termination

Either party may terminate this SOW by giving the other party not less than 30 days written notice. Upon termination, you will pay the following amounts to IBM: i) the charges for Services IBM provides through termination, and all Materials IBM has prepared through termination, whether or not completed or delivered, and ii) if you terminate, all reasonable costs and expenses IBM incurs in terminating the Services. Also upon termination IBM will deliver to you any and all Materials that IBM has prepared or obtained on your behalf through the date of termination.

2.9.2 Offer Expiration Date

This offer will expire on September 30, 2014, unless extended by IBM in writing.

This SOW, its Appendices and the Agreement identified below, are the complete agreement regarding Services, and replace any prior oral or written communications, representations, undertakings, warranties, promises, covenants, and commitments between you and IBM regarding the Services. In entering into this SOW, neither party is relying upon any representation that is not specified in this SOW or the Agreement. Additional or different terms in any written communication from you (such as a purchase order) are void. Each party agrees that no modifications have been made to this SOW. City of Fort Lauderdale IBM Customer Agreement for Services is HW81275, State of Florida Customer Agreement is Agreement Number 973-561-10-1.

Each party accepts the terms of this SOW by signing this SOW (or another document that incorporates it by reference) by hand or, where recognized by law, electronically. Once signed, please return a copy of this document to the IBM address shown below. Any reproduction of this SOW made by reliable means (for example, electronic image, photocopy, or facsimile) is considered an original and all Services ordered under this SOW are subject to it.

IN WITNESS WHEREOF, International Business Machines Corporation, a New York corporation authorized to transact business in the State of Florida, and the City of Fort Lauderdale, a Florida municipality, execute this Statement of Work RDIN-9JMVPK as follows:

ATTEST:

Jonda K. Joseph, City Clerk
Jeff Modarelli ASST

Approved as to form:

Sr. Assistant City Attorney

WITNESSES:

_____
(Signature)

Print Name: _____

_____
(Signature)

Print Name: _____

City of Fort Lauderdale:

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manager

International Business Machines Corporation:

By: _____
(Signature)

Print Name: _Eric Sutton_

Title: _Client Relationship Representative_

ATTEST:

_____
(Signature)

Print Name: _____

Secretary

(CORPORATE SEAL)

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____ as _____ for International Business Machines Corporation, a New York corporation authorized to transact business in the State of Florida.

(SEAL)

_____
Notary Public, State of Florida (Signature of Notary Public)

_____
Name of Notary Typed, Printed or Stamped

Personally Known ____ OR Produced Identification_____

Type of Identification Produced _____

Appendix A: Project Procedures

A - 1: Project Change Control Procedure

The following process will be followed if a change to this SOW is required:

a. IBM and you may determine that it is necessary to exceed the number of estimated hours for the Services as stated in the "Charges" section. In such event, you may authorize additional hours and funding by the written request. The request must reference the SOW number. Through the end of the calendar year (i.e., December 31) during which this SOW is originally executed, additional hours, funding, and End Date extension may be requested in writing, at the originally contracted hourly rate, specified in the "Charges" section. If initiated by you and accepted by IBM or initiated by IBM and accepted by you, such acceptance letter or e-mail will act as a change authorization to this SOW. All other requested changes will require execution of a Project Change Request as discussed below.

b. A Project Change Request (PCR) will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change and the effect the change will have on the project.

c. The designated Project Manager of the requesting party will review the proposed change and determine whether to submit the request to the other party.

d. Both Project Managers will review the proposed change and agree to implement it, recommend it for further investigation, or reject it.

e. IBM will specify any charges for such investigation. A PCR must be signed by authorized representatives from both parties to authorize investigation of the recommended changes. IBM will invoice you for any such charges per the terms of this SOW and the Agreement. The investigation will determine the effect that the implementation of the PCR will have on price, schedule and other terms and conditions of this SOW and the Agreement.

f. A PCR must be accepted by authorized representatives from both parties to authorize implementation of any agreed changes to the SOW and the Agreement. Until a change is agreed to, both parties will continue to act in accordance with the latest agreed version of the SOW.

g. A PCR that has been signed by authorized representatives from both parties constitutes a change authorization for purposes of this SOW and the Agreement.

A - 2: Deliverable Materials Acceptance Procedure

Except for Status Reports, Project Plans/Schedules, and Student Course Materials, deliverable Materials as defined herein will be reviewed and accepted in accordance with the following procedure:

a. One printed draft of the deliverable Material will be submitted to your Project Manager. It is your Project Manager's responsibility to make and distribute additional copies to any other reviewers.

a. Within five business days of receipt, your Project Manager will either accept the deliverable Material or provide the IBM Project Manager a written list of requested revisions. If IBM receives no response from your Project Manager within five business days, then the deliverable Material will be deemed accepted.

b. The IBM Project Manager will consider your timely request for revisions, if any, within the context of IBM's obligations under this SOW.

c. Those revisions agreed to by IBM will be made and the deliverable Material will be resubmitted to your Project Manager, at which time the deliverable Material will be deemed accepted.

d. Those revisions not agreed to by IBM will be managed in accordance with Appendix A-1: Project Change Control Procedure.

e. Any conflict arising from this deliverable Materials Acceptance Procedure will be addressed as specified in the Escalation Procedure set forth in Appendix A-3.

A - 3: Escalation Procedure

The following procedure will be followed to resolve a conflict arising during the performance of this SOW.

a. When a conflict arises between you and IBM, the project team member(s) will first strive to work out the problem internally.

b. Level 1: If the project team cannot resolve the conflict within two business days, your Project Manager and the IBM Project Manager will meet to resolve the issue.

c. Level 2: If the conflict is not resolved within three business days after being escalated to Level 1, your Executive Sponsor will meet with the IBM Project Executive to resolve the issue.

d. If the conflict is resolved by either Level 1 or Level 2 intervention, the resolution will be addressed in accordance with the Project Change Control Procedure set forth in Appendix A-1.

e. If the conflict remains unresolved after Level 2 intervention, then either party may terminate this SOW. If the conflict is addressed by termination, you agree to pay IBM as described in the "Termination" section of this SOW.

f. During any conflict resolution, IBM agrees to provide Services relating to items not in dispute, to the extent practicable pending resolution of the conflict. You agree to pay invoices per this SOW and the Agreement.

Appendix B: Materials

B - 1: Status Reports

Purpose:

IBM will provide status reports advising FLPD's Project Manager of the progress and status of the IBM activities. The report will outline the IBM activities and describe the status of tasks worked on during that period. Significant accomplishments, milestones, and problems will be identified.

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 summary
- Problems, concerns, and recommendations
- Tasks for next reporting period
- Key resource or other requirements for reporting periods
- Other items of importance

Delivery:

IBM will deliver one (1) reproducible soft copy to FLPD's Project Manager.

B - 2: High-level Timeline

Purpose:

Provide high-level timeline for the project.

Content:

The timeline will show the anticipated time frame for each activity in the SOW.

Delivery:

IBM will deliver one (1) copy of this document in softcopy format.

Appendix C: Sample Project Change Request

PROJECT CHANGE REQUEST (PCR)		
PCR Date:	**Requested by:**	**PCR Number:**

This PCR must be approved by both parties and signed below on or before the offer expiration date before the PCR can be implemented. This offer will expire on {insert mm/dd/yyyy}, unless extended by IBM in writing. All other terms in the referenced SOW not affected by this PCR remain in full force and effect.

The parties agree that this PCR modifies the existing referenced SOW as follows:

{insert language regarding the changes to the SOW here}

{insert language regarding the impact of the changes here... sample text is below}

> **If extending the date:** The new estimated End Date is {End Date}.

> **If adding hours:** The additional estimated services hours for this PCR are {Number of hours}, at ${Hourly rate} per hour, for additional estimated professional services charges of ${Fee total}.

> **If adding Fixed Fee Services:** The additional fixed fee for performing the Services defined in this PCR is ${Fee total}.

> **If adding T&L:** The additional estimated travel and living expenses (including actual transportation and lodging, and per diem meal expenses) for this PCR are ${Expenses} in accordance with your Travel Allowance and Subsistence Policy.

PCR Approval	

In entering into this PCR, you are not relying upon any representation made by or on behalf of IBM that is not specified in the Agreement or the SOW, including, without limitation, the actual or estimated completion date, number of hours to provide any of the Services, charges to be paid, or the results of any of the Services to be provided under the SOW. Each of us agrees that the complete agreement between us about these Services consists of 1) this Project Change Request, 2) the referenced SOW including any previous mutually-approved PCRs, and 3) the Agreement or any equivalent agreement in effect between us as identified in the SOW.

Agreed to:	Agreed to:
{Customer Legal Name}	International Business Machines Corporation
By (Authorized Signature): **DRAFT – NOT FOR SIGNATURE**	By (Authorized Signature): **DRAFT – NOT FOR SIGNATURE**
Title:	Title:
Name (type or print):	Name (type or print):
Date:	Date:
PCR Estimated Start Date (remove if not applicable):	Statement of Work Name:
PCR Estimated End Date (remove if not applicable):	Statement of Work Number:
	IBM Fax Number: IBM Internet ID:

IBM Customer Agreement for Services

This IBM Customer Agreement For Services (called the "Agreement") governs transactions by which the City of Fort Lauderdale, a Florida municipality, ("Customer" or "City"), acquires Services (including, without limitation, customized development and support, and business consulting Services) from International Business Machines Corporation ("IBM" or "Contractor").

1. General

1.1 Attachments and Transaction Documents

Additional terms for Services are in documents called "Attachments" and "Transaction Documents" provided by IBM. In general, Attachments contain terms that may apply to more than one 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.

1.2 Definitions

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.

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.

Service – performance of a task, assistance, support, or access to resources (such as an information database) that IBM makes available to Customer pursuant to this Agreement, an Attachment, or a Transaction Document.

1.3 Acceptance of Terms

Customer accepts the terms in Attachments and Transaction Documents by i) signing them (by hand or electronically), ii) using the Service, or allowing others to do so, or iii) making any payment for the Service.

A Service becomes subject to this Agreement when IBM accepts Customer's order by sending Customer a Transaction Document or providing the Service.

Any Attachment or Transaction Document will be signed by both parties.

1.4 Charges and Payment

1.4.1 Charges

A Transaction Document specifies the amount payable for 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 travel related expenses pursuant to Customer's Travel Allowance and Subsistence Policy). IBM will inform Customer in advance whenever additional charges apply.

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. IBM invoices charges based on actual time and materials expended or Customer's actual or authorized use, subject to any specified minimum commitment.

1.4.2 Usage Charges

One-time and recurring charges may be based on measurements of actual or authorized use. 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, as stated in section 1.4.3 herein, will apply.

1.4.3 Changes to Charges

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 Services, as well as labor rates and minimums for Services provided under this Agreement, by giving Customer three months' written notice, during which time Customer may terminate this Agreement . 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 IBM receives the order before the announcement date of the increase.

1.4.4 Payment

Amounts are due upon receipt of invoice and payable within 45 days following Customer's receipt of proper invoice in accordance with the Florida Local Government Prompt Payment Act. Customer agrees to pay accordingly, including any interest in accordance with the Florida Local Government Prompt Payment Act. Payment may be made electronically to an account specified by IBM or by other means agreed to by the parties.

1.4.5 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. 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. As practical, IBM will work to mitigate such additional tax and tax-related charges and will inform Customer in advance if these additional charges apply and are payable by Customer.

1.5 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, during which Customer may terminate this Agreement. 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.

Unless Customer terminates this Agreement as set forth above, Customer acknowledges its agreement to have these changes apply for such transactions by i) placing new orders for Services after the change effective date, ii) failing to request that the change effective date be deferred until the start of the next renewal period, iii) allowing transactions to renew after receipt of the change notice, or iv) failing to terminate non-expiring transactions prior to the change effective date. Changes to charges are implemented as described in the Charges and Payment section above. Otherwise, for a change to be valid, both parties must sign it.

1.6 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 IBM 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 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.

1.7   Intellectual Property Protection

1.7.1   Third Party Claims

If a third party asserts a claim against Customer that a Material 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 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 after Customer receives notice of such claim, notifies IBM in writing of the claim; and

b.   allows IBM to control, and cooperates reasonably with IBM in, the defense and any related settlement negotiations ; and

c.   is and remains in compliance with the Material's applicable license terms and Customer's obligations under section 1.9.2 (Remedies) below.

1.7.2   Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, either to i) enable Customer to continue to use the Material, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees, except as otherwise provided by Florida law, to promptly return the Material to IBM and discontinue its use. IBM will then give Customer a credit equal to the amount Customer paid IBM for the creation of the Materials.

1.7.3   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 Material or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;

b.   any modification of a Material made by Customer or by a third party at Customer's express direction or Customer's combination, operation, or use of a Material with any product, hardware device, program, data, apparatus, method, or process;

c.   Customer's distribution, operation or use of a Material outside Customer's Enterprise;

d.

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

1.8   Limitation of Liability

1.8.1   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 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 Service that is the subject of the claim.

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.

1.8.2   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.

1.9 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 acceptable to Customer 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 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 during which Services are provided and for two years thereafter.

1.10 General Principles of Our Relationship

1.10.1 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.

1.10.2 Assignment and Resale

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. 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.

1.10.3 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 Services that Customer acquires under this Agreement, or that IBM's provision of or Customer's receipt of particular Services under this Agreement meets the requirements of such laws. Neither party is obligated to take any action that would violate applicable law.

1.10.4 Dispute Resolution

Each party will allow the other 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.

1.10.5 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, subject to Florida law. 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, and is subject to Florida law.

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. You authorize International Business Machines Corporation to store and use your business contact information wherever it does business, in connection with IBM products and Services or in furtherance of IBM's business relationship with you.

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 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 Services that meet its needs and for the results obtained from the use of the 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 as safe as Customer provides its employees, 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.

1.11 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 of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

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.

1.12 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 Florida 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. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, an Attachment, or a Transaction Document, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, 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.

1.16 Scrutinized Companies

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The City may terminate this Contract at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.

1.17 Public Records

Notwithstanding anything contained in this agreement to the contrary, Contractor shall:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2013), as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

2. Warranty for IBM Services

2.1 The IBM Warranties

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 by IBM to comply with this warranty so that IBM can take corrective action.

2.2 Extent of Warranty

THIS WARRANTY IS CUSTOMER'S EXCLUSIVE WARRANTY 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.

Items Not Covered by Warranty

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

Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer.

3. Services

3.1 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 respective personnel. Subject to the foregoing, each party may determine the assignment of its respective personnel and its respective 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. IBM agrees that any IBM subcontractor performing Services on a Customer site shall require the prior approval of Customer, which approval shall not be unreasonably withheld.

3.2 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 I 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 and as provided by Florida law 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.

3.3 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.

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 Florida law and 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.

3.4 Automatic Service Renewal (This section is deleted.)

3.5 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.

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 pursuant to this Agreement through Service termination. If Customer terminates without cause, Customer also agrees to pay any applicable adjustment or termination charges as the parties have agreed to in a transaction document and, subject to mutual agreement, for reasonable 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.

This Agreement, including its applicable Attachments and Transaction Documents, is the complete agreement regarding transactions by which Customer acquires Services from 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.
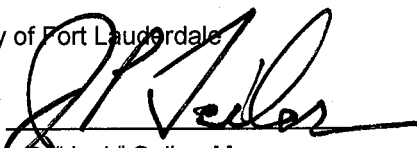
Customer Number:

Enterprise Number:

ATTEST:

_____
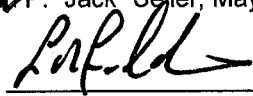Jonda K. Joseph, City Clerk
Jff Modoell Ast

Agreement Number: HW81275

City of Fort Lauderdale

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manager

Approved as to form:

_____
Senior Assistant City Attorney

WITNESSES:

_____
Signature
Print Name:

_____
Signature
Print Name:

(CORPORATE SEAL)

STATE OF _____
COUNTY OF _____

IBM

By: _____
Print Name: Eric Sutton
Title: Client Relationship Representative

ATTEST:

_____
Secretary

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, as president for International Business Machines Corporation, a New York Corporation authorized to transact business in the State of Florida.
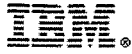

_____
(Signature of Notary Public - State of   )

(SEAL)

_____
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

IBM.®

IBM International Passport Advantage Agreement
Special Terms Addendum

International Business Machines Corporation, a New York corporation authorized to transact business in the State of Florida, ("IBM"), and **City of Fort Lauderdale,** a Florida municipality, ("you" or "You"), enter into this IBM International Passport Advantage Agreement Special Terms Addendum ("Addendum") as of the signature date shown below ("Start Date") to the IBM International Passport Advantage Agreement referenced below ("IPAA") and the applicable IBM Terms of Use (collectively, the "SaaS Terms of Use") referenced below. The terms and conditions of this SaaS Addendum and the SaaS Terms of Use are effective as of the Start Date and will remain in effect through September 18, 2017, ("End Date"). In the event you exercise the optional Subscription Renewal Period as provided in Section 3 below, then the End Date of this Addendum shall be extended for the corresponding Subscription Renewal Period. The terms and conditions of the IPAA and the SaaS Terms of Use that are applicable to the IBM SaaS Subscription remain in effect until the termination or expiration of the IBM SaaS Subscription and apply to respective successors and assignees.

This Addendum allows you to receive from IBM the benefit of IBM Software as a Service "("SaaS")" listed in the IBM Eligible Products Section of this Addendum, for the price shown in the "Option Charges" Section of this Addendum. Any capitalized but undefined terms contained in this Addendum shall have the meaning set forth in the Associated Documents.

The terms of this Addendum are in addition to, and may modify (for the purposes of this Addendum only) those of the "Associated Documents" which govern this transaction. The terms of the Associated Documents are incorporated into this Addendum by reference.

The following IBM Agreements comprise the Associated Documents:
1.   IPAA Agreement / Site #: 108312 / 7368571; and
2.   IBM Terms of Use: General Terms of Use (Attachment 1) and IBM Intelligent City Planning and Operations on IBM SmartCloud Terms of Use (Attachment 2).

1.   Eligible Products
Eligible Products shall mean those IBM SaaS products listed on Table 1 below. You may deploy the Eligible Products, as permitted herein.

TABLE 1 – IBM SAAS					
Part Number	**Part Description**	**Term**	**Quantity**	**SaaS Description**	**Unit Price**
D0YKMLL	IBM Intelligent City Planning and Operations Premium User on IBM SmartCloud Concurrent User per Month	36 Months	1	Subscription	Included
D0YKNLL	IBM Intelligent City Planning and Operations Premium User on IBM SmartCloud Daily Fee for Partial Month	N/A	N/A	Daily Fee	$175.00
D0YKPLL	IBM Intelligent City Planning and Operations Standard User on IBM SmartCloud Concurrent User per Month	12 Months	20	Subscription	Included
D0YKPLL	IBM Intelligent City Planning and Operations Standard User on IBM SmartCloud Concurrent User per Month	24 Months	30	Subscription	Included
D0YKQLL	IBM Intelligent City Planning and Operations Standard User on IBM SmartCloud Daily Fee for Partial Month	N/A	N/A	Daily Fee	$600.00
D0Z66LL	IBM Intelligent Operations for City Management on IBM SmartCloud Concurrent User per Month	36 Months	1	Subscription	Included

IBM.®

IBM International Passport Advantage Agreement
Special Terms Addendum

TABLE 1 – IBM SAAS					
Part Number	Part Description	Term	Quantity	SaaS Description	Unit Price
D0Z67LL	IBM Intelligent Operations for City Management on IBM SmartCloud Daily Fee for Partial Month	N/A	N/A	Daily Fee	$86.67

The following additional definitions apply to IBM SaaS:

1. "Daily Fee" is the daily charge outside of the 36 months for the IBM SaaS Subscriptions Period Partial Month Charges.
2. "Overage" is the use of the IBM SaaS Subscription in excess of the quantity listed in the table above.
3. "Provisioning Date" is the date you are notified by IBM that your access to the IBM SaaS Subscription is available.
4. "Subscription" is the base IBM SaaS Part Number provided for a Term, exclusive of any Daily Fees, Overages, Set Up, On Demand or Remotely Delivered Services.
5. "Term" is the length of time you will have access to the IBM SaaS Subscription, excluding the partial month.

IBM provides the IBM SaaS for the Term listed above on Table 1 to you on the Provisioning Date. The Term begins on the first day of the month following the Provisioning Date unless the Provisioning Date is the first day of the month. In that case, the Term begins on the Provisioning Date.

The SaaS Offerings will not automatically renew at the end of the Subscription Period.

2. Option Charges

Upon your signing of this Addendum, you agree to pay IBM the non-cancelable payments set forth in Table 2 below ("Option Charges") on or before the following dates as shown in Table 2 below. The Option Charges include IBM SaaS Subscriptions through the end of the Term of the SaaS Subscription.

The Option Charges show the SaaS Total Commit Value ("IBM SaaS Charge") billed monthly for the entire commitment amount of the IBM SaaS for which "Included" is shown in the Unit Price column of Table 1 above.

The Option Charges include the IBM SaaS Charge. All other amounts listed on Table 1 above are additional billing amounts beyond the SaaS Charge ("Additional IBM SaaS Charges ").

IBM will invoice you separately for the Additional IBM SaaS Charges using the Per Use Prices on Table 1 above pursuant to the section in the applicable SaaS Terms of Use addressing charges and billing. The Unit Prices for the Additional IBM SaaS Charges on the above table are available to you starting on the Provisioning Date until the end of the Term of the SaaS Subscription.

The Option Charges are exclusive of any applicable duties, fees and taxes. You are responsible for any such duties, fees and taxes including, but not limited to, withholding taxes and, if as a result of your moving, accessing or using an Eligible Product across a border, any customs duty, tax, levy or fee (including withholding taxes).

TABLE 2 – Option Charges

PAYMENT DATE	PAYMENT AMOUNT
September 19, 2014	$25,850.00
October 19, 2014	$25,850.00
November 19, 2014	$25,850.00
December 19, 2014	$25,850.00
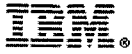
PAYMENT DATE	PAYMENT AMOUNT
January 19, 2015	$25,850.00
February 19, 2015	$25,850.00
March 19, 2015	$25,850.00
April 19, 2015	$25,850.00
May 19, 2015	$25,850.00
June 19, 2015	$25,850.00
July 19, 2015	$25,850.00
August 19, 2015	$25,850.00
September 19, 2015	$34,850.00
October 19, 2015	$34,850.00
November 19, 2015	$34,850.00
December 19, 2015	$34,850.00
January 19, 2016	$34,850.00
February 19, 2016	$34,850.00
March 19, 2016	$34,850.00
April 19, 2016	$34,850.00
May 19, 2016	$34,850.00
June 19, 2016	$34,850.00
July 19, 2016	$34,850.00
August 19, 2016	$34,850.00
September 19, 2016	$33,050.00
October 19, 2016	$33,050.00
November 19, 2016	$33,050.00
December 19, 2016	$33,050.00
January 19, 2017	$33,050.00
February 19, 2017	$33,050.00
March 19, 2017	$33,050.00
April 19, 2017	$33,050.00
May 19, 2017	$33,050.00
June 19, 2017	$33,050.00
July 19, 2017	$33,050.00
August 19, 2017	$33,050.00
Total	**$1,125,000**

3. **Acquisition of Additional IBM SaaS Subscription Renewal Periods.**
Provided (i) your IBM SaaS Subscription has not lapsed; (ii) IBM SaaS Subscription is made generally available for the affected IBM SaaS Product(s) (e.g., product has not been withdrawn); and (iii) you renew the entire IBM SaaS Products listed on Table 3a, prior to the beginning of the applicable Renewal Subscription Period below, you shall be entitled to receive prices not to exceed those listed below for Renewal Subscriptions listed in the below table 3b. Renewal Subscriptions must be ordered directly from IBM for the Renewal Subscription Periods and at prices not to exceed those shown in the Table 3b below by providing written authorization to IBM (e.g., order form, order letter, purchase order) at least thirty (30) days prior to the beginning of the applicable Renewal Subscription Period.

TABLE 3a – SaaS Products Eligible for Subscription Renewal

Part Number	Description	Quantity
D0YKMLL	IBM Intelligent City Planning and Operations Premium User on IBM SmartCloud	1
D0YKPLL	IBM Intelligent City Planning and Operations Standard User on IBM SmartCloud	30
D0Z66LL	IBM Intelligent Operations for City Management on IBM SmartCloud Concurrent	1

TABLE 3b – Not to Exceed SaaS Subscription Renewal Prices

RENEWAL SUBSCRIPTION PERIOD START	RENEWAL SUBSCRIPTION PERIOD END	NOT TO EXCEED SUBSCRIPTION RENEWAL
From 1st of Month 37	To End of Month 48	$460,020.00
From 1st of Month 49	To End of Month 60	$506,022.00

4. General

The terms of this Addendum and the Associated Documents constitute the complete agreement between us regarding this subject matter, and replace any oral and/or prior written communications between us regarding this subject matter. Your use of the IBM SaaS products is subject to the terms of this Addendum and the Associated Documents as if you were acquiring the IBM SaaS separately at the most beneficial price for which you qualify. The IBM SaaS Products provided under this Addendum are governed by the terms and conditions of the IPAA and the applicable Terms of Use. If there is a conflict between the terms of this Addendum and the terms of the Associated Documents, the terms of this Addendum shall prevail. If the Subscription Period of the IBM SaaS extends beyond the End Date of this Addendum, the terms and conditions of the Associated Documents remain in effect until the termination or expiry of the IBM SaaS Subscription Period. This Addendum may not be combined with any allowance, discount, or other offering available for these IBM SaaS products. Once signed, unless prohibited by local law or specified otherwise, any reproduction of this Addendum made by reliable means (for example, photocopy or facsimile) is considered an original.

The parties agree that sections 3.1 and 3.2 of Attachment 1, General Terms of Use, do not apply to this transaction.

Smarter Cities SaaS standard process allows, at any time when the client wants to have a copy of their data from their subscribed SaaS environment, they can use Smarter Cities SaaS customer support portal to submit a service request so IBM can provide a download mechanism to the specified data for them.
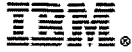
For the End of Service process:
* On the 1st day of the last month of the SaaS for the Term listed in Table 1, IBM will send out an end of service notification email to client focal(s). The email will notify client of the end date of the service is the last day of that same month, and inform client to contact IBM if they want to download exported data from their SaaS environment before the 18th day of the same month.
* There is no charge from IBM if the client wants to obtain a copy of their data. IBM will provide choices for the client to obtain their data (in IXF format), could be online download or ship through a device.
* The notification will be repeated 3 times before the last day of the last month of the SaaS for the Term listed in Table 1.

This Addendum recognizes the following Section 1.16 of the IBM Customer Agreement for Services dated September 2014:

1.16 Scrutinized Companies

Subject to Odebrecht Construction, Inc., v. Prasad, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation, 715 F.3d 1268 (11th Cir. 2013), the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The City may terminate this Contract at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.

IBM®

IBM International Passport Advantage Agreement
Special Terms Addendum

By signing below, each of us agrees to the terms of this Addendum. The prices and terms of this Addendum must be agreed to and signed by you by September 19, 2014 or it is void.

5.   Firm Order Terms:
I have full authority to commit funding of the Option Charges USD for payment under this Addendum plus any additional on-demand, overage, and partial month charges associated with contracted SaaS on this Addendum on behalf of the City of Fort Lauderdale. All approvals required to issue payment have been obtained. Notwithstanding the terms of this Addendum or our prior practice, payment is not contingent upon issuance of a Purchase Order. This order is firm, irrevocable, and payment is due as specified in the IBM invoice.
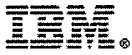
IBM®

IBM International Passport Advantage Agreement
Special Terms Addendum

ATTEST:

Jonda K. Joseph, City Clerk

Jeff Modarelli, Asst

City of Fort Lauderdale

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manager

Approved as to form:

Senior Assistant City Attorney

WITNESSES:

_____
Signature
Print Name:

_____
Signature
Print Name:

(CORPORATE SEAL)

IBM

By: _____
Print Name: Eric Sutton
Title: Client Relationship Representative

ATTEST:

_____
Secretary

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, as president for International Business Machines Corporation, a New York corporation authorized to transact business in the State of Florida.

_____
(Signature of Notary Public - State of   )
(SEAL)

_____
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

Customer Originating Address:
100 N. Andrew Avenue
Fort Lauderdale, Florida 33301

IBM Address:
6303 Barfield Road NE
Sandy Springs, Georgia 30328

IBM Customer: 3454115

After signing, please return this Addendum to the IBM address shown above.

ATTACHMENT 1

IBM Terms of Use – General Terms

IBM

This IBM Terms of Use - General Terms ("General Terms") applies to all IBM SaaS Offerings and are in addition to the IBM Terms of Use - SaaS Specific Offering Terms ("SaaS Specific Offering Terms"). Acceptance of the SaaS Offering Specific Terms includes acceptance of this General Terms.

PART 1 – IBM Terms

1. Non-Disclosure of Content

IBM will not disclose or use Content made available to the IBM SaaS except to operate, maintain, and perform the IBM SaaS or to comply with laws. IBM SaaS will only be operated on systems that comply with the security practices and procedures referenced below.

2. Warranty

IBM warrants that the IBM SaaS will conform to the specifications set forth in Appendix A of the SaaS Specific Offering Terms ("IBM SaaS Specification"). If the IBM SaaS does not function as warranted, and IBM is unable to make it do so, upon Customer request, IBM will give Customer a prorated refund of amounts prepaid by Customer, and Customer's right to use the IBM SaaS will terminate. This limited warranty remains in effect throughout the Subscription Period for the IBM SaaS offering.

3. Emergency Maintenance & Scheduled Maintenance

IBM may perform regularly scheduled maintenance during maintenance windows defined by IBM. Other scheduled and non-scheduled down times may occur. The IBM SaaS will not be available during these times.

4. Updates

The terms of this ToU apply to all enhancements, modifications, variations, revisions, updates, supplements, add-on components, and replacements for the IBM SaaS (collectively, "Updates") that IBM may provide or make available for the IBM SaaS subject to any additional terms provided by IBM applicable to such Updates. IBM has no obligation to, and nothing in these Terms of Use may be construed to require IBM to, create, provide, or install Updates.

5. Updates to Terms of Use

IBM reserves the right to prospectively modify the ToU to the extent necessary to account for any Updates that IBM may make available during the Subscription Period or as required by applicable law, by providing at least thirty (30) days notice of such modified terms to Customer. Subscription renewals will be governed by the ToU in effect at the time of renewal.

6. Enabling Software

Enabling Software is any program or associated material made available to Customer as part of the IBM SaaS. It may only be used for accessing or using the IBM SaaS, and will be subject to an applicable license agreement.

Should Customer's access to the IBM SaaS be terminated, Customer's use of the Enabling Software will also be terminated. Customer must remove all Enabling Software from their systems and, except as otherwise provided by Florida law, destroy all copies.

7.   Data Privacy and Data Security

7.1   Personal Data

Customer: 1) will obtain all legally required consents before making any Personal Data available to the IBM SaaS, and will maintain those consents throughout the Subscription Period; and 2) will not use the IBM SaaS in conjunction with Personal Data to the extent that doing so would violate applicable data protection laws.

Upon Customer's written request, following termination or expiry of either the ToU or the Agreement, IBM will destroy, except as otherwise provided by Florida law, or return to Customer all Personal Data made available to the IBM SaaS.

Unless expressly stated in the applicable IBM SaaS Specifications, the IBM SaaS is not intended for the storage or receipt of any: 1) Personal Data and other data, the loss of which would trigger a data breach notification requirement, or 2) health information, including without limitation individually identifiable health information as defined under the Health Information Portability and Accountability Act of 1996, as amended.

7.2   Security Practices

IBM implements and maintains practices and procedures, which may be revised periodically, regarding the systems used to host and operate the IBM SaaS. These practices and procedures are designed to reduce the vulnerability of our systems to accidental loss, unlawful intrusions, unauthorized access, disclosure or alteration or wrongful conduct that may interfere with, misappropriate, or otherwise damage the Content or Customer's use of the IBM SaaS. A description of the practices and procedures applicable to the IBM SaaS, including applicable technical and operational measures, is available to Customer upon request. Customer is responsible for determining whether these practices and procedures are appropriate to meet Customer's requirements. By using the IBM SaaS, Customer acknowledges its acceptance of the IBM practices and procedures and their adequacy for Customer's purposes.

8.   Compliance with Applicable Export Law

IBM may use personnel who are located in or are residents of various countries across the world to remotely support the delivery of the IBM SaaS, and Customer represents that no Content made available to the IBM SaaS will require an export license or is restricted from export to any such personnel.

9.   Suspension of IBM SaaS and Termination

In the event of a breach of the ToU, Agreement, or Acceptable Use Policy, misappropriation of IBM intellectual property or violation of applicable law by an IBM SaaS User, IBM reserves the right to terminate Customer's access to the IBM SaaS for cause, or suspend or revoke the offending IBM SaaS User's access to the IBM SaaS, or delete the offending IBM SaaS User's Content.

IBM will only terminate Customer's Subscription to the IBM SaaS for cause following prior written notice to Customer, and a reasonable time to cure.

ATTACHMENT 2

IBM Terms of Use – SaaS Specific Offering Terms

IBM Intelligent City Planning and Operations on IBM SmartCloud

The Terms of Use ("ToU") is composed of this IBM Terms of Use - SaaS Specific Offering Terms ("SaaS Specific Offering Terms") and the IBM Terms of Use - General Terms ("General Terms").

The ToU is in addition to the IBM International Passport Advantage Agreement, the IBM International Passport Advantage Express Agreement, or the IBM International Agreement for Selected IBM SaaS Offerings, as applicable ("Agreement") and together with the ToU make the complete agreement. Should a conflict arise between the General Terms and these SaaS Specific Offering Terms, these SaaS Specific Offering Terms will prevail over the General Terms.

Customer may use the IBM SaaS only if Customer first accepts the Terms of Use. By ordering, accessing or using the IBM SaaS, Customer agrees to the ToU.

1. IBM SaaS

The following IBM SaaS offerings are covered by these SaaS Specific Offering Terms:

- IBM Intelligent City Planning and Operations Premium User on IBM SmartCloud

- IBM Intelligent City Planning and Operations Standard User on IBM SmartCloud

- IBM Intelligent City Planning and Operations License and Tax Investigator User on IBM SmartCloud

- IBM Intelligent Operations for City Management on IBM SmartCloud

2. Charge Metrics

Concurrent User is a unit of measure by which the IBM SaaS can be obtained. A Concurrent User is a person who is accessing the IBM SaaS at any particular point in time. Regardless of whether the person is simultaneously accessing the IBM SaaS multiple times, the person counts only as a single Concurrent User. Customer must obtain an entitlement for each simultaneous Concurrent User accessing the IBM SaaS in any manner directly or indirectly (for example: via a multiplexing program, device, or application server) through any means during the measurement period specified in Customer's Proof of Entitlement (PoE) or Transaction Document.

2.1 Charges & Billing

2.1.1 Billing Options

The amount payable for the IBM SaaS is specified in a Transaction Document. The billing options for the IBM SaaS subscription fee are as follows:

a. Entire commitment amount upfront

b. Monthly (in arrears)

c. Quarterly (upfront)

d. Annually (upfront)

The selected billing option will be valid for the length of the term specified in a PoE or a Transaction Document. The amount payable per billing cycle will be based on the annual subscription fee and number of billing cycles in a year.
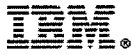
2.1.2 Partial Month Charges

The Partial Month charge is a pro-rated daily rate that will be charged to Customer. The Partial Month Charges are calculated based on the remaining days of the partial month starting on the date Customer is notified by IBM that its access to the IBM SaaS is available.

3. Renewal of a Subscription Period

3.1 Automatic Renewal of a Subscription Period

If Customer's PoE designates the subscription renewal as automatic, Customer may renew Customer's expiring IBM SaaS Subscription Period by written authorization to renew (e.g., order form, order letter, purchase order), prior to the expiration date, in accordance with the terms of the Agreement.

IF IBM DOES NOT RECEIVE SUCH AUTHORIZATION BY THE EXPIRATION DATE, THE EXPIRING IBM SaaS SUBSCRIPTION PERIOD IS AUTOMATICALLY RENEWED FOR EITHER A ONE YEAR TERM OR THE SAME DURATION AS THE ORIGINAL TERM UNLESS, PRIOR TO THE EXPIRATION DATE, IBM RECEIVES, EITHER DIRECTLY FROM CUSTOMER OR THROUGH CUSTOMER'S RESELLER, AS APPLICABLE, CUSTOMER'S WRITTEN NOTIFICATION THAT CUSTOMER DOES NOT WANT TO RENEW. OTHERWISE, CUSTOMER AGREES TO PAY SUCH RENEWAL CHARGES.

CUSTOMER MAY TERMINATE THE IBM SaaS AT ANY TIME AFTER THE END OF THE INITIAL SUBSCRIPTION PERIOD ON ONE MONTH'S WRITTEN NOTICE, EITHER DIRECTLY TO IBM OR THROUGH CUSTOMER'S IBM RESELLER, AS APPLICABLE, IF IBM HAS NOT RECEIVED CUSTOMER'S WRITTEN AUTHORIZATION (e.g., order form, order letter, purchase order) TO RENEW CUSTOMER'S EXPIRING IBM SaaS SUBSCRIPTION PERIOD. IN SUCH EVENT, CUSTOMER MAY OBTAIN A PRORATED REFUND.

3.2 Continuous Billing

If Customer's PoE designates the subscription renewal as continuous, billing will continue following the end of the Subscription Period. Customer will continue to have access to the IBM SaaS and will be billed for usage of the IBM SaaS on a continuous billing basis. To discontinue use of the IBM SaaS and stop the continuous billing process, Customer must provide IBM with ninety (90) days written notice requesting cancellation of its IBM SaaS. Upon cancellation of Customer's access to the IBM SaaS, Customer will be billed for any outstanding access charges through the month in which the cancellation took effect.

3.3 Customer Renewal Required

If Customer's PoE designates the subscription renewal as one that terminates, the IBM SaaS offering will not renew at the end of the initial Subscription Period. In order to continue use of the IBM SaaS beyond the initial Subscription Period, Customer must obtain a new subscription for the IBM SaaS. Please contact an IBM sales representative or Customer's reseller, as applicable, to obtain a new IBM SaaS subscription.

4. Technical Support

Technical support is provided for the IBM SaaS offering and Enabling Software, as applicable, during the Subscription Period. Technical support is included with the IBM SaaS and is not available as a separate offering. While Technical support is in effect:

a. IBM provides Customer assistance for Customer's routine, short duration installation and usage (how-to) questions as well as code-related questions.

b. IBM provides electronic problem reporting and assistance via telephone during the normal business hours (published prime shift hours) of Customer's IBM support center. (This

assistance is not available to Customer's end users.) IBM provides Severity 1 assistance 24 hours a day, every day of the year.

c.   IBM may request that Customer allow IBM to remotely access Customer's system to assist Customer in isolating the problem cause. Customer remains responsible for adequately protecting Customer's system and all data contained in it whenever IBM remotely accesses it with Customer's permission.

Technical support does not include assistance for 1) the design and development of applications, 2) Customer's use of the IBM SaaS in other than their specified operating environment or 3) failures caused by products and services for which IBM is not responsible under these Terms of Use.

5.   IBM SaaS Offering Additional Terms

5.1   IBM SaaS User Profile Information

If Customer or an IBM SaaS User transmits Content to a third party website or other service that is linked to or made accessible by the IBM SaaS, Customer and the IBM User provide IBM with the consent to enable any such transmission of Content, but such interaction is solely between Customer and the third party website or service. IBM makes no warrantees or representations about such third party sites or services, and shall have no liability for such third party sites or services.

5.2   Service Level Objectives

The service level objectives for this IBM SaaS are:

* 99.5% availability outside of regularly scheduled maintenance windows.

* Maximum 5 second response time indicating web page activity is occurring.

Service level objectives are a goal and do not constitute a warranty to Customer. There is no refund, credit, or other remedy available to Customer in the event IBM does not meet the service level objectives.

IBM SaaS Terms of Use - IBM SaaS Specification

IBM

Appendix A

IBM Intelligent City Planning & Operations on IBM SmartCloud provides the following Base Capabilities for all user types:

1. Base Capabilities

a. Intelligent City Planning and Operations Console – main interface that allows users to view events and event status, geo spatial information (requires integration to a GIS server, not provided with the IBM SaaS), reports for managing Key Performance Indicators ("KPI").

b. Allows customers to view correlations, based on time and location, between city data on the city map.

c. Helps Customer to identify unlicensed businesses and/or businesses without current tax ids by viewing the results analytics that identify patterns across data sources on a web interface.

d. Allow Customer to raise events when a pattern that may be associated with an unlicensed business is detected.

e. Allows Customer to display incidents of potential fraud on a map in order to identify geo-spatial patterns in order to help plan responses to incidents.

f. Allows Customer to View reports about incidents of potential fraud, permits or infrastructure plans.

g. Allows Customer to View Key Performance Indicators (KPIs) about for the incidents of unlicensed businesses and/or businesses without current tax ids.

h. Allows Customer to execute Standard Operating Procedures (SOPs) related to potential unlicensed businesses to facilitate coordinated responses to those incidents which helps the Customer to coordinate the response to unlicensed businesses and/or businesses without current tax ids between individuals and departments.

i. Allows IBM Saas Users to collaborate using real-time chat capabilities with other IBM SaaS Users on the same Customer SaaS subscription.

2. User Types

2.1 Standard Users

Standard users have access to all Base Capabilities.

2.2 License and Tax Users

License and Tax Users have access to the same capabilities as Standard Users, as well as access to the following License and Tax capabilities:

a. Helps Customer to identify unlicensed businesses and/or businesses without current tax ids by analytics that identify patterns across data sources, viewed in a desktop or web user interface

b. Allows customers to create and save search patterns for unlicensed businesses and/or businesses without current tax ids in a desktop client.

2.3 Intelligent Operations for City Management

Intelligent Operations for City Management users have access to the same capabilities as Standard Users and Licenses and Tax Users as well as access to the following Intelligent Operations for City Management capabilities:

a. Allows customers to retrieve Permit information from a 3rd party permit management system and display the information on the map of the city.

b. Allows customers to add comments to the Permit.

c. Allows customers to view the area of affect of a Permit and search for potential conflicts that are identified by other data that is displayed on the city map.

d. Allows customers to take actions against a 3rd Party permit management system to set a Permit's state.

e. Allows customers to profile, visualize and classify all infrastructure assets in the city

f. Allows customers to perform predictive analysis on asset failure based on performance history, material quality and age of the asset

g. Allows customers to create customized scenarios which can help them assess needs and apply the appropriate prescriptions to specific assets. This assessment can help customers to determine the best prescription for extending the life of the asset.

h. Allows customers to create customized scenarios based on the results of the needs assessment to identify and correlate related projects across different asset classes.

i. Allows customers to create customized scenarios to apply different funding sources for identified projects. Through this process, customers can determine the appropriate budget and funding source to successfully complete the identified projects.

2.4 Premium Users

Premium Users have access to the same capabilities as Intelligent Operations for City Management users, as well as, access to the following Premium capabilities:

a. Allows Customer to create Key Performance Indicators (KPIs) and reports for the incidents of unlicensed businesses.

b. Allows Customer to create and execute Standard Operating Procedures (SOPs) related to potential unlicensed businesses and/or businesses without current tax ids to facilitate coordinated responses to those incidents.

c. Allow Customer's IT admin staff to administer the IBM SaaS via administrative interfaces.

d. Allows the IBM SaaS to import data from Customer's and third parties' systems via integration APIs.

e. Allows customers to integrate to a 3rd Party Permit management system via integration APIs

f. Allows customers to configure analytics that identify correlations, based on time and location, between city data.

Premium Users cannot submit services requests, add users to the system, change user configurations, or add new screens to the user interface.

IBM Credit LLC

Lease/Purchase Master Agreement
For State and Local Government

LP08272014

ORIGINAL
DO NOT REMOVE
FROM FILE

Licensed Software & Services Only

This Lease/Purchase Master Agreement For State and Local Government ("Agreement") covers the terms and conditions under which IBM Credit LLC will finance various charges. In addition, attached is the form of Lease/Purchase Supplement and Exhibits thereto.

This Agreement and its applicable Supplements and Addenda are the complete agreement regarding the Financing Transactions and replace any prior oral or written communications between both parties. If there is a conflict of terms among the documents, the order of precedence will be as follows: (a) attachments or addenda to the Supplement, (b) Supplement, (c) attachments or addenda to the Agreement, (d) this Agreement.

By signing below, both parties agree to the terms of this Agreement. Once signed, any reproduction of this Agreement or a Supplement made by reliable means (for example, photocopy or facsimile) is considered an original.

Part 1 – Definitions
The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Lease/Purchase Master Agreement,

"Commencement Date" is the date when the term of a Financing Transaction and Lessee's obligation to pay Lease Payments for such Financing Transaction commence, which date shall be set forth in each Lease/Purchase Supplement.

"Event of Default" is defined in Section 12.1.

"Financed Items" means any software program licenses, maintenance, services, and other one-time charges to be lease/purchased pursuant to this Agreement, and with respect to each Lease/Purchase Supplement, such items described therein.

"Financing Transaction" means the lease/purchase transaction for Property set forth in any Lease/Purchase Supplement entered into pursuant this Agreement.

"Lease/Purchase Supplement" or "Supplement" means a Lease/Purchase Supplement in the form attached hereto.

"Lease Payments" means the Lease Payments payable by Lessee under Part 6 of this Agreement and with respect to each Lease/Purchase Supplement, the Payment Amounts set forth in each Lease/Purchase Supplement in Exhibit 1 thereto.

"Lease Payment Dates" means the dates for the Lease Payments as set forth in the Payment Schedules for each Lease/Purchase Supplement.

"Lease Term" means, with respect to a Financing Transaction, the Original Term and all Renewal Terms. The Lease Term for each Financing Transaction entered into hereunder shall be set forth in a Lease/Purchase Supplement, as provided in Section 4.2.

"Lessee" or "Customer" or "City" means the entity identified on the Supplement, and its permitted successors and assigns.

"Lessor" means the entity identified on the Supplement, and its successors and assigns.

(e) Lessee will provide Lessor with current financial statements, budgets and proof of appropriation for the ensuing budget year and other financial information relating to the ability of Lessee to continue this Agreement and the Supplement in such form and containing such information as may be reasonably requested by Lessor.

(f) Left blank intentionally

(g) The execution, delivery and performance of this Agreement and the Supplement and compliance with the provisions hereof and thereof by Lessee does not conflict with, or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease of, or other instrument to which Lessee is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Lessee or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Lessee or to which it is subject.

(h) Lessee's exact legal name is as set forth on the first page of this Agreement. Lessee will not change its legal name in any respect without giving thirty (30) days' prior notice to Lessor.

Part 4 - The Transactions
4.1 **Lease of Property.** On the Commencement Date of each Financing Transaction executed in the Supplement hereunder, Lessor will be deemed to finance the Property described in such Supplement, in accordance with this Agreement and such Supplement, for the Lease Term set forth in such Supplement.

"Nonappropriation Event" is defined in Section 6.6.

"Original Term" means, with respect to a Financing Transaction, the period from the Commencement Date until the end of the budget year of Lessee in effect at the Commencement Date.

"Payment Schedule" means, with respect to a Financing Transaction, a schedule of lease payments for the Original Term and all Renewal Terms that indicates the Payment Due Date, the Payment, the Finance Charge and the Balance Due.

"Property" means, collectively, Financed Items lease/purchased pursuant to this Agreement, and with respect to each Lease/Purchase Supplement, the Financed Items described in such Lease/Purchase Supplement.

"Renewal Terms" means the renewal terms of a Financing Transaction, each having a duration of one year and a term coextensive with Lessee's budget year.

"State" means the state or commonwealth where Lessee is located.

"Supplier" means International Business Machines Corporation "IBM", or any other manufacturer, vendor or provider of the Property leased/purchased by Lessee.

Part 2 – Left blank intentionally

Part 3 –Lessee's Covenants
As of the Commencement Date for each Supplement executed and delivered hereunder, Lessee shall be deemed to represent, covenant and warrant for the benefit of Lessor as follows:
(a) Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State with full power and authority to enter into this Agreement and the Supplement and the transactions contemplated thereby and to perform all of its obligations thereunder. Lessee has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) the police power.

(b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Lessee should merge with another entity under the laws of the State, Lessee agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Lessee's rights and shall assume Lessee's obligations hereunder.

(c) Lessee has been duly authorized to execute and deliver this Agreement and the Supplement by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Supplement, and Lessee has complied with such public bidding requirements, if any, as may be applicable to this Agreement and the Supplement and the acquisition by Lessee of the Property thereunder. On or before the Commencement Date, Lessee shall cause to be executed a Lessee's Certificate in substantially the form attached to the form of the Supplement as Exhibit 3.

(d) During the Lease Term for the Supplement, the Property thereunder will perform and will be used by Lessee only for the purpose of performing essential governmental uses and public functions within the permissible scope of Lessee's authority.

4.2 **Lease Term.** The term of each Financing Transaction shall commence on the Commencement Date set forth in the Certificate of Acceptance and shall terminate upon payment of the final Lease Payment set forth in such Payment Schedule, unless terminated sooner pursuant to this Agreement or the Supplement.

4.3 **Delivery, Installation and Acceptance of Property.** Lessee shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Supplement, and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. When the Property described in such Supplement is delivered, installed and accepted as to Lessee's specifications, Lessee shall immediately accept the Property and evidence said acceptance by executing and delivering to Lessor the Acceptance Certificate substantially in the form attached to the Supplement.

4.4 **Assignment to Lessor.** With respect to Property, Lessee assigns its right to purchase the Property from its Supplier. Although Lessor shall have the obligation to pay the Supplier for the Property, not to exceed the principal amount set forth in the Supplement, all other rights and obligations as defined in the agreement between Lessee and Lessee's Supplier governing the purchase of the Property ("Purchase Agreement") shall remain with Lessee. Lessee represents that it has reviewed and approved the Purchase Agreement. Lessor will not modify or rescind the Purchase Agreement.

4.5 **Credit Review.** For each Financing Transaction, Lessee consents to a reasonable credit review by Lessor.

Part 5 – Enjoyment of Property. Lessee shall during the Lease Term peaceably and quietly have, hold and enjoy the Property, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. Neither Lessor nor its successors or assigns shall interfere with such quiet use and enjoyment during the Lease Term so long as Lessee is not in default under the subject Supplement.

Part 6 – Payments

6.1 **Lease Payments to Constitute a Current Expense of Lessee.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional, statutory or charter limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the faith and credit or taxing power of Lessee. Upon the appropriation of Lease Payments for a fiscal year, the Lease Payments for said fiscal year, and only the Lease Payments for said current fiscal year, shall be a binding obligation of Lessee; provided that such obligation shall not include a pledge of the taxing power of Lessee.

6.2 **Payment of Lease Payments.** Lessee shall promptly pay Lease Payments under each Supplement, exclusively from legally available funds, in lawful money of the United States of America, to Lessor in such amounts and on such dates as described in the applicable Payment Schedule, at Lessor's address set forth as the "remit to" address in the invoice, unless Lessor instructs Lessee otherwise. Lessee shall pay Lessor interest on any delinquent Lease Payments in accordance with the Florida Local Government Prompt Payment Act.

6.3 Left blank intentionally

6.4 **Lease Payments to be Unconditional.** SUBJECT TO SECTION 6.6, THE OBLIGATIONS OF LESSEE TO PAY THE LEASE PAYMENTS DUE UNDER THE SUPPLEMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT LESSEE'S RIGHTS OR ACTIONS AGAINST ANY SUPPLIER AS PROVIDED IN SECTION 9.2.

6.5 **Continuation of Lease by Lessee.** Lessee intends to continue all Supplements entered into pursuant to this Agreement and to pay the Lease Payments thereunder. Lessee reasonably anticipates that legally available funds in an amount sufficient to make all Lease Payments during the term of all Supplements can be obtained. Lessee agrees that during the budgeting process for each budget year its staff will provide to the governing body of Lessee notification of any Lease Payments due under this Supplement during the following budget year.

6.6 **Nonappropriation.** If, during the then current Original Term or Renewal Term, sufficient funds are not appropriated to make Lease Payments required under a Supplement for the following fiscal year, Lessee shall be deemed to not have renewed such Supplement for the following fiscal year and the Supplement shall terminate at the end of the then current Original Term or Renewal Term and Lessee shall not be obligated to make Lease Payments under said Supplement beyond the then current fiscal year for which funds have been appropriated. Upon the occurrence of such nonappropriation (a "Nonappropriation Event") Lessee shall, no later than the end of the fiscal year for which Lease Payments have been appropriated, except as otherwise provided by Florida law, deliver possession of the Property under said Supplement to Lessor. In the event of a Nonappropriation Event under a Supplement, Lessee shall cease use of all software financed or acquired under the applicable Supplement and shall confirm and state in writing to Lessor that it has, except as otherwise provided by Florida law: (1) deleted or disabled all files and copies of the software from the equipment on which it was installed; (2) returned all software documentation, training manuals, and physical media on which the software was delivered; and (3) has no ability to use the returned software. Lessee shall also cease receipt and/or acceptance of any Property consisting of services which shall not have been performed by the service provider prior to the date of such Nonappropriation Event. Lessor may, by written instructions to any escrow agent who is holding proceeds of the Supplement, instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to Lessee's obligations under the Supplement and this Agreement. Lessee shall notify Lessor in writing within seven (7) days after the failure of the Lessee to appropriate funds sufficient for the payment of the Lease Payments, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee. In the event of such nonappropriation, upon request from Lessor, Lessee agrees to provide in a timely manner, written evidence of such nonappropriation, a copy of the fiscal year budget in which such nonappropriation occurred and any other related documentation reasonably requested by Lessor.

Part 7 – Left Blank Intentionally

Part 8 –Ancillary Charges

8.1 Left Blank Intentionally.

8.2 Left Blank Intentionally

8.3 Left Blank Intentionally

Part 9 – Warranties; Use of Financed Items

9.1 **Disclaimer of Warranties.** LESSOR MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND LESSOR HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS FINANCED TO LESSEE "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY LESSEE. Lessee acknowledges that it has made (or will make) the selection of the Property from the Supplier based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Lessor. Lessee understands and agrees that (a) neither the Supplier nor any sales representative or other agent of Supplier, is (i) an agent of Lessor, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall either party be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Supplements, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Supplements.

9.2 **Supplier's Warranties.** Lessor hereby irrevocably assigns to Lessee all rights that Lessor may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Supplier. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Supplier of the Property, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Supplier of the Property.

9.3 **Use of the Property.** Lessee will not install, use, operate or maintain the Property carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Supplement. Lessee shall apply for all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Lessee agrees to comply in all respects with all laws of the State of Florida. Lessee shall promptly notify Lessor in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Supplement or the Property thereunder.

Part 10 – Prepayments. Lessee shall have the option to prepay in whole, but not in part, the Lease Payments due under a Supplement on any Lease Payment Date, at the Prepayment Price set forth in the Lease Payment Schedule as the "Prepayment Price", plus any past due amounts, accrued interest to the date of such prepayment and any other monetary amounts due under the Supplement to Lessor. The Prepayment Price shall be an amount equal to the present value of the remaining Lease Payments multiplied by the Prepayment Fee Rate set forth in such Lease Payment Schedule as the "Prepayment Fee Rate". Upon payment of all Lease Payments or the prepayment of all Lease Payments under the applicable Supplement, and performance by Lessee of all other terms, conditions and provisions hereof, Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably require to evidence the transfer, without warranty by or recourse to Lessor, of all of Lessor's right, title and interest in and to the Property subject to such Supplement to Lessee.

Part 11 – Assignment; Risk of Loss

11.1 **Assignment by Lessor.** Lessor's right, title and interest in, to and under each Supplement and the Property under such Supplement may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Lessor without the consent of Lessee; provided that any assignment shall not be effective against the Lessee until Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register.

11.2 Left Blank Intentionally

11.3 Left Blank Intentionally

11.4 **Risk of Loss Covenants.** Lessee shall not be required to indemnify or hold Lessor harmless against liabilities arising from the Agreement. Lessee shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses, damages or losses that arise from events occurring after Lessee has surrendered possession of the Property in accordance with the terms of the Agreement to Lessor or that arise from any act or omission of the Lessor.

Part 12 – Defaults and Remedies

12.1 **Events of Default Defined.** Any of the following shall constitute an "Event of Default" under a Supplement:

(a) Failure by Lessee to pay any Lease Payment under the Supplement or other payment required to be paid with respect thereto at the time specified therein;

(b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Supplement, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

2

(c) Any statement, representation or warranty made by Lessee in or pursuant to the Supplement or its execution, delivery or performance shall prove to have been false, , misleading or breached in any material respect on the date when made;

(d) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(e) An order, judgment or decree shall be entered by any court of competent jurisdiction, appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

The foregoing provisions of Section 12.1 are subject to the following limitation: if by reason of force majeure Lessee is unable in whole or in part to perform its agreements under this Agreement and the Supplement (other than the obligations on the part of Lessee contained in Part 6 hereof) Lessee shall not be in default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Lessee.

A Nonappropriation Event is not an Event of Default.

12.2 Remedies on Default. Whenever any Event of Default exists with respect to a Supplement, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) Without terminating the Supplement, and by written notice to Lessee, Lessor may declare all Lease Payments and other amounts payable by Lessee thereunder to the end of the then current budget year of Lessee to be due, including without limitation delinquent Lease Payments under the Supplement from prior budget years, and such amounts shall thereafter bear interest at the rate provided in the Florida Local Government Prompt Payment Act;

(b) Lessor may terminate the Supplement, and require Lessee to discontinue use of any Financed Items.

(c) **Left Blank Intentionally**

(d) By written notice and demand to Lessee, Lessee shall cease receipt and/or acceptance of any Property consisting of services which shall not have been performed by the service provider prior to the date of Event of Default

(e) Lessor may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Supplement and this Agreement.

12.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Part it shall not be necessary to give any notice, other than such notice as may be required in this Part.

12.4 Costs and Attorney Fees. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

Part 13 – General
13.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties hereto at the addresses immediately after the signatures to this Agreement/Supplement (or at such other address as either party hereto shall designate in writing to the other for notices to such party).

13.2 Left Blank Intentionally

13.3 Left Blank Intentionally

13.4 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. Any county, township, municipality, political subdivision or affiliate (collectively, "Affiliate") of Lessee may enter into a Financing Transaction under this Agreement by signing a Supplement

referencing this Agreement and so will be bound to the terms and conditions of this Agreement as Lessee. Nothing in this Agreement obligates the Lessor to provide financing to an Affiliate.

13.5 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

13.6 Waiver of Jury Trials. Lessee and Lessor hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Lessor or Lessee in the negotiation, administration, performance or enforcement hereof.

13.7 Amendments, Changes and Modifications. This Agreement may be amended in writing by Lessor and Lessee.

13.8 Execution in Counterparts. This Agreement and the Supplements hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

13.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida..

14.0 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

15.0 Scrutinized Companies. Subject to Odebrecht Construction, Inc., v. Prasad, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation, 715 F.3d 1268 (11th Cir. 2013), the Lessor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The City may terminate this Contract at the City's option if the Lessor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.

3

WHEREFORE, the Lessor and the Lessee execute this Lease/Purchase Master Agreement for State and Local Government as follows:

ATTEST:

Jenda K. Joseph, City Clerk

of Macbell Asst

WITNESSES

Signature
Print Name: Rohini N. Jha

Signature
Print Name: Meena Dave

(CORPORATE SEAL)

STATE OF Georgia

COUNTY OF Fulton

The foregoing instrument was acknowledged before me this 15 day of September 2014, by Leisha Rutledge, as Customer Account Manager for IBM Credit, LLC, a limited liability company authorized to transact business in the State of Florida.

(SEAL)

Personally Known _____ OR Produced Identification ✓

Type of Identification Produced GA DL

City of Fort Lauderdale

By:
John P. "Jack" Seiler, Mayor

By:
Lee R. Feldman, City Manager

Approved as to form:

Senior Assistant City Attorney

IBM Credit LLC, a Delaware limited liability company

By:
Print Name: LEISHA RUTLEDGE
Title: CUSTOMER ACCOUNT MANAGER

ATTEST:

General Manager

Shawn F. McCabe
(Signature of Notary Public - State of _____)

Shawn F. McCabe
(Print, Type, or Stamp Commissioned Name of Notary Public)

SHAWN F MCCABE
Notary Public
Fulton County
State of Georgia
My Commission Expires Sep 15, 2014

4

Z1265798-US -I (02-12)

LEASE/PURCHASE SUPPLEMENT

Referenced Purchase Agreement No:
Referenced License Agreement No:
Referenced Trade-In Agreement No:
Associated Supplement No:
Addendum No:

Estimated Installation Date or
Intended Financing Date or
Effective Date of Additional
License

Planning Date: 9/30/14

Idress of Customer
FOMATION SYSTEMS
0 N ANDREWS AVE
'H FLR
'LAUDERDALE, FL 33301-1016

Installed at Location
INFOMATION SYSTEMS
100 N ANDREWS AVE
6TH FLR
FT LAUDERDALE, FL 33301-1016

Customer No: 3454115
IBM CSO Location: MP3
Lease Payment
Master Agreement No: LP08272014
LPMA Amendment Nos:
Quote Validity Date: 09/13/14
Referenced Quote Letter No: Q03290009506

ngle Equipment Location
M/LPMA Customer Number
54115/3454150
istomer Reference

CSO Location Address
ATLANTA CSO
6303 BARFIELD RD NE
ATLANTA , GA 30328-4233
ATTN: BILL ONEIL
404-348-9596

Location Customer Number	Machine or LPM Type/Model Feature	IBM Plant Order or MES or Serial Number	Description	Purchase Price or One-Time Charges or Other Amount	State and Local Taxes	Credit (From IBM Trade-In Agreement) and/or Down Payment	Amount Financed	Interest Rate	Payment Amount	Term (Number of Payment Periods) Option
01 3454115 3454150	9993/GTS	H044539	FINANCING OF GTS SERVICES	408,000.00		408,000.00	408,000.00	.00	SEE PAYMENT SCHEDULE	S 36

The payments shown on this payment schedule, reflect waiver of the Prepayment Fee provision of the Lease Purchase Master Agreement.

PAYMENT PERIOD	Fiscal year Start Date 01/01 Month/Day	Supplier Name	Interest Commencement	Total Payment (all pages)	Rates shown reflect waiver of LPMA prepayment fee provisions
1. Monthly [X] Annual [ ] 2. Other (specify): Schedule attached (check): [ ]		Supplier Customer no.		See Payment Schedule	

THE LEASE/PURCHASE MASTER AGREEMENT ("AGREEMENT") REFERENCED ABOVE SHALL BE INCORPORATED HEREIN BY REFERENCE. LESSEE HEREUNDER SHALL BE BOUND TO THE TERMS AND CONDITIONS OF THE AGREEMENT AS LESSEE. THE AGREEMENT, THIS SUPPLEMENT AND ANY APPLICABLE ATTACHMENTS OR ADDENDA ARE THE COMPLETE, EXCLUSIVE STATEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREIN. THESE DOCUMENTS SUPERSEDE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN THE PARTIES. BY SIGNING BELOW, LESSEE REPRESENTS AND WARRANTS THAT LESSEE'S NAME AS SET FORTH IN THE SIGNATURE BLOCK BELOW IS LESSEE'S EXACT LEGAL NAME AND THE INFORMATION IDENTIFYING LESSEE'S STATE OF ORGANIZATION IS TRUE, ACCURATE AND COMPLETE IN ALL RESPECTS. BY SIGNING BELOW, BOTH PARTIES AGREE TO THE TERMS REPRESENTED BY THIS AGREEMENT AS IT MAY BE AMENDED OR MODIFIED DELIVERY OF AN EXECUTED COPY OF ANY OF THESE DOCUMENTS BY FACSIMILE OR OTHER RELIABLE MEANS SHALL BE DEEMED TO BE AS EFFECTIVE FOR ALL PURPOSES AS DELIVERY OF A MANUALLY EXECUTED COPY. LESSEE ACKNOWLEDGES THAT WE MAY MAINTAIN A COPY OF THESE DOCUMENTS IN ELECTRONIC FORM AND AGREES THAT COPY REPRODUCED FROM SUCH ELECTRONIC FORM OR BY ANY OTHER RELIABLE MEANS (FOR EXAMPLE, PHOTOCOPY, IMAGE OR FACSIMILE) SHALL IN ALL RESPECTS BE CONSIDERED EQUIVALENT TO AN ORIGINAL.

Accepted by:
CITY OF FORT LAUDERDALE
Lessee

By: * See Attached Signature
_____
Authorized Signature

Name (Type or Print) _____ Title _____ Date
State of Organization: FL

IBM CREDIT LLC
Lessor

By: _____
Authorized Signature
Lasha Lomaos-Customer matter
Lasha Lomaos-Customer Account matter
Name (Type or Print) Title Date

TOTAL FROM ALL PAGES:	$408,000.00
JRCHASE PRICE	
RADE-IN/CREDIT DWN PAYMENT	
R ONE TIME CHARGES	
R OTHER AMOUNT	$408,000.00
'ATE OR LOCAL TAXES	
MOUNT FINANCED	$408,000.00
AX ON FINANCE CHARGE	

'HEN APPLICABLE THIS TAX IS
YABLE WITH FIRST INSTALLMENT)

26-5742-05 (03/12)

Additional Terms and Conditions

Supplement Number L00029459

PTION CODES

PTION I - Taxable Lease/Purchase for Machine or a Modification for a State and Local Lessee

PTION IG - Tax-Exempt Lease/Purchase for a Machine or a Modification for a State and Local Lessee

PTION S - Taxable Lease/Purchase for an IBM Program or Service for a State and Local Lessee

PTION S' - Tax-Exempt Lease/Purchase for an IBM Program or Service for a State and Local Lessee

PTION T - Taxable Lease/Purchase for a non-IBM Program or Service for a State and Local Lessee

PTION T' - Tax-Exempt Lease/Purchase for a non-IBM Program or Service for a State and Local Lessee

ach Supplement shall consist of Property that solely qualifies for tax-exempt interest eatment under the Internal Revenue Code [Option Codes IG, S', T'] (a "Tax-Exempt upplement") or solely Property that does not qualify for tax-exempt interest treatment nder the Internal Revenue Code [Option Codes I, S, T] (a "Taxable Supplement").

dditional Documentation

addition to this Lease/Purchase Supplement, and as a requirement to entering into of this ase/Purchase Supplement, Lessee shall provide in completed and executed form, cceptable to Lessor, the additional documents attached to this Lease/Purchase Supplement at may include:

Exhibit 1 - Payment Schedule for this Supplement

Exhibit 2 - Opinion of Counsel to the Lessee

Exhibit 3 - Lessee's Certificate

Exhibit 4(a) - Certificate of Acceptance, or

Exhibit 4(b) - Acknowledgement of Commencement Date for Property Supplied by IBM

Exhibit 5 - Form 8038-G or 8038-GC (Tax-Exempt Supplement only)

State Addendum, if applicable and attached

Prepaid Maintenance Certification of Maintenance Provider (Tax-Exempt Supplement only)

Prepaid Maintenance Certification of Maintenance Vendor (Tax-Exempt Supplement only)

The Lease Payment schedule for this Supplement sets forth the scheduled Lease Payments under this Supplement. The Commencement Date for this Supplement is set forth in the Lease Payment Schedule.

With respect to Financed Items consisting of prepaid maintenance, Lessee accepts the terms of the prepaid maintenance and agrees to look solely to the maintenance provider for provision of such maintenance in accordance with the terms of the contracts with the maintenance provided for said maintenance. Acceptance for purposes of this Supplement shall be the date of acceptance by Lessee in the Certificate of Acceptance.

Lessee agrees that it will timely assist in the completion and execution of the Form 8038-G or Form 8038-GC and that upon said execution, Lessor is authorized and directed to file said form with the appropriate office of the Internal Revenue Service.

Capitalized terms set forth in this Supplement or in the attachments, but not defined herein or therein, shall have the meaning set forth in the Lease/Purchase Master Agreement. The complete terms and conditions of the Lease/Purchase Master Agreement are incorporated by reference.

The interest rates applicable to this Supplement that provide for Tax-Exempt Lease/Purchase are based on many factors including Lessee's underlying obligation qualifying to pay interest that is treated as exempt by the Internal Revenue Service (IRS) from federal income tax under Section 103(a) of the Internal Revenue Code (Code), as well as many proprietary factors including pricing assumptions made by Lessor as to whether Lessor anticipates being able to recognize any benefits of this tax exemption.

The interest rates applicable to this Supplement may reflect fees or other consideration Lessor receives from Lessee's Suppliers that is passed on to Lessee in the form of lower rates.

For a Taxable Supplement, the following provisions of the Lease/Purchase Master Agreement shall not be applicable: (i) Part 3, paragraph (f), (ii) Section 14.2.

Lessor reserves the right to reject any invoice that is: (i) not for information technology Equipment or related software or services, or (ii) dated more than 90 days prior to the date Lessor receives authorization from Lessee to finance.

26-5742-05 (03/12)

EXHIBIT 1
Payment Schedule

Re: Lease/Purchase Supplement No. L00029459 to Lease/Purchase Master Agreement between IBM Credit LLC and CITY OF FORT LAUDERDALE.

Commencement Date

The Commencement Date shall be the date of acceptance of the Property as set forth in the Acceptance Certificate executed by the Lessee and filed with the Lessor.

Payment Schedule

Total Principal Amount:	$408,000.00
Schedule Interest Rate:	0.00%
Prepayment Fee Rate:	0.00%

Payment No	Payment Due Dates	Lease Payments	Principal Component	Interest Component	Prepayment Price (After making pmt for said Due Date)
1	11/1/2014	$5,210.20	$5,210.28	($0.08)	$402,790.00
2	12/1/2014	$5,210.20	$5,210.27	($0.07)	$397,579.00
3	1/1/2015	$5,210.20	$5,210.28	($0.08)	$392,369.00
4	2/1/2015	$5,210.20	$5,210.27	($0.07)	$387,159.00
5	3/1/2015	$5,210.20	$5,210.27	($0.07)	$381,949.00
6	4/1/2015	$5,210.20	$5,210.27	($0.07)	$376,738.00
7	5/1/2015	$5,210.20	$5,210.27	($0.07)	$371,528.00
8	6/1/2015	$5,210.20	$5,210.27	($0.07)	$366,318.00
9	7/1/2015	$5,210.20	$5,210.27	($0.07)	$361,108.00
10	8/1/2015	$5,210.20	$5,210.27	($0.07)	$355,897.00
11	9/1/2015	$5,210.20	$5,210.27	($0.07)	$350,687.00
12	10/1/2015	$5,210.20	$5,210.26	($0.06)	$345,477.00
13	11/1/2015	$17,500.92	$17,500.99	($0.07)	$327,976.00
14	12/1/2015	$17,500.92	$17,500.98	($0.06)	$310,475.00
15	1/1/2016	$17,500.92	$17,500.98	($0.06)	$292,974.00
16	2/1/2016	$17,500.92	$17,500.98	($0.06)	$275,473.00
17	3/1/2016	$17,500.92	$17,500.97	($0.05)	$257,972.00
18	4/1/2016	$17,500.92	$17,500.97	($0.05)	$240,471.00

EXHIBIT 1
Payment Schedule - Page 2

Payment No	Payment Due Dates	Lease Payments	Principal Component	Interest Component	Prepayment Price (After making pmt for said Due Date)
19	5/1/2016	$13,359.47	$13,359.51	($0.04)	$227,111.00
20	6/1/2016	$13,359.47	$13,359.51	($0.04)	$213,752.00
21	7/1/2016	$13,359.47	$13,359.51	($0.04)	$200,392.00
22	8/1/2016	$13,359.47	$13,359.51	($0.04)	$187,033.00
23	9/1/2016	$13,359.47	$13,359.51	($0.04)	$173,673.00
24	10/1/2016	$13,359.47	$13,359.50	($0.03)	$160,314.00
25	11/1/2016	$13,359.47	$13,359.50	($0.03)	$146,954.00
26	12/1/2016	$13,359.47	$13,359.50	($0.03)	$133,595.00
27	1/1/2017	$13,359.47	$13,359.50	($0.03)	$120,235.00
28	2/1/2017	$13,359.47	$13,359.49	($0.02)	$106,876.00
29	3/1/2017	$13,359.47	$13,359.49	($0.02)	$93,516.00
30	4/1/2017	$13,359.47	$13,359.49	($0.02)	$80,157.00
31	5/1/2017	$13,359.47	$13,359.48	($0.01)	$66,797.00
32	6/1/2017	$13,359.47	$13,359.48	($0.01)	$53,438.00
33	7/1/2017	$13,359.47	$13,359.48	($0.01)	$40,078.00
34	8/1/2017	$13,359.47	$13,359.48	($0.01)	$26,719.00
35	9/1/2017	$13,359.47	$13,359.48	($0.01)	$13,359.00
36	10/1/2017	$13,359.47	$13,359.47	$0.00	$0.00

Lessee: CITY OF FORT LAUDERDALE
By: * See Attached Signature
Name:
Title:

ACKNOWLEDGEMENT OF COMMENCEMENT DATE FOR PROPERTY SUPPLIED DIRECTLY BY INTERNATIONAL BUSINESS MACHINES CORPORATION

Re: Lease/Purchase Supplement No. __L00029459__ to Lease/Purchase Master Agreement No. __LP08272014__ between IBM Credit LLC and __City Of FT Lauderdale__ ("Lessee")
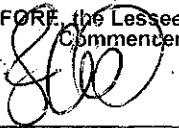
COMMENCEMENT DATE

Lessee is a customer under the Lease/Purchase Master Agreement referenced above ("Agreement") with IBM Credit LLC. By executing the above-referenced Supplement, Lessee represents and certifies that Lessee has agreed to acquire the IBM provided prepaid services (hereafter "Property") listed in the Supplement by the date indicated below. Lessee authorizes IBM Credit LLC to pay International Business Machines Corporation for the Property. Interest on such obligation shall begin to accrue the first day of the month following the date of installation for the Property indicated below.

Acceptance Date for the Property in Supplement _September 18th, 2014_
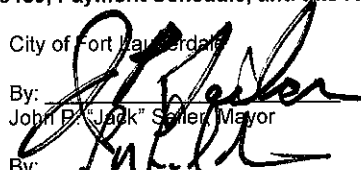
WHEREFORE, the Lessee executes the Lease/Purchase Supplement L00029459, Payment Schedule, and this Acknowledgement of Commencement Date as follows:
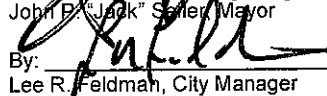
ATTEST:

_____
Jonda K. Joseph, City Clerk
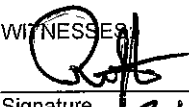Jeff Madarelli Ass't

City of Fort Lauderdale

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manager
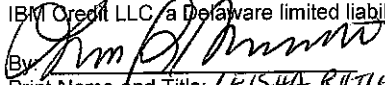
Approved as to form:

_____
Senior Assistant City Attorney
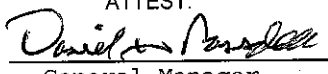
WITNESSES:

_____
Signature
Print Name: Rohini N. Jha

_____
Signature
Print Name: Meena Dave

(CORPORATE SEAL)

STATE OF Georgia

COUNTY OF Fulton

IBM Credit LLC, a Delaware limited liability company

By: _____
Print Name and Title: LEISHA RUTLEDGE - Customer Account Manager

ATTEST:

_____
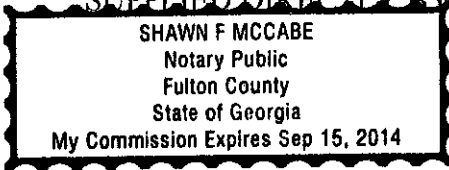General Manager

Leisha A. The foregoing instrument was acknowledged before me this _15_ day of _September_, 2014, by
Leisha Rutledge, as Customer Account Manager
for _IBM Credit LLC_, a _limited liability_ company authorized to transact business in the State of Florida.

Z1265743- US 02 (02-10)
Exhibit 4b

ACKNOWLEDGEMENT OF COMMENCEMENT DATE FOR PROPERTY SUPPLIED DIRECTLY BY INTERNATIONAL BUSINESS MACHINES CORPORATION

SHAWN F MCCABE
Notary Public
Fulton County
State of Georgia
My Commission Expires Sep 15, 2014

(SEAL)

Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____ GA _____ N _____

_(Signature of Notary Public - State of _____)_

(Print, Type, or Stamp Commissioned Name of Notary)