

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of June 21, 2017, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on June 20, 2017, by and between BERRY, DUNN, MCNEIL & PARKER, LLC, a Maine limited liability company ("Consultant"), with a place of business at 100 Middle Street, Portland, Maine 04101, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with quality assurance and risk mitigation services for the City's new Enterprise Resource Planning (ERP) system implementation ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Four Hundred Ninety-Four Thousand Four Hundred Ninety-Five Dollars (\$494,495), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one

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fiscal year shall be contingent upon the City Council of the City appropriating the necessary funds for such payment by the City in each fiscal year during the term of this Agreement. For the purposes of this Section, a fiscal year commences on October 1 of the year and continues through September 30 of the following year. In the event that the City Council of the City fails to appropriate the necessary funds for any fiscal year, then, and in that event, the Agreement will terminate at no additional cost or obligation to the City.

C. Consultant may select the time and place of performance for these services; provided, however, that access to City documents, records and the like, if needed by Consultant, shall be available only during City's normal business hours and provided that milestones for performance, if any, are met.

D. Consultant has requested to receive regular payments. City shall pay Consultant in due course of payments following receipt from Consultant and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the Project. Consultant shall certify on the invoices that Consultant has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Consultant's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

E. Consultant represents that Consultant has obtained all necessary information on conditions and circumstances that may affect its performance and has conducted site visits, if necessary.

1 F. CAUTION: Consultant shall not begin work until this  
2 Agreement has been signed by both parties and until Consultant's evidence of  
3 insurance has been delivered to and approved by City.

4 2. TERM. The term of this Agreement shall commence at midnight on  
5 July 1, 2017, and shall terminate at 11:59 p.m. on July 1, 2019, unless sooner terminated  
6 as provided in this Agreement, or unless the services or the Project is completed sooner.  
7 The term may be renewed for two (2) additional one-year periods, at the discretion of the  
8 City Manager.

9 3. COORDINATION AND ORGANIZATION.

10 A. Consultant shall coordinate its performance with City's  
11 representative, if any, named in Exhibit "C", attached to this Agreement and  
12 incorporated by this reference. Consultant shall advise and inform City's  
13 representative of the work in progress on the Project in sufficient detail so as to  
14 assist City's representative in making presentations and in holding meetings on the  
15 Project. City shall furnish to Consultant information or materials, if any, described  
16 in Exhibit "D", attached to this Agreement and incorporated by this reference, and  
17 shall perform any other tasks described in the Exhibit.

18 B. The parties acknowledge that a substantial inducement to City  
19 for entering this Agreement was and is the reputation and skill of Consultant's key  
20 employee, named in Exhibit "E" attached to this Agreement and incorporated by this  
21 reference. City shall have the right to approve any person proposed by Consultant  
22 to replace that key employee.

23 4. INDEPENDENT CONTRACTOR. In performing its services,  
24 Consultant is and shall act as an independent contractor and not an employee,  
25 representative or agent of City. Consultant shall have control of Consultant's work and the  
26 manner in which it is performed. Consultant shall be free to contract for similar services to  
27 be performed for others during this Agreement; provided, however, that Consultant acts in  
28 accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges

1 and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation;  
2 (b) City will not secure workers' compensation or pay unemployment insurance to, for or  
3 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of  
4 the usual and customary rights, benefits or privileges of City employees. Consultant  
5 expressly warrants that neither Consultant nor any of Consultant's employees or agents  
6 shall represent themselves to be employees or agents of City.

7           5.     INSURANCE.

8           A.     As a condition precedent to the effectiveness of this  
9 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
10 duration of this Agreement, from insurance companies that are admitted to write  
11 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
12 Company or from authorized non-admitted insurance companies subject to Section  
13 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII  
14 by A.M. Best Company, the following insurance:

15                   i.     Commercial general liability insurance (equivalent in  
16 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less  
17 than \$1,000,000 per each occurrence and \$2,000,000 general aggregate.  
18 This coverage shall include but not be limited to broad form contractual  
19 liability, cross liability, independent contractors liability, and products and  
20 completed operations liability. City, its boards and commissions, and their  
21 officials, employees and agents shall be named as additional insureds by  
22 endorsement (on City's endorsement form or on an endorsement equivalent  
23 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10  
24 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04),  
25 and this insurance shall contain no special limitations on the scope of  
26 protection given to City, its boards and commissions, and their officials,  
27 employees and agents. This policy shall be endorsed to state that the insurer  
28 waives its right of subrogation against City, its boards and commissions, and

1 their officials, employees and agents.

2 ii. Workers' Compensation insurance as required by the  
3 California Labor Code and employer's liability insurance in an amount not  
4 less than \$1,000,000. This policy shall be endorsed to state that the insurer  
5 waives its right of subrogation against City, its boards and commissions, and  
6 their officials, employees and agents.

7 iii. Professional liability or errors and omissions insurance  
8 in an amount not less than \$1,000,000 per claim.

9 iv. Commercial automobile liability insurance (equivalent in  
10 scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in  
11 an amount not less than \$500,000 combined single limit per accident.

12 B. Any self-insurance program, self-insured retention, or  
13 deductible must be separately approved in writing by City's Risk Manager or  
14 designee and shall protect City, its officials, employees and agents in the same  
15 manner and to the same extent as they would have been protected had the policy  
16 or policies not contained retention or deductible provisions.

17 C. Each insurance policy shall be endorsed to state that coverage  
18 shall not be reduced, non-renewed or canceled except after thirty (30) days prior  
19 written notice to City, shall be primary and not contributing to any other insurance  
20 or self-insurance maintained by City, and shall be endorsed to state that coverage  
21 maintained by City shall be excess to and shall not contribute to insurance or self-  
22 insurance maintained by Consultant. Consultant shall notify City in writing within  
23 five (5) days after any insurance has been voided by the insurer or cancelled by the  
24 insured.

25 D. If this coverage is written on a "claims made" basis, it must  
26 provide for an extended reporting period of not less than one hundred eighty (180)  
27 days, commencing on the date this Agreement expires or is terminated, unless  
28 Consultant guarantees that Consultant will provide to City evidence of uninterrupted,

1 continuing coverage for a period of not less than three (3) years, commencing on  
2 the date this Agreement expires or is terminated.

3 E. Consultant shall require that all subconsultants or contractors  
4 that Consultant uses in the performance of these services maintain insurance in  
5 compliance with this Section unless otherwise agreed in writing by City's Risk  
6 Manager or designee.

7 F. Prior to the start of performance, Consultant shall deliver to City  
8 certificates of insurance and the endorsements for approval as to sufficiency and  
9 form. In addition, Consultant shall, within thirty (30) days prior to expiration of the  
10 insurance, furnish to City certificates of insurance and endorsements evidencing  
11 renewal of the insurance. City reserves the right to require complete certified copies  
12 of all policies of Consultant and Consultant's subconsultants and contractors, at any  
13 time. Consultant shall make available to City's Risk Manager or designee all books,  
14 records and other information relating to this insurance, during normal business  
15 hours.

16 G. Any modification or waiver of these insurance requirements  
17 shall only be made with the approval of City's Risk Manager or designee. Not more  
18 frequently than once a year, City's Risk Manager or designee may require that  
19 Consultant, Consultant's subconsultants and contractors change the amount, scope  
20 or types of coverages required in this Section if, in his or her sole opinion, the  
21 amount, scope or types of coverages are not adequate.

22 H. The procuring or existence of insurance shall not be construed  
23 or deemed as a limitation on liability relating to Consultant's performance or as full  
24 performance of or compliance with the indemnification provisions of this Agreement.

25 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
26 contemplates the personal services of Consultant and Consultant's employees, and the  
27 parties acknowledge that a substantial inducement to City for entering this Agreement was  
28 and is the professional reputation and competence of Consultant and Consultant's

1 employees. Consultant shall not assign its rights or delegate its duties under this  
2 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval  
3 of City, except that Consultant may with the prior approval of the City Manager of City,  
4 assign any moneys due or to become due Consultant under this Agreement. Any  
5 attempted assignment or delegation shall be void, and any assignee or delegate shall  
6 acquire no right or interest by reason of an attempted assignment or delegation.  
7 Furthermore, Consultant shall not subcontract any portion of its performance without the  
8 prior approval of the City Manager or designee, or substitute an approved subconsultant  
9 or contractor without approval prior to the substitution. Nothing stated in this Section shall  
10 prevent Consultant from employing as many employees as Consultant deems necessary  
11 for performance of this Agreement.

12 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,  
13 certifies that, at the time Consultant executes this Agreement and for its duration,  
14 Consultant does not and will not perform services for any other client which would create  
15 a conflict, whether monetary or otherwise, as between the interests of City and the interests  
16 of that other client. And, Consultant shall obtain similar certifications from Consultant's  
17 employees, subconsultants and contractors.

18 8. MATERIALS. Consultant shall furnish all labor and supervision,  
19 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
20 necessary to or used in the performance of Consultant's obligations under this Agreement,  
21 except as stated in Exhibit "D".

22 9. OWNERSHIP OF DATA. All materials, information and data  
23 prepared, developed or assembled by Consultant or furnished to Consultant in connection  
24 with this Agreement, including but not limited to documents, estimates, calculations,  
25 studies, maps, graphs, charts, computer disks, computer source documentation, samples,  
26 models, reports, summaries, drawings, designs, notes, plans, information, material and  
27 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
28 and City shall have the unrestricted right to use and disclose the Data in any manner and

1 for any purpose without payment of further compensation to Consultant. Copies of Data  
2 may be retained by Consultant but Consultant warrants that Data shall not be made  
3 available to any person or entity for use without the prior approval of City. This warranty  
4 shall survive termination of this Agreement for five (5) years.

5           10. TERMINATION. Either party shall have the right to terminate this  
6 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
7 prior written notice to the other party. In the event of termination under this Section, City  
8 shall pay Consultant for services satisfactorily performed and costs incurred up to the  
9 effective date of termination for which Consultant has not been previously paid. The  
10 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective  
11 date of termination, Consultant shall deliver to City all Data developed or accumulated in  
12 the performance of this Agreement, whether in draft or final form, or in process. And,  
13 Consultant acknowledges and agrees that City's obligation to make final payment is  
14 conditioned on Consultant's delivery of the Data to City.

15           11. CONFIDENTIALITY. Consultant shall keep all Data confidential and  
16 shall not disclose the Data or use the Data directly or indirectly, other than in the course of  
17 performing its services, during the term of this Agreement and for five (5) years following  
18 expiration or termination of this Agreement. In addition, Consultant shall keep confidential  
19 all information, whether written, oral or visual, obtained by any means whatsoever in the  
20 course of performing its services for the same period of time. Consultant shall not disclose  
21 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit  
22 of others except for the purpose of this Agreement.

23           12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
24 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
25 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available  
26 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
27 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
28 disclosed pursuant to subpoena or court order.



1                   13.    ADDITIONAL COSTS AND REDESIGN.

2                   A.     Any costs incurred by City due to Consultant's failure to meet  
3 the standards required by the scope of work or Consultant's failure to perform fully  
4 the tasks described in the scope of work which, in either case, causes City to request  
5 that Consultant perform again all or part of the Scope of Work shall be at the sole  
6 cost of Consultant and City shall not pay any additional compensation to Consultant  
7 for its re-performance.

8                   B.     If the Project involves construction and the scope of work  
9 requires Consultant to prepare plans and specifications with an estimate of the cost  
10 of construction, then Consultant may be required to modify the plans and  
11 specifications, any construction documents relating to the plans and specifications,  
12 and Consultant's estimate, at no cost to City, when the lowest bid for construction  
13 received by City exceeds by more than ten percent (10%) Consultant's estimate.  
14 This modification shall be submitted in a timely fashion to allow City to receive new  
15 bids within four (4) months after the date on which the original plans and  
16 specifications were submitted by Consultant.

17                  14.    AMENDMENT. This Agreement, including all Exhibits, shall not be  
18 amended, nor any provision or breach waived, except in writing signed by the parties which  
19 expressly refers to this Agreement.

20                  15.    LAW. This Agreement shall be construed in accordance with the laws  
21 of the State of California, and the venue for any legal actions brought by any party with  
22 respect to this Agreement shall be the County of Los Angeles, State of California for state  
23 actions and the Central District of California for any federal actions. Consultant shall cause  
24 all work performed in connection with construction of the Project to be performed in  
25 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,  
26 county or municipal governments or agencies (including, without limitation, all applicable  
27 federal and state labor standards, including the prevailing wage provisions of sections 1770  
28 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any

1 fire marshal, health officer, building inspector, or other officer of every governmental  
2 agency now having or hereafter acquiring jurisdiction.

3 16. PREVAILING WAGES.

4 A. Consultant agrees that all public work (as defined in California  
5 Labor Code section 1720) performed pursuant to this Agreement (the "Public  
6 Work"), if any, shall comply with the requirements of California Labor Code sections  
7 1770 *et seq.* City makes no representation or statement that the Project, or any  
8 portion thereof, is or is not a "public work" as defined in California Labor Code  
9 section 1720.

10 B. In all bid specifications, contracts and subcontracts for any  
11 such Public Work, Consultant shall obtain the general prevailing rate of per diem  
12 wages and the general prevailing rate for holiday and overtime work in this locality  
13 for each craft, classification or type of worker needed to perform the Public Work,  
14 and shall include such rates in the bid specifications, contract or subcontract. Such  
15 bid specifications, contract or subcontract must contain the following provision: "It  
16 shall be mandatory for the contractor to pay not less than the said prevailing rate of  
17 wages to all workers employed by the contractor in the execution of this contract.  
18 The contractor expressly agrees to comply with the penalty provisions of California  
19 Labor Code section 1775 and the payroll record keeping requirements of California  
20 Labor Code section 1771."

21 17. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
22 constitutes the entire understanding between the parties and supersedes all other  
23 agreements, oral or written, with respect to the subject matter in this Agreement.

24 18. INDEMNITY.

25 A. Consultant shall indemnify, protect and hold harmless City, its  
26 Boards, Commissions, and their officials, employees and agents ("Indemnified  
27 Parties"), from and against any and all liability, claims, demands, damage, loss,  
28 obligations, causes of action, proceedings, awards, fines, judgments, penalties,

1 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or  
2 in connection with (1) Consultant's breach or failure to comply with any of its  
3 obligations contained in this Agreement, including any obligations arising from the  
4 Project's compliance with or failure to comply with applicable laws, including all  
5 applicable federal and state labor requirements including, without limitation, the  
6 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful  
7 acts, errors, omissions or misrepresentations committed by Consultant, its officers,  
8 employees, agents, subcontractors, or anyone under Consultant's control, in the  
9 performance of work or services under this Agreement (collectively "Claims" or  
10 individually "Claim").

11 B. In addition to Consultant's duty to indemnify, Consultant shall  
12 have a separate and wholly independent duty to defend Indemnified Parties at  
13 Consultant's expense by legal counsel approved by City, from and against all  
14 Claims, and shall continue this defense until the Claims are resolved, whether by  
15 settlement, judgment or otherwise. No finding or judgment of negligence, fault,  
16 breach, or the like on the part of Consultant shall be required for the duty to defend  
17 to arise. City shall notify Consultant of any Claim, shall tender the defense of the  
18 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,  
19 in the defense.

20 C. If a court of competent jurisdiction determines that a Claim was  
21 caused by the sole negligence or willful misconduct of Indemnified Parties,  
22 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the  
23 court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
24 percentage of willful misconduct attributed by the court to the Indemnified Parties.

25 D. The provisions of this Section shall survive the expiration or  
26 termination of this Agreement.

27 19. AMBIGUITY. In the event of any conflict or ambiguity between this  
28 Agreement and any Exhibit, the provisions of this Agreement shall govern.

1                   20.    NONDISCRIMINATION.

2                   A.     In connection with performance of this Agreement and subject  
3 to applicable rules and regulations, Consultant shall not discriminate against any  
4 employee or applicant for employment because of race, religion, national origin,  
5 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or  
6 disability. Consultant shall ensure that applicants are employed, and that  
7 employees are treated during their employment, without regard to these bases.  
8 These actions shall include, but not be limited to, the following: employment,  
9 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or  
10 termination; rates of pay or other forms of compensation; and selection for training,  
11 including apprenticeship.

12                  B.     It is the policy of City to encourage the participation of  
13 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
14 procurement process, and Consultant agrees to use its best efforts to carry out this  
15 policy in its use of subconsultants and contractors to the fullest extent consistent  
16 with the efficient performance of this Agreement. Consultant may rely on written  
17 representations by subconsultants and contractors regarding their status.  
18 Consultant shall report to City in May and in December or, in the case of short-term  
19 agreements, prior to invoicing for final payment, the names of all subconsultants  
20 and contractors hired by Consultant for this Project and information on whether or  
21 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as  
22 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

23                  21.    EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
24 accordance with the provisions of the Ordinance, this Agreement is subject to the  
25 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
26 Long Beach Municipal Code, as amended from time to time.

27                  A.     During the performance of this Agreement, the Consultant  
28 certifies and represents that the Consultant will comply with the EBO. The

1 Consultant agrees to post the following statement in conspicuous places at its place  
2 of business available to employees and applicants for employment:

3 "During the performance of a contract with the City of Long Beach, the  
4 Consultant will provide equal benefits to employees with spouses and its  
5 employees with domestic partners. Additional information about the City of  
6 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
7 Long Beach Business Services Division at 562-570-6200."

8 B. The failure of the Consultant to comply with the EBO will be  
9 deemed to be a material breach of the Agreement by the City.

10 C. If the Consultant fails to comply with the EBO, the City may  
11 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or  
12 to become due under the Agreement may be retained by the City. The City may  
13 also pursue any and all other remedies at law or in equity for any breach.

14 D. Failure to comply with the EBO may be used as evidence  
15 against the Consultant in actions taken pursuant to the provisions of Long Beach  
16 Municipal Code 2.93 et seq., Contractor Responsibility.

17 E. If the City determines that the Consultant has set up or used its  
18 contracting entity for the purpose of evading the intent of the EBO, the City may  
19 terminate the Agreement on behalf of the City. Violation of this provision may be  
20 used as evidence against the Consultant in actions taken pursuant to the provisions  
21 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

22 22. NOTICES. Any notice or approval required by this Agreement shall  
23 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
24 postage prepaid, addressed to Consultant at the address first stated above, and to City at  
25 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy  
26 to the City Engineer at the same address. Notice of change of address shall be given in  
27 the same manner as stated for other notices. Notice shall be deemed given on the date  
28 deposited in the mail or on the date personal delivery is made, whichever occurs first.

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23. COPYRIGHTS AND PATENT RIGHTS.

A. Consultant shall place the following copyright protection on all Data: © City of Long Beach, California \_\_\_\_\_, inserting the appropriate year.

B. City reserves the exclusive right to seek and obtain a patent or copyright registration on any Data or other result arising from Consultant's performance of this Agreement. By executing this Agreement, Consultant assigns any ownership interest Consultant may have in the Data to City.

C. Consultant warrants that the Data does not violate or infringe any patent, copyright, trade secret or other proprietary right of any other party. Consultant agrees to and shall protect, defend, indemnify and hold City, its officials and employees harmless from any and all claims, demands, damages, loss, liability, causes of action, costs or expenses (including reasonable attorney's fees) whether or not reduced to judgment, arising from any breach or alleged breach of this warranty.

24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants

that Consultant has not employed or retained any entity or person to solicit or obtain this Agreement and that Consultant has not paid or agreed to pay any entity or person any fee, commission or other monies based on or from the award of this Agreement. If Consultant breaches this warranty, City shall have the right to terminate this Agreement immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments due under this Agreement or otherwise recover the full amount of the fee, commission or other monies.

25. WAIVER. The acceptance of any services or the payment of any

money by City shall not operate as a waiver of any provision of this Agreement or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

26. CONTINUATION. Termination or expiration of this Agreement shall

1 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
2 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

3 27. TAX REPORTING. As required by federal and state law, City is  
4 obligated to and will report the payment of compensation to Consultant on Form 1099-  
5 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
6 resulting from payments under this Agreement. Consultant shall submit Consultant's  
7 Employer Identification Number (EIN), or Consultant's Social Security Number if  
8 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of  
9 Financial Management. Consultant acknowledges and agrees that City has no obligation  
10 to pay Consultant until Consultant provides one of these numbers.

11 28. ADVERTISING. Consultant shall not use the name of City, its officials  
12 or employees in any advertising or solicitation for business or as a reference, without the  
13 prior approval of the City Manager or designee.

14 29. AUDIT. City shall have the right at all reasonable times during the  
15 term of this Agreement and for a period of five (5) years after termination or expiration of  
16 this Agreement to examine, audit, inspect, review, extract information from and copy all  
17 books, records, accounts and other documents of Consultant relating to this Agreement.

18 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
19 designed to or entered for the purpose of creating any benefit or right for any person or  
20 entity of any kind that is not a party to this Agreement.

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OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

BERRY, DUNN, MCNEIL & PARKER, LLC,  
a Maine limited liability company

June 26, 2017

By [Signature]  
Name Charles D. Snow  
Title Principal

June 26, 2017

By [Signature]  
Name Edmund L. Darany  
Title Principal

"Consultant"

CITY OF LONG BEACH, a municipal corporation

[Signature], 2017

By [Signature]  
City Manager  
Tom Modica  
Assistant City Manager  
"City"

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER

This Agreement is approved as to form on June 27, 2017.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy



# EXHIBIT “A”

## Scope of Work

## Exhibit A: Statement of Work

### Phase 1: ERP Technology Infrastructure Readiness Assessment

#### PHASE 1A – ASSESSMENT PLANNING

- 1. Conduct initial project planning.** BerryDunn's project team will conduct an on-site initial project planning meeting with the City's Project Management Team to review our proposed project approach, clarify goals and objectives, identify known project constraints, and refine dates and/or tasks as appropriate. During this time, we will help the City define the appropriate scope of the project, differentiating between what is necessary for project success as opposed to what is desired but nonessential. As part of this meeting, we will discuss our approach for managing communications between BerryDunn and the City, as well as our approach to scope, risks, and resource management.
- 2. Develop Assessment Plan.** Based on our initial project planning discussions, we will draft a detailed Assessment Plan for distribution to key project team members detailing the scope of the assessment, methodology to be used, and criteria for assessment; project stakeholders; and established timeframes.

This will offer a more specific work plan that is reflective of any changes to the work plan as described here that are desired by the City. We will facilitate a teleconference with the City to gain the Project Team's approval of the Assessment Plan, collecting any feedback for incorporation in the final version.

#### ***Deliverable: D1. Assessment Plan***

- 3. Request and Review Existing Documentation.** Prior to conducting our on-site work, we will provide the City with an Information Request Sheet to request available documentation that will be helpful to us during the project (e.g., network diagrams, security-related policies and procedures, internal and external data feeds). We respectfully request that the City provide the requested information prior to the project kickoff meeting and interviews, as reviewing available information in advance of our on-site work will enable us to be more efficient, become more knowledgeable of the current environment, and make best use of City personnel's time.
- 4. Conduct On-Site Fact-Finding Meetings.** We will conduct onsite fact-finding meetings related to the Infrastructure Readiness Assessment focusing on those key stakeholders involved in supporting the infrastructure for the project and its impact City-wide as well as key project stakeholders most familiar with the technology needs of the implementation. The purpose of these meetings is to review plans made to date, the status of infrastructure procurements and installations, and current adherence to performance and security metrics and goals. Where appropriate, our team will observe staff and tour facilities.

We anticipate these fact-finding interviews will take place over two-and-a-half days, with a team of BerryDunn consultants conducting the meetings. When necessary, the BerryDunn team will

accommodate unanticipated scheduling challenges of City personnel to make the best use of on-site time. Last-minute changes often alter the schedule for key stakeholders. Our approach is to always do what we can to accommodate such needs, to ensure that the project is progressing in as efficient a manner as possible.

**5. Develop draft Assessment Report.** Drawing on the information gathered through our review of documentation and on-site fact-finding sessions, we will prepare a draft Assessment Report. This Assessment Report will focus on overall Infrastructure Readiness including but not limited to the following areas:

- Required systems integration points and infrastructure enhancements
- Data security
- Business contingency and disaster recovery planning
- Complexity of required interface development and implementation
- Data center and environment controls
- Technical staff knowledge of the operating environment
- Recommended staff training
- Configuration management
- Change control
- Network perimeter management
- Database management
- Load, stress, or capacity testing tools
- Physical security
- Data integrity
- Plan for establishing necessary database environments for the implementation project
- End-user desktop, mobile and print environments
- Hosting support, including disaster recovery considerations

We will provide a draft of the Assessment Report to the City for review and facilitate an on-site work session to explain our findings and gain feedback. We believe it is important to obtain the City's validation and approval of these findings, as this information will serve as the benchmark for future Assessment Reviews. We will then revise the Assessment Report and update to final.

#### ***Deliverable: D2. Assessment Report***

### **PHASE 1B – SIX-MONTH ASSESSMENT REVIEWS**

**6. Conduct Six-month Assessment Reviews.** As part of BerryDunn's ongoing ERP infrastructure assessment for this engagement, we will provide Assessment Review Memos every six months. To inform these reports, we will conduct on-site fact-finding sessions with the same stakeholders our team met with during Phase 1A, identifying any changes in the City's environment, its progress toward mitigating the risks identified in the initial assessment and summarizing them in an executive-level draft Assessment Review Memo. We will then facilitate a teleconference with the City Project Team to review the draft Memo, gathering all feedback in a single final draft.

### ***Deliverable: D3. Assessment Review Memos***

#### **Phase 2: Quality Assurance Review**

##### **PHASE 2A – INITIAL REVIEW**

7. **Conduct planning for Phase 2.** BerryDunn's project team will initiate Phase 2 by planning related to the tasks and activities of the phase based upon the Assessment Plan developed in Phase 1.
8. **Develop QA Project Work Plan.** Based on our initial project planning discussions, we will draft a detailed QA Project Work Plan for distribution to key project team members detailing the scope of the assessment, methodology to be used, and criteria for assessment; project stakeholders; and established timeframes.

This will offer a more specific work plan that is reflective of any changes to the work plan as described here that are desired by the City. We will facilitate a teleconference with the City to gain the Project Team's approval of the QA Project Work Plan, collecting any feedback for incorporation in the final version.

### ***Deliverable: D4. QA Project Work Plan***

9. **Request and Review Existing Documentation.** Prior to conducting our on-site work, we will provide the City with an Information Request Sheet to request available documentation that will be helpful to us during the project (e.g., Vendor Work Plan, Implementation Schedule, and Resource Management Plan). We respectfully request that the City provide the requested information prior to the project kickoff meeting and interviews, as reviewing available information in advance of our on-site work will enable us to be more efficient, become more knowledgeable of the current environment, and make best use of City personnel's time.
10. **Develop and Administer SWOT Web Survey.** Coordinating with the City Project Manager, we will develop and distribute a web survey to City staff to understand issues and challenges with current system(s). We envision that this survey will be issued to the core department users and will be used to help determine City's current and future ERP system needs, as well as associated Strengths, Weakness, Opportunities, and Threats (SWOT). Prior to issuing the interview questionnaire, we will review the questions with the City's Project Manager. We will then provide the survey to the core department users for completion. The results of the survey will be used as one of many data points in developing our review of the implementation project plans.
11. **Conduct On-Site Fact-Finding Meetings.** We will conduct on-site fact-finding meetings with key project stakeholders from representative departments as agreed upon during planning for the phase. The focus of the meetings will be to learn the current status of the project, the state of project management key activities, and currently identified risks and issues. We will discuss the themes identified from the SWOT survey results to confirm assumptions and clarify any outstanding questions.

We anticipate these fact-finding interviews will take place over two-and-a-half days, with a team of BerryDunn consultants conducting the meetings. When necessary, the BerryDunn team will accommodate unanticipated scheduling challenges of City personnel to make the best use of on-site time.

**12. Develop draft QA Review Report.** Drawing on the information gathered through our review of documentation and on-site fact-finding sessions, we will prepare a draft QA Review Report. This written assessment of the vendor's implementation plan will include an evaluation of the following:

- Existing implementation schedule
- Resource management plan
- Project deliverables
- Approval milestones

It will also include recommended adjustments to enhance project success. We will provide a draft of the QA Review Report to the City for review and facilitate an on-site work session to explain our findings and gain feedback. We believe it is important to obtain the City's validation and approval of these findings, as this information will serve as the benchmark for future QA Reviews. We will then revise the QA Review Report and update to final.

***Deliverable: D5. QA Review Report***

**PHASE 2B – SIX-WEEK QA REVIEWS**

**13. Conduct Six-week QA Reviews.** As part of BerryDunn's ongoing implementation QA oversight for this engagement, we will provide QA Review Memos every six weeks. To inform these reports, we will conduct on-site fact-finding sessions with the same stakeholders our team met with during Phase 2A, evaluating the City's and vendor's progress toward established milestones and summarizing them in an executive-level draft QA Review Memo. Each Memo will identify steps the City has taken during the previous reporting period to adjust the implementation plan or implement recommended risk mitigation strategies, as well as provide any additional action steps our team would recommend. We will then facilitate a teleconference with the City Project Team to review the draft Memo, gathering all feedback in a single final draft.

***Deliverable: D6. QA Review Memos***

**Phase 3: Go-live Readiness Review**

**14. Conduct planning for Phase 3.** BerryDunn's project team will initiate Phase 3 by planning related to the tasks and activities of the phase based upon the Assessment Plan developed in Phase 1.

**15. Develop Go-live Readiness Review Plan.** Based on our initial project planning discussions, we will draft a detailed Go-live Readiness Review Plan for distribution to key project team members detailing the scope of the readiness review, methodology to be used, and criteria for assessment; project stakeholders; and established timeframes.

This will offer a more specific work plan that is reflective of any changes to the work plan as described here that are desired by the City. We will facilitate a teleconference with the City to gain the Project Team's approval of the Go-live Readiness Review Plan, collecting any feedback for incorporation in the final version.

***Deliverable: D7. Go-live Readiness Review Plan***

- 16. Develop and Administer End-User Web Survey.** In coordination with the City Project Manager, we will develop and distribute a web survey to the City stakeholder groups to evaluate the training provided, go-live readiness, and readiness for post-go-live operations from the end-user perspective. The results of this survey will inform our on-site work sessions, allowing us to discuss any outstanding issues at a more detailed level.
- 17. Conduct On-Site Fact-Finding Meetings.** We will conduct on-site fact-finding meetings with key project stakeholders identified as relating to our Go-Live Readiness Review Areas. The focus of the meetings will be to gather input and perspective as to the status of the Readiness Review Areas and tasks outstanding needing completion. We will discuss the perceived go-live issues identified in the survey results to begin developing action steps.

We anticipate these fact-finding interviews will take place over two-and-a-half days, with a team of BerryDunn consultants conducting the meetings. As with all of our on-site visits, the BerryDunn team will accommodate unanticipated scheduling challenges of City personnel to make the best use of on-site time.

- 18. Develop Go-Live Readiness Review Reports.** As part of each assessment, we will identify risks and provide specific recommendations for action items that must be completed in order to go live, as well as other considerations for the City and implementation vendor to address during or shortly after the transition to live operation of the system. Our assessment may include, but not be limited to, the availability of necessary reporting capabilities, adequacy of user training, data integrity, process defects or workarounds, and testing results. We also recommend that the implementation vendor provide its own readiness assessment, independent of BerryDunn's, and report its findings to the City.

***Deliverable: D8. Go-live Readiness Review Reports***

**Phase 4: Post-Live Review**

- 19. Conduct planning for Phase 4.** BerryDunn's project team will initiate Phase 4 by planning related to the tasks and activities of the phase based upon the Assessment Plan developed in Phase 1.
- 20. Conduct On-Site Post-Live Review Meetings.** BerryDunn's project teams will facilitate onsite Post-Live Review Meetings following the go-live cutover event of the two implementation phases. These meetings will focus on identifying open items related to the implementation of a contractual nature or otherwise, confirming the timing to address open items, and eliciting lessons learned to be either applied in the subsequent phase or in related City initiatives.

We envision the Post-Live Review Meetings taking place over up to two-and-a-half days with a team of BerryDunn consultants.

**21. Develop Post-Live Review Memo.** Following the Post-Live Review Meetings we will document the findings in the Post-Live Review Memo. Two memos will be developed in total, one for the Financials Phase and one for the HR Phase. Each memo will describe the work performed, key open items, timing and recommendations to address open items, and the lessons learned that were discussed.

***Deliverable: D9. Post-Live Review Memos***

## Exhibit B: Fee Schedule

Table 1 contains our fixed and all-inclusive cost for performing the tasks and activities within Phases 1 through 3. For the task and activities we will complete multiple times as part of this engagement, we will retain notice to proceed from the City Project Manager prior to beginning work on the iteration of each. The City Project Manager will authorize each task to be managed to the Project Total Budget of \$494,495. Reallocation of the work effort within this total budget may occur and will be authorized by the City Project Manager.

We will submit monthly progress invoices towards each deliverable to the City.

**Table 1: Cost Breakdown**

Phase	Cost
<b>Phase 1: ERP Technology Infrastructure Readiness Assessment</b>	
Phase 1A: Assessment Planning	\$40,770
Phase 1B: Six-month Assessment Reviews	\$9,000 per review
<b>Phase 2: Ongoing QA Review</b>	
Phase 2A: Initial Review	\$48,850
Phase 2B: Six-week QA Reviews	\$12,915 per review
<b>Phase 3: Go-live Readiness Review</b>	
Phase 3A: Financial Review	\$14,000
Phase 3B: HR Review	\$14,000
<b>Phase 4: Post-Live Review</b>	
Phase 4A: Financial Review	\$9,800
Phase 4B: HR Review	\$9,800

BerryDunn would be pleased to offer the City additional and related assistance as part of the ERP initiative if enacted via change order. Such additional services would be described in the related change order using the rates as depicted in Table 2. These rates are exclusive of travel expenses.

**Table 2: Rates for Additional Services**

Role	Rate
Analyst	\$165
Senior Analyst	\$205
Engagement Manager	\$275



# EXHIBIT “B”

Rates or Charges

## 4.0 Cost Proposal

As requested by the City, we have provided our fixed and all-inclusive cost proposal for performing Phases 1 through 3 in Table 1. BerryDunn does not charge for time spent traveling, so these costs are reflective only of the time our staff will spend on the City's project. We will progress bill the City on a monthly basis.

**Table 1: Cost Breakdown**

<b>Phase</b>	<b>Cost</b>
<b>Phase 1: ERP Technology Infrastructure Readiness Assessment</b>	
Phase 1A: Assessment Planning	\$40,770
Phase 1B: Six-month Assessment Reviews	\$9,000 per review
<b>Phase 2: Ongoing QA Review</b>	
Phase 2A: Initial Review	\$48,850
Phase 2B: Six-week QA Reviews	\$12,915 per review
<b>Phase 3: Go-live Readiness Review</b>	
Financial Review	\$14,000
HR Review	\$14,000

# EXHIBIT “C”

City’s Representative:

Dennis Finch, Business Information Technology  
Officer

(562) 570-6543

# EXHIBIT “D”

Materials/Information Furnished: None

# EXHIBIT “E”

Consultant’s Key Employee:

Charles Snow

(207) 541-2294