

AGREEMENT

34879

THIS AGREEMENT is made and entered, in duplicate, as of January 11, 2018, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on January 9, 2018, by and between TMG UTILITY ADVISORY SERVICES, INC. DBA TMG CONSULTING, INC., a Texas corporation ("Consultant"), with a place of business at 388 Feathergrass Drive, Buda, Texas 78610, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with project management services for the implementation of payment processing services ("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 Two Hundred Sixty-Three Thousand One Hundred Dollars (\$263,100), at the rates or charges shown in Exhibit "B".

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

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

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

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

26 E. Consultant represents that Consultant has obtained all
27 necessary information on conditions and circumstances that may affect its
28 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 January 10, 2018, and shall terminate at 11:59 p.m. on December 31, 2019, unless sooner
6 terminated as provided in this Agreement, or unless the services or the Project is
7 completed sooner.

8 3. COORDINATION AND ORGANIZATION.

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

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

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

(b) City will not secure workers' compensation or pay unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of the usual and customary rights, benefits or privileges of City employees. Consultant expressly warrants that neither Consultant nor any of Consultant's employees or agents shall represent themselves to be employees or agents of City.

5. INSURANCE.

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

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

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

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

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

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

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

24 D. If this coverage is written on a "claims made" basis, it must
25 provide for an extended reporting period of not less than one hundred eighty (180)
26 days, commencing on the date this Agreement expires or is terminated, unless
27 Consultant guarantees that Consultant will provide to City evidence of uninterrupted,
28 continuing coverage for a period of not less than three (3) years, commencing on

1 the date this Agreement expires or is terminated.

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

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

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

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

24 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
25 contemplates the personal services of Consultant and Consultant's employees, and the
26 parties acknowledge that a substantial inducement to City for entering this Agreement was
27 and is the professional reputation and competence of Consultant and Consultant's
28 employees. Consultant shall not assign its rights or delegate its duties under this

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

11 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
12 certifies that, at the time Consultant executes this Agreement and for its duration,
13 Consultant does not and will not perform services for any other client which would create
14 a conflict, whether monetary or otherwise, as between the interests of City and the interests
15 of that other client. Consultant further certifies that Consultant does not now have and shall
16 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
17 other source of income, interest in real property or investment which would be affected in
18 any manner or degree by the performance of Consultant's services hereunder. And,
19 Consultant shall obtain similar certifications from Consultant's employees, subconsultants
20 and contractors.

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

25 9. OWNERSHIP OF DATA. All materials, information and data
26 prepared, developed or assembled by Consultant or furnished to Consultant in connection
27 with this Agreement, including but not limited to documents, estimates, calculations,
28 studies, maps, graphs, charts, computer disks, computer source documentation, samples,

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

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

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

26 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
27 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
28 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available

1 without breach of this Agreement by Consultant; or (c) a third party who has a right to
2 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
3 disclosed pursuant to subpoena or court order.

4 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

23 15. LAW. This Agreement shall be construed in accordance with the laws
24 of the State of California, and the venue for any legal actions brought by any party with
25 respect to this Agreement shall be the County of Los Angeles, State of California for state
26 actions and the Central District of California for any federal actions. Consultant shall cause
27 all work performed in connection with construction of the Project to be performed in
28 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,

1 county or municipal governments or agencies (including, without limitation, all applicable
2 federal and state labor standards, including the prevailing wage provisions of sections 1770
3 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
4 marshal, health officer, building inspector, or other officer of every governmental agency
5 now having or hereafter acquiring jurisdiction.

6 16. PREVAILING WAGES.

7 A. Consultant agrees that all public work (as defined in California
8 Labor Code section 1720) performed pursuant to this Agreement (the "Public
9 Work"), if any, shall comply with the requirements of California Labor Code sections
10 1770 *et seq.* City makes no representation or statement that the Project, or any
11 portion thereof, is or is not a "public work" as defined in California Labor Code
12 section 1720.

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

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

27 18. INDEMNITY.

28 A. Consultant shall indemnify, protect and hold harmless City, its

Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, arising or alleged to have arisen, in whole or in part, out of or in connection with (1) Consultant's breach or failure to comply with any of its obligations contained in this Agreement, including any obligations arising from the Project's compliance with or failure to comply with applicable laws, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful acts, errors, omissions or misrepresentations committed by Consultant, its officers, employees, agents, subcontractors, or anyone under Consultant's control, in the performance of work or services under this Agreement (collectively "Claims" or individually "Claim").

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

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

D. The provisions of this Section shall survive the expiration or

1 termination of this Agreement.

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

4 20. NONDISCRIMINATION.

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

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

26 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
27 accordance with the provisions of the Ordinance, this Agreement is subject to the
28 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the

1 Long Beach Municipal Code, as amended from time to time.

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

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

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

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

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

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

25 22. NOTICES. Any notice or approval required by this Agreement shall
26 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
27 postage prepaid, addressed to Consultant at the address first stated above, and to City at
28 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy

to the City Engineer at the same address. Notice of change of address shall be given in the same manner as stated for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever occurs first.

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

1 Agreement shall not constitute a waiver of any other or subsequent breach of this
2 Agreement.

3 26. CONTINUATION. Termination or expiration of this Agreement shall
4 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
5 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

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

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

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

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

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

3 TMG UTILITY ADVISORY SERVICES,
4 INC. DBA TMG CONSULTING, INC., a
5 Texas corporation

6 1/19, 2018

By [Signature]
Name Tim Acuna
Title CEO

7
8 1/20, 2018

By [Signature]
Name Mario M. Bauer
Title CEO

9 "Consultant"

10 CITY OF LONG BEACH, a municipal
11 corporation

12 1/23, 2018

13 By [Signature]
14 City Manager

15 "City"

16 This Agreement is approved as to form on 1-22, 2018.

17 CHARLES PARKIN, City Attorney

18 By [Signature]
19 Deputy
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EXHIBIT “A”

Scope of Work



Attachment A: Scope of Work

TMG Utility Advisory Services Inc. ("TMG") will provide the City of Long Beach, California ("CLB") with Project Management Services for the Payment Processing project.

TMG Project Management(PM) will assist the City with the transition from the existing Contractor (Fidelity National Information Systems, Inc.) to its new Contractor (Kubra America West, Inc.).

The Project Management activities and tasks will cover the following City requirements:

- Serve as the primary point of contact for all project activities
- Develop and maintain detailed work plan and project charter
- Develop and maintain Project readiness checklist
- Manage implementation and cut-over of the various phases
- Develop and maintain formal project acceptance and conduct post implementation evaluation
- Bi-weekly and monthly reporting
- Attendance of monthly Project Execution Committee meetings
- Oversight of User Acceptance Testing

The following diagram provides a high-level view of tasks and activities for the duration of the project. The specific dates and task details will be expanded upon once the project starts and the teams finalize the scope

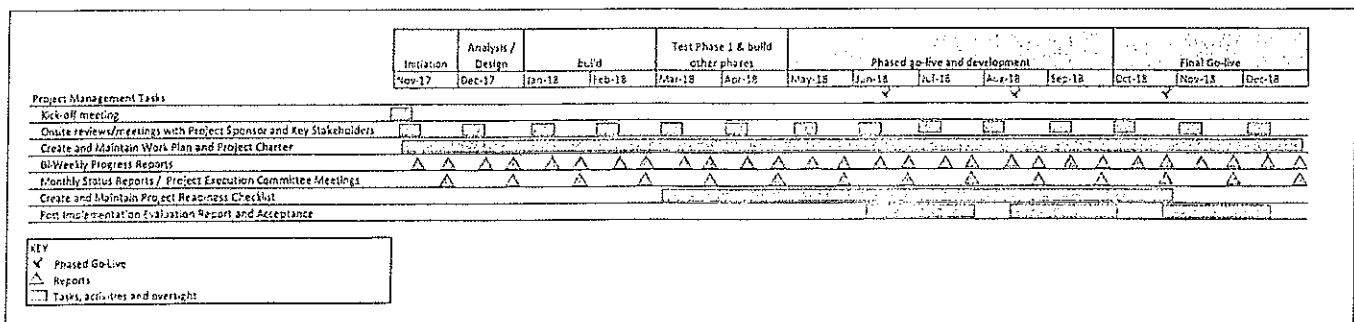


Figure 1: High-level overview of activities/Tasks

Tasks

1. Work Program Management



- The City of Long Beach's selected Vendor (KUBRA) will be under contract to develop the project work plan. The TMG Project Manager will work with KUBRA, City of Long Beach personnel and other third parties to integrate the individual project work plans into a consolidated Master Work Program.
- The Master Work Program will be maintained, and key data will be published.
- The TMG Project Manager will generate and issue work assignments to the project teams via a Weekly Task List. Team members will be responsible for entering percentage completion or hours worked with an estimate to complete on their project work plan.
- The TMG Project Manager will provide the tools and manage the process for all staff to input hours worked and completion information directly into the work program on a weekly basis.

DELIVERABLE: Master Work Project Program, maintained (includes project schedule delineating the estimated time and cost for the completion of each project task and project deliverable), Functional and Load Testing Plan, Data Migration Plan, Integration Test Plan, Monthly Progress/Status Reports

2. Scope Management

- During Project Initiation, the TMG Project Manager will assist KUBRA and City of Long Beach's project team in developing the Project Charter. In addition, the TMG Project Manager will review existing change order practices and processes. During this time, the TMG Project Manager will document and obtain approval for the Project Charter and the change order process. The TMG Project Manager will publish the process to all parties, including relevant form development.
- The TMG Project Manager will use a shared drive or other existing document-sharing infrastructure to manage the change order log and change order forms ensuring that there is adherence to the process.
- The TMG Project Manager will incorporate approved change orders and their effect into the Master Work Program and other relevant documents, including the Vendor/SI and other third-party Agreements, and the revised Cost-To-Budget analysis if requested by the Commission.

DELIVERABLES: Project Scope Plan, Change Management Plan, Project Charter, Change Order Process, Change Order Log.

3. Issue / Problem Management

- The TMG Project Manager will review existing issue forms, practices and processes. The TMG Project Manager will create a form and process for review and approval by both parties as necessary and publish them to the relevant parties.
- The TMG Project Manager will use the shared drive or other City of Long Beach infrastructure to manage the issue process and issue forms.



- The TMG Project Manager will incorporate resolved issues as required into relevant documents, including the Master Work Program and other documents, including the Contract Packages, and the revised Cost-To-Budget analysis if requested by City of Long Beach.

DELIVERABLES: Issue and Problem Management Process and Procedures, Issue/Problem Log (bug tracking database)

4. Cost / Budget Management

- The TMG Project Manager will work with City of Long Beach to deploy the process for capturing cost and time information for use in Cost to Budget analysis. The TMG Project Manager will plan on capturing internal staff time using timesheets or accounting reports, and expenses from expense vouchers or accounting reports.
- The TMG Project Manager will capture integrator costs and third-party costs from submitted invoices.
- The TMG Project Manager will capture internal overhead allocations and other indirect costs applied to the project from various accounting reports.

DELIVERABLES: Cost-To-Budget Analysis (as requested)

5. Personnel Management

- The TMG Project Manager will act on behalf and in the best interest of City of Long Beach. The TMG Project Manager is not responsible for City of Long Beach personnel, KUBRA, and other third-party personnel working on the project. However, the TMG Project Manager will assume responsibility for: Overall Project Management and task administration, administering and updating the organization chart and updating the project roster.
- The TMG Project Manager will work to develop a list of equipment "owned" by the program.
- The TMG Project Manager will work with City of Long Beach to identify workspace, conference rooms, workrooms, and other space as required by the program.

DELIVERABLES: Organization Chart, Project Roster

6. Tools / Environment Management

- The project team will require various hardware and software tools to conduct their work. The TMG Project Manager will work with City of Long Beach, vendors and integrators to insure all team members have access to equipment and tools required for project management related tasks.
- Typically, development environments and their size are outlined in the contract package and relevant statement of work. The TMG Project Manager will work with all parties to



document these environments, their size, progression of updates, and operating schedules per the contract.

7. Approval Management

- The TMG Project Manager will review and accept or coordinate the acceptance of project deliverables as directed by City of Long Beach. This may include but is not limited to: the detailed project work program, functional specifications for interfaces and modifications, unit test plans, training plans, conversion plans, conversion mapping documents, system test plan, system test results, bill print format, user acceptance test plan, user acceptance test results, and other deliverables as identified.
- The Vendor/SI's project deliverables and the approval or acceptance process are outlined in the contract packages and relevant statements of work. The TMG Project Manager will coordinate the receipt and approval/rejection of each project deliverable.

DELIVERABLES: Coordination of receipt, approval/rejection of project deliverables

8. Contract Management

- The TMG Project Manager will develop a contract management plan for City of Long Beach's approval.
- The TMG Project Manager will administer the software, Vendor/SI and other third-party contracts and apply valid change orders.
- The TMG Project Manager will work with City of Long Beach procurement team to close out contracts using City of Long Beach defined processes.

DELIVERABLES: Change order documentation, Contract close out documentation

9. Reporting / Status Management

- The TMG Project Manager will prepare and present regular Progress and status report package which consists of the following: Project Status Write-up, Project Dashboard, Project Schedule, Project Organization, Work Program with Critical Path, Change Order Log, Issue Log, Cost to Budget Analysis, Deliverable Log, Risk Register and Procurement Status.
 - Bi-Weekly Progress Report for the Business Information Systems Bureau Manager
 - Monthly Status Reports for the Project Execution Committee
- Additional Reporting and Status Management along with distribution will be documented in the Communication Plan.
- Attend all Project Meetings and Execution Committee Meetings (in-person or via conference)
- Develop and maintain Project Readiness Checklist (includes Staffing support plan, system maintenance and operational procedures, disaster recover/ Continuity of Operations Plan, Preventative Maintenance, Software License renewal plan, hardware replacement plan, refresher training)



- Conduct and document Post Implementation Evaluation Report for each phase
- Cutover Plan

DELIVERABLES: Bi-Weekly Progress Report Package, Monthly Status Reports, UAT reporting, Project Readiness Checklist, Post Implementation Evaluation Report review for each phase.

10. Communication / Document Management

- The TMG Project Manager will work with City of Long Beach's Organizational Change Management Agent and City of Long Beach's Corporate Communications department in the development of a Communication Plan to be approved by City of Long Beach, which outlines communications, frequency and distribution.
- The TMG Project Manager will assist project staff as needed with facilitating communication between all aspects of the project team and coordinating the tools, resources and documents into a local repository throughout the project.

DELIVERABLES: Communication Plan, To-be Business Process Documents, Training Documents, Knowledge Transfer Plan

11. Risk Management

- The TMG Project Manager will create the risk plan, conduct analysis of risks, and develop a response to each risk.
- The TMG Project Manager will provide the risk assessment to both City of Long Beach and Vendor/SI for review and update.

12. Test Support

- The TMG Test Lead will work with the City's team to develop, validate and co-ordinate the creation of test scripts.
- The TMG Project Manager will monitor, assist with and report on testing progress.



Personnel

TMG's Primary Consultant performing work for this engagement will be Pam Glanvill and Ebitari Larsen.

Schedule

Services shall be delivered during the period 12/04/2017 and 12/31/2018 at the rates and cost defined in Attachment B: Fees

EXHIBIT “B”

Rates or Charges

Attachment B: Fees

TMG will provide the services described herein for a not to exceed cost of \$263,100 inclusive of travel and living expenses. Invoices will be generated twice a month based on the hours worked at the rates listed in the Rate Table below.

Travel and living expenses are inclusive, with up to 18 onsite weeks

The pricing assumes a project duration of up to 14 months, with the following phases: Initiation, analysis/design, build, test, go-live and stabilization for the various business departments. The specific dates and task details will be expanded upon once the project starts and the teams finalize the scope

The following table contains the rates for the Project Resources:

Resource	Total Estimated Effort (hours)	Hourly Rate	Fee
Pam Glanvill	1020	\$235	\$239,700
Ebjart Larsen	120	\$195	\$23,400
Total	1260		\$263,100

Figure 2: Rate Table

The following table provides a high-level plan of deliverables, the dates, effort and cost for planning purposes.

Phase/Activities	Estimated Hours	Hourly Rate	Not to exceed Total Cost
Project Initiation <ul style="list-style-type: none"> • Project Charter • Organization Chart • Project Roster • Master Work Project Program, maintained (includes project schedule delineating the estimated time and cost for the completion of each project task and project deliverable) • Change Management Plan • Communication Plan • Knowledge Transfer Plan • Data Migration Plan (if applicable) 	160 Hours (~November 2017)	\$235	\$37,600.00

Phase/Activities	Estimated Hours	Hourly Rate	Not to exceed Total Cost
<p>Develop Project Plan</p> <p>Meet on-site with the City's Project Sponsor and other key stakeholders to complete a detailed review of the scope of work, Project Schedule and other items to ensure a successful project. This includes phases, tasks, subtasks, key milestones, and deliverables. A project charter will be produced that will include key components of the Project Management Plan, change management plan, the risk/issue management plan, the communications plan and training plan.</p> <p>Deliverables include:</p> <ul style="list-style-type: none"> • Monthly Progress/Status Reports • Project Scope Plan • Change Order Process • Change Order Log • Issue and Problem Management Process and Procedures • Issue/Problem Log (bug tracking database) • Cost-To-Budget Analysis (as requested) • Coordination of receipt, approval/rejection of project deliverables • Change order documentation • Bi-Weekly Progress Report Package • Monthly Status Reports • Integration Test Plan 	<p>220 hours</p> <p>(~December 2017)</p>	<p>160 hours at \$235 and 60 hours at \$195</p>	<p>\$49,300.00</p>
<p>Project Implementation</p> <p>Deliverables include ongoing updates and maintenance of all initial plans created above:</p> <ul style="list-style-type: none"> • Monthly Progress/Status Reports • Project Scope Plan • Change Order Process • Change Order Log • Issue and Problem Management Process and Procedures • Issue/Problem Log (bug tracking database) 	<p>400 hours</p> <p>(Full duration of project)</p>	<p>\$235</p>	<p>\$94,000.00</p>

Phase/Activities	Estimated Hours	Hourly Rate	Not to exceed Total Cost
<ul style="list-style-type: none"> Cost-To-Budget Analysis (as requested) Coordination of receipt, approval/rejection of project deliverables Change order documentation Bi-Weekly Progress Report Package Monthly Status Reports Integration Test Plan To-be Business Process Documents 			
User Acceptance Testing (UAT) <ul style="list-style-type: none"> UAT reporting Functional and Load Testing Plan Training Documents 	160 hours (~February, March, April 2018)	100 hours at \$235 and 60 hours at \$195	\$35,200.00
Project Readiness Checklist <ul style="list-style-type: none"> Project Readiness Checklist (includes Staffing support plan, system maintenance and operational procedures, disaster recover/ Continuity of Operations Plan, Preventative Maintenance, Software License renewal plan, hardware replacement plan, refresher training) 	80 hours (~May through October 2018)	\$235	\$18,800.00
Implementation and Cut-Over <ul style="list-style-type: none"> Cutover plan 	80 hours (~May through October 2018)	\$235	\$18,800.00
Post Implementation Evaluation Report <ul style="list-style-type: none"> Post Implementation Evaluation Report review for each phase Contract close out documentation 	40 hours (~October to December 2018)	\$235	\$9,400.00

Figure 3: Deliverables, timing and Cost Estimate

EXHIBIT “C”

City’s Representative:

Jasmine Frost, Business Information Services
Manager

(562) 570-5552

EXHIBIT “D”

Materials/Information Furnished: None

EXHIBIT “E”

Consultant’s Key Employee:

Pam Glanvill