

1 B. The City's obligation to pay the sum stated above for any one
2 fiscal year shall be contingent upon the City Council of the City appropriating the
3 necessary funds for such payment by the City in each fiscal year during the term of
4 this Agreement. For the purposes of this Section, a fiscal year commences on
5 October 1 of the year and continues through September 30 of the following year. In
6 the event that the City Council of the City fails to appropriate the necessary funds
7 for any fiscal year, then, and in that event, the Agreement will terminate at no
8 additional cost or obligation to the City.

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

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

27 E. Consultant represents that Consultant has obtained all
28 necessary information on conditions and circumstances that may affect its

1 performance and has conducted site visits, if necessary.

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

5 2. TERM. The term of this Agreement shall commence at midnight on
6 October 1, 2014, and shall terminate at 11:59 p.m. on December 31, 2017, unless sooner
7 terminated as provided in this Agreement, or unless the services or the Project is
8 completed sooner.

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. Consultant further certifies that Consultant does not now have and shall
17 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
18 other source of income, interest in real property or investment which would be affected in
19 any manner or degree by the performance of Consultant's services hereunder. And,
20 Consultant shall obtain similar certifications from Consultant's employees, subconsultants
21 and contractors.

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

26 9. OWNERSHIP OF DATA. All materials, information and data
27 prepared, developed or assembled by Consultant or furnished to Consultant in connection
28 with this Agreement, including but not limited to documents, estimates, calculations,

1 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
2 models, reports, summaries, drawings, designs, notes, plans, information, material and
3 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
4 and City shall have the unrestricted right to use and disclose the Data in any manner and
5 for any purpose without payment of further compensation to Consultant. Copies of Data
6 may be retained by Consultant but Consultant warrants that Data shall not be made
7 available to any person or entity for use without the prior approval of City. This warranty
8 shall survive termination of this Agreement for five (5) years.

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

19 11. CONFIDENTIALITY.

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

1 B. Consultant qualifies under Section 7056 of the Revenue and
2 Taxation Code to review (Bradley-Burns) confidential taxpayer information and
3 documentation before the State Board of Equalization (BOE). Consultant is hereby
4 authorized by this Agreement to examine transaction tax, sales tax and use tax
5 records of the BOE pertaining to the ascertainment of those sales or transactions
6 and use taxes to be collected for the City.

7 C. Consultant is required to disclose information contained in, or
8 derived from, those transaction, sales and use tax records only to an officer or
9 employee of the City who is authorized by resolution to examine the information.

10 D. Consultant is prohibited from performing consulting services for
11 a retailer during the term of this Agreement.

12 E. Consultant is prohibited from retaining the information
13 contained in, or derived from, those transaction, sales and use tax records, after this
14 Agreement has expired.

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

21 13. ADDITIONAL COSTS AND REDESIGN.

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

28 B. If the Project involves construction and the scope of work

1 requires Consultant to prepare plans and specifications with an estimate of the cost
2 of construction, then Consultant may be required to modify the plans and
3 specifications, any construction documents relating to the plans and specifications,
4 and Consultant's estimate, at no cost to City, when the lowest bid for construction
5 received by City exceeds by more than ten percent (10%) Consultant's estimate.
6 This modification shall be submitted in a timely fashion to allow City to receive new
7 bids within four (4) months after the date on which the original plans and
8 specifications were submitted by Consultant.

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

12 15. LAW. This Agreement shall be construed in accordance with the laws
13 of the State of California, and the venue for any legal actions brought by any party with
14 respect to this Agreement shall be the County of Los Angeles, State of California for state
15 actions and the Central District of California for any federal actions. Consultant shall cause
16 all work performed in connection with construction of the Project to be performed in
17 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
18 county or municipal governments or agencies (including, without limitation, all applicable
19 federal and state labor standards, including the prevailing wage provisions of sections 1770
20 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
21 marshal, health officer, building inspector, or other officer of every governmental agency
22 now having or hereafter acquiring jurisdiction.

23 16. PREVAILING WAGES.

24 A. Consultant agrees that all public work (as defined in California
25 Labor Code section 1720) performed pursuant to this Agreement (the "Public
26 Work"), if any, shall comply with the requirements of California Labor Code sections
27 1770 *et seq.* City makes no representation or statement that the Project, or any
28 portion thereof, is or is not a "public work" as defined in California Labor Code

1 section 1720.

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

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

16 18. INDEMNITY.

17 A. Consultant shall indemnify, protect and hold harmless City, its
18 Boards, Commissions, and their officials, employees and agents ("Indemnified
19 Parties"), from and against any and all liability, claims, demands, damage, loss,
20 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
21 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
22 in connection with (1) Consultant's breach or failure to comply with any of its
23 obligations contained in this Agreement, including any obligations arising from the
24 Project's compliance with or failure to comply with applicable laws, including all
25 applicable federal and state labor requirements including, without limitation, the
26 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful
27 acts, errors, omissions or misrepresentations committed by Consultant, its officers,
28 employees, agents, subcontractors, or anyone under Consultant's control, in the

1 performance of work or services under this Agreement (collectively "Claims" or
2 individually "Claim").

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

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

17 D. The provisions of this Section shall survive the expiration or
18 termination of this Agreement.

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

21 20. NONDISCRIMINATION.

22 A. In connection with performance of this Agreement and subject
23 to applicable rules and regulations, Consultant shall not discriminate against any
24 employee or applicant for employment because of race, religion, national origin,
25 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
26 disability. Consultant shall ensure that applicants are employed, and that
27 employees are treated during their employment, without regard to these bases.
28 These actions shall include, but not be limited to, the following: employment,

1 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
2 termination; rates of pay or other forms of compensation; and selection for training,
3 including apprenticeship.

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

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

19 A. During the performance of this Agreement, the Consultant
20 certifies and represents that the Consultant will comply with the EBO. The
21 Consultant agrees to post the following statement in conspicuous places at its place
22 of business available to employees and applicants for employment:

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

28 B. The failure of the Consultant to comply with the EBO will be

1 deemed to be a material breach of the Agreement by the City.

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

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

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

14 22. NOTICES. Any notice or approval required by this Agreement shall
15 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
16 postage prepaid, addressed to Consultant at the address first stated above, and to City at
17 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
18 to the City Engineer at the same address. Notice of change of address shall be given in
19 the same manner as stated for other notices. Notice shall be deemed given on the date
20 deposited in the mail or on the date personal delivery is made, whichever occurs first.

21 23. COPYRIGHTS AND PATENT RIGHTS.

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

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

28 C. Consultant warrants that the Data does not violate or infringe

1 any patent, copyright, trade secret or other proprietary right of any other party.
2 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
3 and employees harmless from any and all claims, demands, damages, loss, liability,
4 causes of action, costs or expenses (including reasonable attorney's fees) whether
5 or not reduced to judgment, arising from any breach or alleged breach of this
6 warranty.

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

15 25. WAIVER. The acceptance of any services or the payment of any
16 money by City shall not operate as a waiver of any provision of this Agreement or of any
17 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
18 Agreement shall not constitute a waiver of any other or subsequent breach of this
19 Agreement.

20 26. CONTINUATION. Termination or expiration of this Agreement shall
21 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
22 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

23 27. TAX REPORTING. As required by federal and state law, City is
24 obligated to and will report the payment of compensation to Consultant on Form 1099-
25 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
26 resulting from payments under this Agreement. Consultant shall submit Consultant's
27 Employer Identification Number (EIN), or Consultant's Social Security Number if
28 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of

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

1 Financial Management. Consultant acknowledges and agrees that City has no obligation
2 to pay Consultant until Consultant provides one of these numbers.

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

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

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

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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.

MUNISERVICES, LLC, a Delaware limited liability company

September 13, 2017

By *Doug Jensen*
Name Doug Jensen
Title syp client services

_____, 2017

By _____
Name _____
Title _____

"Consultant"

CITY OF LONG BEACH, a municipal corporation

Sept. 25, 2017

By *TBM* EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.
City Manager

Tom Modica
"City Assistant City Manager"

This Agreement is approved as to form on Sept. 19, 2017.

CHARLES PARKIN, City Attorney

By *Charles Parkin*
Deputy

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

EXHIBIT “A”

Scope of Work

10/20/2014 10:10:10 AM

The following language is to be incorporated into Exhibit "A", Scope of Services, to the Agreement as if set forth therein.

Confidentiality Provisions

"MuniServices qualifies under Section 7056 of the Revenue and Taxation Code to review (Bradley-Burns) confidential taxpayer information and documentation before the State Board of Equalization (BOE). MuniServices is hereby authorized by this Agreement to examine transaction tax, sales tax and use tax records of the BOE pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the City.

MuniServices is required to disclose information contained in, or derived from, those transaction, sales and use tax records only to an officer or employee of the City who is authorized by resolution to examine the information.

MuniServices is prohibited from performing consulting services for a retailer during the term of this Agreement.

MuniServices is prohibited from retaining the information contained in, or derived from, those transaction, sales and use tax records, after this Agreement has expired."

EXHIBIT A

SCOPE OF SERVICES

SALES, USE AND TRANSACTION TAX AUDIT SERVICES

Audit Reviews & Methodologies

Taxable Nexus Field Audit. This audit focuses on those businesses located in the City from which the City has not been receiving sales or transactions and use tax revenue. The result is new or 'found' revenue for the City. MuniServices' initial and periodic Taxable Nexus Field Audits include a physical canvassing of the City's borders in addition to the commercial and industrial areas of the City, and an evaluation of sales or transactions and use tax generating businesses located in the City. All relevant aspects of business operations such as stocks of goods, will-call operations and other references to sales related activities will be reviewed. In the absence of this labor-intensive undertaking, significant misallocations may remain undetected through electronic data mining.

Tax Area Code (TAC)/Permitization Audits. This audit review focuses on the identification and correction of improperly registered permits for companies having point-of-sale or use operations in the City in addition to businesses that have been assigned an incorrect tax area code due to jurisdictional/boundary confusion. Wholesalers, contractors, manufacturers and other non-retail businesses frequently do not hold sales or transactions and use tax properly registered to the City in which they are located because their business operations do not include a point-of-sale qualifying activity. However, these companies will often generate local sales and use tax from the BOE audit deficiency assessments, new or changed operations, the self-accrual of use tax on purchases through direct payment permits. This review will be done in conjunction with physical canvassing.

Deficiency Assessment Audit. When the BOE audits taxpayers for sales or transactions and use tax compliance, it is not uncommon for the taxpayer to receive a substantial deficiency assessment due to underpayments and/or under collections. In many cases, the City's local allocation portion of the deficiency assessment is distributed in error to the State pool, countywide pool, or other jurisdictions. Accordingly, we have developed proprietary criteria and techniques to detect and correct BOE deficiency assessment misallocations and thus expand the benefits produced by our allocation audit service.

Quarterly Distribution Report (QDR) Audit. The QDR audits have the same objective as the other MuniServices' audits shown above: to detect, document and assist in correcting errors and thereby generate new, previously unrealized sales, use and transaction tax revenue for the City and focuses on those accounts where we observe a substantial deviation in historical allocation to include declines or missing payment, negative fund transfers and audit adjustments in the sales or transactions and use tax revenue allocation for a particular business entity. The QDR audits must be conducted in a timely manner in order to preserve the opportunity for the City to recover misallocated revenue and will include the most current economic period based on the calendar quarter and the three prior tax return periods. MuniServices will review 100% of those taxpayers reporting local tax to the City each quarter in addition to a comprehensive review of the countywide pool to ensure all possible allocation errors and aberrations are identified and submitted for correction.

Accounts Payable Audit Reviews. In order to identify opportunities for the City to recover the local allocation on purchase transactions subject to tax, and facilitate the recovery of such funds, MuniServices' will



perform an accounts payable audit that enables MuniServices to prepare the documentation to facilitate the issuance of a direct payment permit (use tax) to the City, where feasible, and provide technical assistance in preparing and filing the required tax returns. MuniServices accounts payable audits will also include, upon request by the City, a review of the City's purchases to identify opportunities for the City to capture the 1% local tax on purchases subject to use tax. Our staff will utilize various methodologies to identify tax refunds and unclaimed sales tax exemptions for the greatest opportunity for revenue recovery. The BOE has specific procedures and timing for filing refund claims it is important to prioritize and development a relationship with the vendor involved as they will be instrumental throughout the process.

Use Tax Audit & Recovery Opportunities

The use tax audit services are designed to not only capture use tax revenue through the review of past purchase activity by the businesses in the City, but also to assist in establishing new processes and procedures designed to prevent the pooling of these revenues and increase the direct allocation to the City. The use tax audits focus on identifying taxpayers purchasing tangible personal property directly from out-of-state retailers where the transactions are subject to use tax (rather than sales tax) which is often collected by the vendor who in turn remits it to the BOE, with the local allocation typically distributed statewide or countywide through the pools. These audits include proprietary techniques used to identify purchases made by businesses located in the City from out-of-state vendors that are in excess of \$500,000 by analyzing all County wide pools in addition to the statewide pool each quarter in order to redirect the local use tax allocation directly to the City and/or your corresponding countywide pool. Additional use tax audits can focus on the practice of "Use Tax Accrual" in certain conditions where the purchaser may elect to self-accrue the use tax and remit it directly to the BOE, in which case the local portion will come back to the City in the same manner as sales tax. This can involve both purchases made by the City itself or working directly with businesses and construction contractors and developers to establish the practice of self-accrual and direct remittance of the use tax to the BOE.

Correct Reporting Errors

MuniServices Sales/Use and Transaction Tax Audit team includes a full-time correction/case management team that is responsible for coordinating and facilitating the correction of the misallocation errors. This involves the following tasks:

- After a petition has been filed with the BOE the corrections team will initiate follow-up with the taxpayer both through direct or written communication. This follow-up will include discussions related to the misallocation at issue in addition to providing BOE contact information, links to the BOE website to facilitate correct local tax reporting on future returns to mitigate additional errors. Additional documentation to include amended tax returns, sales contracts and invoices as applicable will be obtained and provided to the BOE to facilitate correction.
- Comprehensive review of all BOE responses to petitions to ensure that all applicable local tax reallocations will be processed. This will include a review of all accounts with previously identified reporting errors to ensure that all statutory periods for which the City is eligible to recover sales and use tax revenue distributed in error are corrected for the most current economic period based on the calendar quarter and the three prior tax return periods.
- Respond to negative findings by the BOE in a timely fashion to preserve the City's Date of Knowledge (DOK). This may include additional research and communication with the taxpayer and the request for further documentation as necessary. If the City, or MuniServices at the City's request, fails to pursue any level of appeal prior to correction or final adjudication, the matter is deemed abandoned, the DOK is abandoned, and the City's right to receive corrected allocations for the prior periods is extinguished.

- Quarterly review of inventory/status of petitions to ensure that corrections are being processed in a timely fashion by the BOE. Continuous and timely follow-up on cases will reduce the amount of time to affect a correction thereby bringing the new revenue to the City faster. This may require meeting with BOE staff to discuss particular issues impacting the correction.
- Represent the City as necessary in the appeals of rejected or denied misallocation inquiries under the BOE Process set forth in Regulation 1807. MuniServices has the most experienced staff, to include an in-house attorney specializing in sales and use tax, to competently and aggressively represent the City's interests.

Corrections through the Appeals Process

MuniServices is the only professional services firm that tenaciously pursues misallocated local sales and use tax revenues using the Appeal process. The DOK is established to preserve the City's right to reallocations for all improperly allocated funds for three economic quarters prior to the quarter in which the DOK is established and for all subsequent economic quarters until correction or final adjudication of the inquiry. Once a petition has been filed we will reply to negative BOE responses, and pursue appeals through the BOE appeal process for accounts on the City's behalf for which we have established a DOK and for which we have determined that appeal is warranted. The BOE's process for escalating appeals is complex and involved and frequently takes several years if appeals are pursued through final administrative rights. However, due to the extensive investigation performed prior to submitting the petition, along with applicable supporting documentation provided, most MuniServices cases are resolved at either the first or second level of the appeals process as described in Regulation 1807. MuniServices will keep the City apprised to the status of each of these accounts on a quarterly basis through an open account status report.

Sales Tax Reports & Documentation

Audit Update Report. Quarterly reports addressing each taxpayer reporting error individually submitted to the BOE on the City's behalf, which includes the business name, address, telephone number, California sales tax permit number, individuals contacted, date(s) of contact, nature of business, reason(s) for error, recommended corrective procedure and, if available, estimated sales and use tax revenue which should be forthcoming to City.

Open Account Status Report. MuniServices will provide quarterly status reports containing detailed information on sales and use tax inquiries filed with the BOE on behalf of the City. These status reports will include a list of accounts filed with the BOE including taxpayer name and address, Date of Knowledge ("DOK"), and sales and use tax permit number, current status of accounts including estimate of amount of local sales and use tax due the City, plus additional information that may be requested by City to be included in this report.

Sales Tax Audit Invoice Progress Report. Detailed listing of accounts corrected that the contingency fee applies with supporting documentation.

Other Documents/Reports. These documents that are included in the quarterly invoice package will show the recovered amount, what economic period the recovery is for, the taxpayer's names, and permit numbers.

SALES TAX ANALYTICS & REPORTING AND FORECASTING SERVICES (STARS)

Beyond anything else available to local governments, STARS allows clients to experience their sales and use tax information rather than just review or analyze it. A powerful combination of an online data analytics platform and in-person discussions and training sessions makes your local economy real in the eyes of decision makers and analysts alike. You are going to enjoy seeing sales tax analytics the way it is meant to be.

Our Sales and Use Tax Analytics Reporting Service (STARS) increase our clients' understanding of their revenue base and the associated economic dynamics. The experiential information flows intuitively from business-level details through varying levels of classifications to the City-wide aggregations historically, in the present and in the future by way of multi-year projections. Taken together, the comprehensive information empowers the City personnel with tools to make well-informed, short-term, mid-term and long-term budgeting decisions. The services directly tie budget decisions to actual cash and economic conditions. It makes your economy make sense.

Online Service

MuniServices has invested in a new STARS service. The new service, which will not only move the service online, add more robust features and replace the current books and inquiry system, but also will enhance the service through optional services like GIS mapping as outlined in the appendix to this document. This is an example of MuniServices ongoing investment and resources devoted to our services.

Reporting

MuniServices' system is designed with the many end users (city council, city management, finance, budgeting and analysts, etc.) and their varying needs in mind. The reporting begins with interactive dashboards showing key performance indicators and major anomalies and moves to more detailed reports. The detailed reports not only include top sales tax generators ranked by tax amount and business performance analysis over time, but also provide sales trends for business categories, sales tax capture/leakage analysis by economic business code and comparisons to other local, county and state jurisdictions. The systems design allows ongoing enhancement and extensions to the report libraries, giving the user, no matter the degree of detail they require, to access a report that matches their needs.

Quarterly Meetings

Beyond the powerful tools for economic analysis the City will find in our new system, MuniServices' will provide our concierge-level service and Quarterly Sales Tax Review Meetings, support for ad-hoc inquiries, forecasting, and other consulting. Our underlying philosophy in our reporting revolves around visualizing the answers to your key questions and in increasing the flexibility of the reports so that you can follow the trail of questions and answers as you analyze the data for insight. Additionally, these quarterly updates include a review of pertinent legislative and regulatory activities.

Economic Overview

Clients have found our collection of economic news articles through the current month indicating performance of future sales tax to be very helpful in understanding forces affecting their revenue. MuniServices monitors dozens of news releases about articles that may have an impact on your sales and use tax including business journals, Los Angeles Times, Wall Street Journal, Kiplinger, Associated Press, daily legislative bulletins, California Association of Realtors, California New Car Dealers Association,

Bloomberg, and dozens of additional sources to share this information with our clients. Our analysts attend regional forecasts and reviews credible and reliable sources to ensure the most reliable messages.

The Forecast

MuniServices provides a five-fiscal year sales and use tax forecast to our Clients included in our STARS contracts with no extra fees. While other firms rely solely on tax analysis modeling provided through services such as Beacon Economics, MuniServices takes our projections several steps further. Every quarter the City's dedicated Client Services Manager brings an updated forecast that takes economic analysis and integrates the City's unique economic indicators including: business-level adjustments based on business-by-business projections; micro-economic trends; macroeconomic trends; sales and use tax anomalies; future developments; and threatened business, but also integrates those adjustments into three forecast scenarios. The proprietary process provides a customized, accurate forecast for the City, which results in accuracy within 1% - 2% of actual revenues received. The five year forecast includes growth adjustments by segment as well as for the County pool. MuniServices also provides a "recession scenario," which is the amount of impact a future recession would have on the tax revenues of the City.

EXHIBIT “B”

Rates or Charges

Long Beach, CA

Cost Proposal for Sales and Use Tax Auditing,

Projection and Recovery, and

Other Revenue Audit Services

RFP No. FM 14-115

Due. July 22, 2014

11:00 a.m.



7625 N. Palm Ave., Ste. 108

Fresno, CA 93711



Cost Proposal

Sales & Use Tax Audit (SUTA) Services

MuniServices compensation for the Sales and Use Tax Audit Service will be a 15% contingency fee. This fee applies to 6 quarters after the Date of Correction and all eligible prior quarters back to and including the three quarters prior to the Date of Knowledge quarter. The Date of Knowledge is the quarter during which MuniServices notifies the State Board of Equalization (SBE) of the existence of a misallocation. The Date of Correction refers to the quarter in which the taxpayer has correctly reported the local tax and the SBE distributes the local tax properly to City based on the taxpayer's reporting, together with any prior period reallocations. For QDR Misallocations detected and corrected, MuniServices compensation will only include the quarters in which the misallocation actually occurred.

MuniServices will be entitled to full payment of all compensation even if any one or more of City, its personnel, agents, or representatives, or any third party or parties provide(s) information to MuniServices that assists or is used by MuniServices in the identification, detection, and correction of point-of-sale distribution errors or the reporting and/or misallocation of revenue.

In the event that the City identifies, documents, and notifies the SBE of a point-of-sale distribution error, reporting error or misallocation as those terms are used herein, the City will notify MuniServices of the City's discovery no later than ten days after the Date of Knowledge as defined in Title 18 of the California Code of Regulations, Regulation 1807 ("Date of Knowledge"). The City also agrees to notify MuniServices promptly if it is working on a local tax misallocation issue independently of MuniServices and to maintain and promptly make available to MuniServices on request contemporaneous documentation of such work and its timing so we do not duplicate work.

MuniServices' fees apply to all work accomplished during the contract term even if the tax corrects after the term of the contract.

Completion of Services

Notwithstanding any other provision of this Agreement, because Consultant's services performed hereunder result in corrections of misallocations and other revenue after cessation of services by Consultant for City, City agrees that with regards to misallocations identified to the SBE whose Date of Knowledge occurred during Consultant's performance of services for City or for other revenue resulting from Consultant's actions taken during the term of this Agreement, that City's obligation to pay Consultant in accordance with the compensation language of this Agreement shall survive expiration or termination of this Agreement for any reason. Additionally, notwithstanding any other provision of this Agreement, if this Agreement is terminated or expires, Consultant shall continue to pursue corrections of accounts identified during the term of this Agreement that have not been corrected by the SBE as of the effective date of termination or expiration. The period after termination during which Consultant is pursuing correction of accounts identified before termination is referred to as the "completion period." City shall compensate Consultant in accordance with the compensation language of this Agreement for corrected misallocations that result from Consultant's efforts during the completion period. City will also take all necessary steps to allow Consultant to continue to receive the required information from the SBE during this completion period.



Business Cooperation Program (BCP) – Use Tax

MuniServices' compensation will be 20% of the new sales and use tax revenue received by the City as a result of MuniServices' efforts. If MuniServices' efforts result in on-going new sales or use tax revenues to the City, then MuniServices will participate in those new revenues for the first 12 consecutive quarters in which a business reports the new revenues after beginning its participation in the BCP. With regard to new sales or use tax revenues generated from construction projects, MuniServices only participates with the new revenues generated during the life of the construction project. MuniServices will bill the City its 20% participation fee on the new sales and use taxes generated on a quarterly basis.

Additional Consulting

City may request that MuniServices provide additional consulting services at any time during the term of the Agreement. If MuniServices and City agree on the scope of additional consulting services requested, then MuniServices will provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, MuniServices standard hourly rates range from \$75 per hour to \$300 per hour.

In the event that MuniServices determines there are extraordinary circumstances that warrant more intensive and detailed services beyond those included in the scope for BCP services, MuniServices will provide notice to the City in writing and in advance of the reason for the additional services together with MuniServices' estimate of costs. MuniServices will not undertake to perform, nor will City be obligated to pay for, any additional services except those services that are agreed to in writing by City and MuniServices.

These additional consulting services will be invoiced no less frequently than monthly based on actual time and expenses incurred.

Completion of Services

Notwithstanding any other provision of the Agreement, because MuniServices' services performed will result in corrections of misallocations and other revenue after cessation of services by MuniServices for City with regards to misallocations identified to the SBE whose Date of Knowledge occurred during MuniServices' performance of services for City or for other revenue resulting from MuniServices' actions taken during the term of the Agreement, that the City will be obligated to pay MuniServices in accordance with the compensation language of the Agreement shall survive expiration or termination of this Agreement for any reason. Additionally, notwithstanding any other provision of the Agreement, if this Agreement is terminated or expires, MuniServices shall continue to pursue corrections of accounts identified during the term of this Agreement that have not been corrected by the SBE as of the effective date of termination or expiration. The period after termination during which MuniServices is pursuing correction of accounts identified before termination is referred to as the "completion period." City will compensate MuniServices in accordance with the compensation language of the Agreement for corrected misallocations that result from MuniServices' efforts during the completion period. City will also take all necessary steps to allow MuniServices to continue to receive the required information from the SBE during the completion period.



Economic Analysis -Sales Tax Analysis and Reporting Service (STARS)

The STARS Digest and Query System will be provided for an Annual Fee of \$10,000 paid in quarterly installments. The Annual Fee will be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index - West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the CPI-WU for the month in which the agreement is fully signed with the first adjustment to occur at the beginning of the Calendar year following the first full calendar year of service.

Franchise Fee Compliance Audit Services

Typically the Compensation for the Franchise Fee Audits (gas, electric, telecommunications, Cable TV) Audit service is a fixed fee and will be based on the number of audits and the number of years reviewed. Should the City desire to contract for this service we would negotiate the compensation upon mutually agreeable terms.

Solid Waste Hauler Franchise Fee Compliance Program

Typically the Compensation for the Solid Waste Compliance Program is on a fixed fee basis and will be determined when the City provides additional information regarding its waste haulers. Should the City desire to contract for this service we will negotiate the compensation. A sample of the compensation language is shown here. Please note - this sample compensation is only for standard waste hauler audits. It does not apply to work for landfill or other audits. Compensation for those other audits will be negotiated when a scope of service is agreed upon.

Phase I Audit - Reasonableness Test Compliance Review

The Phase I Audit will be a fixed fee of \$17,500 for all three years (3) included in the review. This compensation includes an audit on up to 5 haulers; \$1,500 will be charged for each additional hauler. The fixed fee is due and payable immediately after the completion of Phase I.

In addition, MuniServices will charge a 25% contingency fee on audit findings up to \$300,000 and 15% on all findings greater than \$300,000.

The contingent fee is applied to the final finding amount agreed to by the City and the hauler, or arrived at through mediation and/or a legal proceeding. The contingent fee applies to all financial benefit obtained by the City resulting from audit findings. Phase I flat fee costs will be deducted from findings before contingency fee is applied.

Phase II - Agreed-Upon Procedures Franchise Fee Audit

If the waste haulers refuse to cooperate or disagree with the findings of the Reasonableness Test Compliance Review or the City does not want to offer the settlement agreement after Phase I, MuniServices will provide the Agreed-Upon Procedures Franchise Fee Audit for the contingent fees outlined above. Additionally, MuniServices shall be entitled to reimbursement of reasonable travel and other out-of-pocket expenses associated with the conduct of the audit. Such reimbursement shall be for actual costs of travel, meals, and lodging (receipts provided) and shall not exceed \$1,000 without the written approval of the City. The out-of-pocket expenses shall be invoiced upon issuance of the final report of the Phase II finding to the City.



Optional Jurisdictional Verification Service

Should MuniServices provide the Optional Jurisdictional Verification Service to the City, it will be provided for a fixed fee of \$2,000 per solid waste hauler. This fee shall be invoiced upon the completion of the report.

EXHIBIT “C”

City’s Representative:

Geraldine Alejo, Revenue Management Officer

(562) 570-5478

EXHIBIT “D”

Materials/Information Furnished: None

EXHIBIT “E”

Consultant’s Key Employee:

Doug Jensen