

March 21, 2013

AGENDA ITEM NO. 1A
COUNCIL MEETING 3/21/2013

APPROVED BY


DEPARTMENT DIRECTOR


CITY MANAGER

FROM: CAROLYN T. HOGG, CIO/Director 
Information Services Department

BY: EDDIE HUGHES, Information Services Manager 
Information Services Department

SUBJECT: APPROVE SMARTER CITIES CHALLENGE GRANT AGREEMENT WITH INTERNATIONAL BUSINESS MACHINES CORPORATION (IBM) IN THE ESTIMATED AMOUNT OF \$400,000 IN SERVICES AND EXPENSES, AND AUTHORIZE THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

RECOMMENDATIONS

It is recommended that the Council approve the Smarter Cities Challenge grant agreement with IBM in the estimated amount of \$400,000 in services and expenses and authorize the City Manager or his designee to execute the agreement on behalf of the City.

EXECUTIVE SUMMARY

The Information Services Department (ISD) on behalf of the City, applied for and was selected as one of IBM Smarter Cities Challenge grant winners. This grant will provide the City with access to IBM's top experts to work on economic development and neighborhood revitalization efforts. IBM will provide five executives working full-time in the City for three weeks. These consulting services are provided at no charge but are estimated to be worth \$400,000. At the conclusion of the three weeks of consulting, IBM will deliver to the City a roadmap document identifying both short and long term opportunities to address our challenge.

BACKGROUND

Launched in 2011, the IBM Smarter Cities challenge is a three-year, 100-city, \$50 million competitive grant program. The program, which is IBM's single-largest philanthropic initiative, assigns a team of five top IBM experts to each winning city to study a key issue identified by the city's leadership. The approximate value of the grant is \$400,000.

Over a three-week period, IBM will work with city officials to analyze data and solicit the input of dozens of local agencies and community groups before providing detailed recommendations on how the city might improve its economic development efforts or share data to improve neighborhood revitalization efforts. City officials are working with IBM to schedule the team's stay in Fresno.

During the engagement, IBM will identify short and long-term opportunities for improvement by taking a data-driven approach to economic development, and also include ways of analyzing disparate systems that are interconnected. The importance of data collection and analysis, particularly for downtown redevelopment and applying technology to improve agricultural productivity, was strongly emphasized in the grant application. At

REPORT TO CITY COUNCIL

Approve Agreement for IBM Smarter Cities Challenge Grant

March 21, 2013

Page 2

the conclusion of their three weeks of consulting, IBM will deliver to the City a roadmap document both short and long-term opportunities for data collection and analysis. Part of the roadmap will include a plan to deploy ultra-high speed broadband in the Downtown Corridor, which could serve as the underpinning for development of a regional agricultural technology cluster in Fresno. The City also hopes to gain the knowledge and skills necessary to build a regional cloud for sharing "open data" and modeling tools that will be instrumental for neighborhood revitalization and citizen engagement. The IBM effort will complement the ongoing work of the Strong Cities, Strong Communities initiative, a federal interagency collaboration that has been partnering with the City of Fresno for more than a year to address revitalization and economic development issues.

Fresno is one of seven U.S. cities selected for the IBM Smarter Cities Challenge grants. Other U.S. cities are: Buffalo, New York; Burlington, Vermont; Knoxville, Tennessee; Reno, Nevada; Richmond, Virginia; and Tucson, Arizona. A total of 31 cities worldwide were selected.

FISCAL IMPACT

There is no fiscal impact; all services and expenses will be provided at no charge to the City.

Attachment: IBM Smarter Cities Challenge Letter and Agreement Annex A



Old Orchard Road
Armonk, NY 10504

February 28, 2013

Renena Smith
Assistant City Manager
City of Fresno
2600 Tulare Street
Fresno, California 93721-3601

Dear Ms. Smith,

The City of Fresno (the "City") submitted a proposal as part of IBM's Smarter Cities Challenge and was one of the cities selected by International Business Machines Corporation ("IBM") for a grant.

Under the Smarter Cities Challenge grant, IBM is providing to the City a grant consisting of consulting services to help the City's leaders identify ways to improve and enhance the use of data to approach economic development. The grant will identify short and long-term opportunities for improvement. These services are being delivered by five (5) IBM executives working full-time in the City for 3 weeks. These consulting services are provided at no charge to the City. At the conclusion of the three (3) weeks of consulting, IBM will deliver to the City a roadmap document (the "Roadmap") identifying both short and long-term opportunities for data collection and analysis.

This letter agreement, including Annex A attached hereto, sets forth the details of the grant and the terms and conditions under which this grant is being provided to the City.

Kindly acknowledge your agreement with this letter agreement, including Annex A, for and on behalf of the City, by signing two original copies of this letter agreement where indicated and returning the original, signed copies to Gwyneth Borden, IBM, for countersignature by IBM. Once countersigned, IBM will return one original version to you, and keep one for its own records. Please contact Judy Chin, Corporate Citizenship & Corporate Affairs at judychin@us.ibm.com should you have any questions or comments.

We look forward to working with you on the grant.

Sincerely,

INTERNATIONAL BUSINESS MACHINES CORPORATION

By: _____
Stanley S. Litow
Vice President, Corporate Citizenship and
Corporate Affairs & President, IBM International
Foundation
Date: _____

**ACCEPTED AND AGREED:
CITY OF FRESNO**



Renena Smith, Assistant City Manager

Annex A

The grant

The market value of IBM's grant of services is estimated at up to \$400,000 in services and expenses based on standard IBM list prices as of the date of the letter agreement (the "Maximum Grant"). This is a grant of services only; the City will not be receiving cash in connection with this grant. IBM and the City will be responsible for their own expenses and costs relating to this grant. The estimated start date for the project is April 22, 2013 with completion targeted for the week of May 6, 2013. The services under this grant will end on the earliest of: (i) the City advises IBM, in writing, that further services are no longer required, (ii) IBM provides the Maximum Grant, or (iii) IBM terminates the letter agreement, by providing notice to the City, as a result of a breach of the letter agreement by the City or in the event IBM determines that the grant contemplated hereunder creates a conflict of interest.

The City will provide a Project Manager to act as a single point of contact for IBM for all matters relating to this grant. The City will make available to IBM during the 3-week grant engagement appropriate meeting space, information, systems and resources to meet with the IBM consultants, including City leaders and key stakeholders in connection with the grant.

Public statements about the grant

The City will obtain the prior written approval of IBM prior to making any public statements or acknowledgements of the grant. IBM may publicize the grant to the City without prior notice to the City, including without limitation in publications referring to the IBM Smarter Cities Challenge, such as IBM's Smarter Cities Challenge web site, Smarter Cities, Corporate Social Responsibility or Corporate Citizenship & Community Affairs and Smarter Planet. The City will provide to IBM its emblems or logos for use (together with specifications relating to usage thereof) in any publications made by IBM relating to the grant.

No conflicts of interest

Neither IBM nor the City believes that the grant raises any actual or potential conflicts of interest. The grant is independent of any past, present or potential future arrangements, and is not connected to an existing business relationship between the City and IBM. The letter agreement does not obligate either IBM or the City to enter into future business with the other. The City agrees that this grant is not intended to influence, and will not influence, the IT procurement decisions of the City (or any organization with which your officers, board members or trustees are affiliated), and that this grant is not intended, in any manner, to circumvent any established city or state procurement or ethics laws or rules.

The City confirms that the grant complies with all applicable city and state ethics laws, and the grant does not conflict with any applicable law, regulation, or agency policy. The City has obtained all necessary approvals and authorizations to accept the grant. The City shall provide at IBM's request a statement from its attorney confirming the foregoing.

The City will use the services and deliverables provided hereunder solely for the benefit of the City, in a manner that reflects the highest standards of ethical conduct and in accordance with all applicable laws, rules and regulations, including without limitation anti-bribery laws. The City agrees that no individual associated with or employed by the City will improperly benefit, whether directly or indirectly, from the grant. The City will not offer, promise or make, directly or indirectly, any payment for the purpose of improperly influencing (or inducing anyone to influence) decisions or actions of any official of a government controlled entity or public international organization.

The grant is provided on the understanding confirmed by the City that the grant will not preclude or restrict IBM from proposing or bidding on any business opportunities that might exist now or in the future with the City. The grant is not made for the purpose of lobbying. The City will take appropriate action to mitigate or eliminate any conflicts of interest that might interfere with this grant or any future agreements between the parties.

Warranties

None of the information or materials provided to IBM by the City is confidential. The City has all rights needed for IBM to work with any information or materials provided to IBM in connection with the grant. The City shall comply with all applicable laws, including privacy laws, in connection with the grant, and will hold IBM harmless from claims that the City violated any laws or did not have the authority to provide to IBM any information or materials.

The services provided by IBM are provided AS IS without warranty of any kind. THE WARRANTIES IN THIS PARAGRAPH ARE THE EXCLUSIVE WARRANTIES WE PROVIDE YOU AND REPLACE ALL OTHER WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY OF NON-INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. IBM makes no guarantee that the opportunities and ideas discussed during the grant or highlighted in the Roadmap or other materials furnished in connection with the grant will meet the City's goals or needs or that the City will achieve any particular results.

No third party beneficiaries

The parties agree that nothing herein is intended to or does extend to any third party any third party beneficiary rights, and the parties agree that they shall not take any action which would serve to establish such rights.

License to Roadmap

IBM grants to the City a nontransferable, nonexclusive, irrevocable worldwide and fully paid-up license to (a) use, reproduce and distribute the Roadmap and (b) reproduce and distribute any other copyrightable materials furnished or developed by IBM in connection with the grant, in each case solely within your City's organization. The City grants IBM for its use in connection with providing the services under the grant only (and for inclusion, if applicable, in the Roadmap) an irrevocable, nonexclusive, worldwide and fully paid-up license to use, reproduce and distribute internally any reports, data and any other copyrightable materials furnished or developed by the City. IBM may use any feedback you provide to IBM in connection with the grant internally and externally, including without limitation, in its publications about Smarter Cities, the Smarter Cities Challenge, Smarter Planet, Corporate Social Responsibility or Corporate Citizenship & Community Affairs.

IBM's liability

IBM's maximum aggregate liability for any and all claims that may arise from this grant whether in contract or in tort or on any other basis, including claims for IBM's performance or nonperformance, will be limited to \$25,000. This limitation will not apply however to claims by the City for bodily injury (including death) or damage to real property or tangible personal property caused by IBM. IBM will not be liable for special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings) even if IBM has been informed of their possibility. IBM will also not be liable for third party claims against the City. Furthermore, IBM will not be liable for loss of or damage to the City's or anyone else's records or data. For purposes of this paragraph, IBM means IBM and their respective employees, subsidiaries, partnerships, affiliates, and their respective subcontractors and agents.

General

The provisions set forth in the following sections of this Annex A will survive after termination or expiration of the letter agreement and will remain in effect until fulfilled: "Warranties", "No Conflicts of Interest", "License to Roadmap" and "IBM's Liability". The letter agreement, including this Annex A, may only be amended by a writing specifically referencing the letter agreement which has been signed by authorized representatives of the parties. The letter agreement may be signed in counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same letter agreement. The letter agreement shall be governed by the laws of the State of New York, excluding its provisions on conflict of laws. Any copy of the letter agreement made by reliable means (for example, photocopy or facsimile) is considered an original.



Francine M. Kanne
Interim City Attorney

March 5, 2013

Mr. Stanley Litow
Vice President, Corporate Citizenship and
Corporate Affairs & President IBM International Foundation
Old Orchard Road
Armonk, NY 10504

RE: IBM's Smarter Cities Challenge Grant

Dear Mr. Litow,

The City of Fresno (the "City") submitted a proposal as part of IBM's Smarter Cities Challenge and was one of the cities selected by International Business Machines Corporation ("IBM") for a grant. Under the Smarter Cities Challenge grant, IBM is providing to the City a grant consisting of consulting services to help the City's leaders identify short and long-term opportunities for improvement. These consulting services are provided at no charge to the City. The details of such grant are set forth in a separate grant agreement between the City and IBM.

The grant is independent of any past, present or potential future arrangements, and is not connected to an existing business relationship between the City and IBM. This grant agreement does not obligate either of IBM or the City to enter into future business with the other. I confirm that (i) the grant, and the City's receipt of the same, complies with all applicable city and state ethics laws, (ii) the grant does not conflict with any applicable law or regulation, and (iii) the City has obtained all necessary approvals and authorizations to accept the grant.

Very truly yours,

A handwritten signature in black ink, appearing to read "Karen J. Ray".

Karen J. Ray
Deputy City Attorney

KJR:elb [61198elb/kjr]