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C. "Future Savings" means the amount by which City's charges on its Utility Accounts are reduced as a result of a change in the billing rate, calculation, method or procedure attributed to Contractor's services. This shall not include any percentage of savings from current or pending energy saving projects, including the City's LED Streetlight Conversion Project.

D. "Two Year Savings Period" means that period beginning on the date that the change in the billing rate, calculation, method or procedure is first reflected on City's utility bill, and ends two years thereafter.

E. "Utility Accounts" means the City's electricity accounts, not including the Harbor Department, unless specifically directed by the City.

2. SCOPE OF WORK OR SERVICES; TIMING; COMPENSATION.

A. Contractor shall furnish specialized services more particularly described in (i) the Scope of Work, attached to this Agreement as Exhibit "A". In accordance with the standards of the profession, and City shall pay for these services in the manner described below.

B. Refunds or Credits. Contractor shall not receive any compensation under any circumstances until the City receives its refunds or savings. If City receives a refund or credit that was identified in the Findings Letter and that is attributed to Contractor's change in billing rate, calculation, method or procedure, then City will pay to Contractor thirty-three percent (33%) of the amount refunded or credited. The amount of the refund or credit for this purpose will include all amounts refunded or credited (including any portion attributable to interest) for any overcharges that were incurred by City prior to the date that the overcharges no longer appeared on the City's utility bill. Payment of Contractor's thirty-three percent (33%) compensation is due within thirty (30) days of the date City receives Contractor's invoice.

C. Future Savings. If City obtains Future Savings that were identified in the Findings Letter, then City will pay Contractor thirty-three percent

1 (33%) of such Future Savings that accrue during a Two-Year Savings Period.
2 Future Savings is the amount by which City's charges on its Utility Accounts are
3 reduced as a result of a change in the billing rate, calculation, method or
4 procedure. Future Savings will be calculated as the difference between the
5 amount City was billed on its Utility Accounts during the Two-Year Savings Period,
6 and the amount that it would have been billed on its Utility Accounts during the
7 Two-Year Savings Period if there had been no change in its billing rate,
8 calculation, method or procedure. The Two-Year Savings Period begins on the
9 date that the change in the billing rate, calculation, method or procedure is first
10 reflected on City's utility bill, and ends two years thereafter. Contractor will submit
11 invoices periodically to City for payment based on the Future Savings as they
12 accrue. The invoices will verify (a) that Future Savings have actually been
13 realized by City, and (b) the amount of such Future Savings. Payment of
14 Contractor's invoices is due within thirty (30) days of the date the invoices are
15 received by City. The compensation under this subparagraph will not include
16 compensation for Future Savings that are: (a) the result of a reduction in the
17 amount of utility usage by City, or (b) the result of City's utilization of a different
18 utility supplier that provides lower cost utility service.

19 3. TERM. The term of this Agreement shall commence at midnight on
20 April 18, 2023, and shall terminate at 11:59 p.m. on April 17, 2025, unless sooner
21 terminated as provided in this Agreement, or unless the services or the Project is
22 completed sooner. At the end of the term, Contractor will cease all work on behalf of City.
23 However, City will remain obligated to pay Contractor, pursuant to this Agreement, for
24 any refunds, credits or Future Savings that were identified in the Findings Letter and that
25 are thereafter obtained by City. Contractor may continue to obtain and review City's utility
26 billing and other information after the end of the term in order to periodically verify
27 whether City has obtained a refund, credit or Future Savings that was identified in the
28 Findings Letter. The parties have the option to renew the term for one (1) additional one-

1 year period, at the discretion of the City Manager.

2 4. COORDINATION AND ORGANIZATION.

3 A. Contractor shall coordinate its performance with City's
4 representative, if any, named in Exhibit "B", attached to this Agreement and
5 incorporated by this reference. Contractor shall advise and inform City's
6 representative of the work in progress on the Project in sufficient detail so as to
7 assist City's representative in making presentations and in holding meetings on
8 the Project. City shall furnish to Contractor information or materials, if any,
9 described in Exhibit "C", attached to this Agreement and incorporated by this
10 reference, and shall perform any other tasks described in the Exhibit.

11 B. The parties acknowledge that a substantial inducement to City
12 for entering this Agreement was and is the reputation and skill of Contractor's key
13 employee, Chris Wiehl. City shall have the right to approve any person proposed
14 by Contractor to replace that key employee.

15 5. INDEPENDENT CONTRACTOR. In performing its services,
16 Contractor is and shall act as an independent Contractor and not an employee,
17 representative or agent of City. Contractor shall have control of Contractor's work and
18 the manner in which it is performed. Contractor shall be free to contract for similar
19 services to be performed for others during this Agreement; provided, however, that
20 Contractor acts in accordance with Section 9 and Section 11 of this Agreement.
21 Contractor acknowledges and agrees that (a) City will not withhold taxes of any kind from
22 Contractor's compensation; (b) City will not secure workers' compensation or pay
23 unemployment insurance to, for or on Contractor's behalf; and (c) City will not provide
24 and Contractor is not entitled to any of the usual and customary rights, benefits or
25 privileges of City employees. Contractor expressly warrants that neither Contractor nor
26 any of Contractor's employees or agents shall represent themselves to be employees or
27 agents of City.

28 6. INSURANCE.

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

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

22 (b) Workers' Compensation insurance as required by the California
23 Labor Code and employer's liability insurance in an amount not less than
24 \$1,000,000. This policy shall be endorsed to state that the insurer waives
25 its right of subrogation against City, its boards and commissions, and their
26 officials, employees and agents.

27 (c) Professional liability or errors and omissions insurance in an
28 amount not less than \$1,000,000 per claim.

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

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

9 C. Each insurance policy shall be endorsed to state that
10 coverage shall not be reduced, non-renewed or canceled except after thirty (30)
11 days prior written notice to City, shall be primary and not contributing to any other
12 insurance or self-insurance maintained by City, and shall be endorsed to state that
13 coverage maintained by City shall be excess to and shall not contribute to
14 insurance or self-insurance maintained by Contractor. Contractor shall notify City
15 in writing within five (5) days after any insurance has been voided by the insurer or
16 cancelled by the insured.

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

23 E. Contractor shall require that all sub-Contractor or Contractors
24 that Contractor uses in the performance of these services maintain insurance in
25 compliance with this Section unless otherwise agreed in writing by City's Risk
26 Manager or designee.

27 F. Prior to the start of performance, Contractor shall deliver to
28 City certificates of insurance and the endorsements for approval as to sufficiency

1 and form. In addition, Contractor shall, within thirty (30) days prior to expiration of
2 the insurance, furnish to City certificates of insurance and endorsements
3 evidencing renewal of the insurance. City reserves the right to require complete
4 certified copies of all policies of Contractor and Contractor's sub-Contractors and
5 Contractors, at any time. Contractor shall make available to City's Risk Manager
6 or designee all books, records and other information relating to this insurance,
7 during normal business hours.

8 G. Any modification or waiver of these insurance requirements
9 shall only be made with the approval of City's Risk Manager or designee. Not
10 more frequently than once a year, City's Risk Manager or designee may require
11 that Contractor, Contractor's sub-Contractors and Contractors change the amount,
12 scope or types of coverages required in this Section if, in his or her sole opinion,
13 the amount, scope or types of coverages are not adequate.

14 H. The procuring or existence of insurance shall not be
15 construed or deemed as a limitation on liability relating to Contractor's
16 performance or as full performance of or compliance with the indemnification
17 provisions of this Agreement.

18 7. ASSIGNMENT AND SUBCONTRACTING. This Agreement
19 contemplates the personal services of Contractor and Contractor's employees, and the
20 parties acknowledge that a substantial inducement to City for entering this Agreement
21 was and is the professional reputation and competence of Contractor and Contractor's
22 employees. Contractor shall not assign its rights or delegate its duties under this
23 Agreement, or any interest in this Agreement, or any portion of it, without the prior
24 approval of City, except that Contractor may with the prior approval of the City Manager
25 of City, assign any moneys due or to become due Contractor under this Agreement. Any
26 attempted assignment or delegation shall be void, and any assignee or delegate shall
27 acquire no right or interest by reason of an attempted assignment or delegation.
28 Furthermore, Contractor shall not subcontract any portion of its performance without the

1 prior approval of the City Manager or designee, or substitute an approved sub-Contractor
2 or Contractor without approval prior to the substitution. Nothing stated in this Section
3 shall prevent Contractor from employing as many employees as Contractor deems
4 necessary for performance of this Agreement.

5 8. CONFLICT OF INTEREST. Contractor, by executing this
6 Agreement, certifies that, at the time CONTRACTOR executes this Agreement and for its
7 duration, Contractor does not and will not perform services for any other City which would
8 create a conflict, whether monetary or otherwise, as between the interests of City and the
9 interests of that other City. And, Contractor shall obtain similar certifications from
10 Contractor's employees, sub-Contractors and Contractors.

11 9. MATERIALS – APPLICABLE TO CITY'S UTILITY ACCOUNTS.
12 Unless otherwise stated in an addendum initialed by both parties, this Agreement will
13 apply to all electricity accounts (and any related utility user taxes, other taxes,
14 assessments, surcharges or fees) with respect to which City:

- 15 A. is receiving utility service as of the Effective Date,
16 B. has received utility service within three years prior to the
17 Effective Date,
18 C. receives utility service within one year after the Effective Date,
19 or
20 D. has permitted or authorized Contractor to obtain a copy of the
21 utility bill.

22 10. CITY TO PROVIDE UTILITY BILLS. On or promptly after City's
23 execution of this Agreement, City will provide Contractor with a copy of at least one
24 month's utility bills for all of City's Utility Accounts.

25 11. CONTRACTOR AUTHORIZED TO OBTAIN INFORMATION ON
26 UTILITY ACCOUNTS. Contractor is hereby authorized to obtain information relating to
27 the Utility Accounts directly from utility provider personnel and utility provider web sites. If
28 site visits are necessary, Contractor will first obtain proper authorization from City.

1 12. CONTRACTOR'S FINDINGS LETTER. Contractor will use its best
2 efforts to identify the basis for any refunds, credits or Future Savings on City's Utility
3 Accounts. Contractor will send one or more Findings Letters to City that generally sets
4 forth the basis for any refunds, credits or Future Savings identified by Contractor.
5 Contractor may, from time to time, supplement or amend the Findings Letter.

6 13. STEPS TO OBTAIN REFUNDS OR SAVINGS. Contractor is
7 authorized by City to take steps to obtain the refunds, credits or Future Savings identified
8 in the Findings Letter. Such steps may include, but are not limited to, communicating,
9 negotiating and dealing with utility providers (or, in the case of utility user taxes or other
10 governmental charges, the appropriate government entity), and seeking relief from the
11 California Public Utilities Commission in a complaint proceeding or other proceeding.

12 14. COOPERATION BY CITY. City will cooperate with Contractor, as
13 reasonable, in Contractor's efforts to carry out the purposes and intent of this Agreement.
14 Such cooperation will include, but not be limited to, providing information upon request by
15 Contractor concerning City's utility expenditures, utility service and operations.

16 15. Contractor shall furnish all labor and supervision, supplies, materials,
17 tools, machinery equipment, appliances, transportation and services necessary to or
18 used in the performance of Contractor 's obligations under this Agreement, except as
19 stated in Exhibit "C".

20 16. OWNERSHIP OF DATA. All materials, information and data
21 prepared, developed or assembled by Contractor or furnished to Contractor in connection
22 with this Agreement, including but not limited to documents, estimates, calculations,
23 studies, maps, graphs, charts, computer disks, computer source documentation,
24 samples, models, reports, summaries, drawings, designs, notes, plans, information,
25 material and memorandum ("Data") shall be the exclusive property of City. Data shall be
26 given to City, and City shall have the unrestricted right to use and disclose the Data in
27 any manner and for any purpose without payment of further compensation to Contractor.
28 Copies of Data may be retained by Contractor but Contractor warrants that Data shall not

1 be made available to any person or entity for use without the prior approval of City. This
2 warranty shall survive termination of this Agreement for five (5) years.

3 17. TERMINATION. Either party shall have the right to terminate this
4 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
5 prior notice to the other party. Upon termination, Contractor will cease all work on behalf
6 of City. However, if termination occurs after Contractor has sent its Findings Letter to
7 City, then City will remain obligated to pay Contractor, pursuant to this Agreement, for
8 any refunds, credits or Future Savings that were identified in the Findings Letter and that
9 are thereafter obtained by City. Contractor may continue to obtain and review City's
10 utility billing and other information following termination in order to periodically verify
11 whether City has obtained a refund, credit or Future Savings that was identified in the
12 Findings Letter. On the effective date of termination, Contractor shall deliver to City all
13 Data developed or accumulated in the performance of this Agreement, whether in draft or
14 final form, or in process. And, Contractor acknowledges and agrees that City's obligation
15 to make final payment is conditioned on Contractor's delivery of the Data to City.

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

25 19. BREACH OF CONFIDENTIALITY. Contractor shall not be liable for
26 a breach of confidentiality with respect to Data that: (a) Contractor demonstrates
27 Contractor knew prior to the time City disclosed it; or (b) is or becomes publicly available
28 without breach of this Agreement by Contractor; or (c) a third party who has a right to

1 disclose does so to Contractor without restrictions on further disclosure; or (d) must be
2 disclosed pursuant to subpoena or court order.

3 20. ADDITIONAL SERVICES. The City has the right at any time during
4 the performance of the services, without invalidating this Agreement, to order extra work
5 beyond that specified in the RFP or make changes by altering, adding to or deducting
6 from the work. No extra work may be undertaken unless a written order is first given by
7 the City, incorporating any adjustment in the Agreement Sum, or the time to perform this
8 Agreement. Any increase in compensation of ten percent (10%) or less of the Agreement
9 Sum, or in the time to perform of One Hundred Eighty (180) days or less, may be
10 approved by the City Representative. Any greater increases, taken either separately or
11 cumulatively, must be approved by the City Council. It is expressly understood by
12 Contractor that the provisions of this paragraph do not apply to services specifically set
13 forth in the RFP or reasonably contemplated in the RFP. Contractor acknowledges that it
14 accepts the risk that the services to be provided pursuant to the RFP may be more costly
15 or time consuming than Contractor anticipates and that Contractor will not be entitled to
16 additional compensation for the services set forth in the RFP.

17 21. NO LEGAL SERVICES. City acknowledges and understands that:
18 (a) Only an attorney can provide legal services or advice, (b) Contractor is not an
19 attorney or law firm, and does not and will not provide legal services or advice, (c)
20 Contractor does not and will not act as an attorney for City or any other person, (d)
21 Nothing in this Agreement, and no act, omission or statement by Contractor, or its owners
22 or employees, will be construed to create an attorney-City relationship between
23 Contractor and City or any other person, (e) Contractor is not subject to the California
24 Rules of Professional Conduct, which govern the conduct of attorneys, and (f) City should
25 consult an attorney if it wishes to receive legal services or advice.

26 22. DISCLOSURE OF INFORMATION. Contractor may obtain
27 information that pertains to City's business, operations, or affairs, including but not limited
28 to its utility charges and utility usage. City expressly authorizes Contractor to use and

1 disclose such information to others as necessary or convenient to carry out the services
2 contemplated by this Agreement.

3 23. RELEASE OF CLAIMS AGAINST CONTRACTOR. City
4 acknowledges and agrees that Contractor has made no express or implied
5 representation or warranty that it will be successful in identifying or obtaining any refunds,
6 credits, or Future Savings on City's Utility Accounts. City hereby covenants not to bring
7 any action for damages against Contractor that is based upon or relates to any failure by
8 Contractor to identify or obtain refunds, credits, or Future Savings to which City was or is
9 entitled.

10 24. REPRESENTATIONS MADE BY CITY. It may become necessary
11 for City to make certain representations to the utility provider or other entity in order
12 obtain refunds, credits or Future Savings identified by Contractor in its Findings Letter.
13 City hereby warrants that any such representations made by City will be true and correct
14 in all respects.

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

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

1 Agreement is found to be in conflict with applicable laws, that part will be inoperative, null
2 and void insofar as it is in conflict with any applicable laws, but the remainder of the
3 Agreement will remain in full force and effect.

4 27. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
5 constitutes the entire understanding between the parties and supersedes all other
6 agreements, oral or written, with respect to the subject matter in this Agreement.

7 28. INDEMNITY.

8 A. Contractor shall indemnify, protect and hold harmless City, its
9 Boards, Commissions, and their officials, employees and agents ("Indemnified
10 Parties"), from and against any and all liability, claims, demands, damage, loss,
11 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
12 costs and expenses, including attorneys' fees, court costs, expert and witness fees,
13 and other costs and fees of litigation, arising or alleged to have arisen, in whole or
14 in part, out of or in connection with (1) Contractor's breach or failure to comply with
15 any of its obligations contained in this Agreement, including all applicable federal
16 and state labor requirements including, without limitation, the requirements of
17 California Labor Code section 1770 *et seq.* or (2) negligent or willful acts, errors,
18 omissions or misrepresentations committed by Contractor, its officers, employees,
19 agents, sub-Contractors, or anyone under Contractor's control, in the performance
20 of work or services under this Agreement (collectively "Claims" or individually
21 "Claim").

22 B. In addition to Contractor's duty to indemnify, CONTRACTOR
23 shall have a separate and wholly independent duty to defend Indemnified Parties at
24 Contractor's expense by legal counsel approved by City, from and against all
25 Claims, and shall continue this defense until the Claims are resolved, whether by
26 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
27 breach, or the like on the part of Contractor shall be required for the duty to defend
28 to arise. City shall notify Contractor of any Claim, shall tender the defense of the

1 Claim to Contractor, and shall assist Contractor, as may be reasonably requested,
2 in the defense.

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

8 D. The provisions of this Section shall survive the expiration or
9 termination of this Agreement.

10 29. FORCE MAJEURE. If any party fails to perform its obligations
11 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
12 labor or materials or reasonable substitutes for labor materials, governmental restrictions,
13 governmental regulations, governmental controls, judicial orders, enemy or hostile
14 governmental action, civil commotion, fire or other casualty, or other causes beyond the
15 reasonable control of the party obligated to perform, then that party's performance will be
16 excused for a period equal to the period of such cause for failure to perform.

17 30. AMBIGUITY. In the event of any conflict or ambiguity between this
18 Agreement and any Exhibit, the provisions of this Agreement shall govern.

19 31. NONDISCRIMINATION.

20 A. In connection with performance of this Agreement and subject
21 to applicable rules and regulations, Contractor shall not discriminate against any
22 employee or applicant for employment because of race, religion, national origin,
23 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
24 disability. Contractor shall ensure that applicants are employed, and that employees
25 are treated during their employment, without regard to these bases. These actions
26 shall include, but not be limited to, the following: employment, upgrading, demotion
27 or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay
28 or other forms of compensation; and selection for training, including apprenticeship.

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

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

“During the performance of a contract with the City of Long Beach, the Contractor will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Long Beach’s Equal Benefits Ordinance may be obtained from the City of Long Beach Business Services Division at 562-570-6200.”

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

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

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

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

33. NOTICES. Any notice or approval required by this Agreement shall

1 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
2 postage prepaid, addressed to Contractor at the address first stated above, and to City at
3 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
4 to the City Clerk at the same address. Notice of change of address shall be given in the
5 same manner as stated for other notices. Notice shall be deemed given on the date
6 deposited in the mail or on the date personal delivery is made, whichever occurs first.

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

15 35. 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 36. TAX REPORTING. As required by federal and state law, City is
21 obligated to and will report the payment of compensation to Contractor on Form 1099-
22 Misc. Contractor shall be solely responsible for payment of all federal and state taxes
23 resulting from payments under this Agreement. Contractor shall submit Contractor's
24 Employer Identification Number (EIN), or Contractor's Social Security Number if
25 CONTRACTOR does not have an EIN, in writing to City's Accounts Payable, Department
26 of Financial Management. Contractor acknowledges and agrees that City has no
27 obligation to pay Contractor until Contractor provides one of these numbers.

28 37. ADVERTISING. Contractor shall not use the name of City, its

1 officials or employees in any advertising or solicitation for business or as a reference,
2 without the prior approval of the City Manager or designee.

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

7 39. THIRD PARTY BENEFICIARY. This Agreement is not intended or
8 designed to or entered for the purpose of creating any benefit or right for any person or
9 entity of any kind that is not a party to this Agreement.

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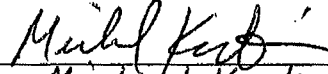
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IN WITNESS WHEREOF, the parties have signed this document with all the formalities required by law as of the date first stated above.

UTILITY COST MANAGEMENT, LLC, a California limited liability company

May 17, 2023

By 
Name Michael Kerkorian
Title Managing Member

_____, 2023

By _____
Name _____
Title _____

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"Contractor"

CITY OF LONG BEACH, a municipal corporation

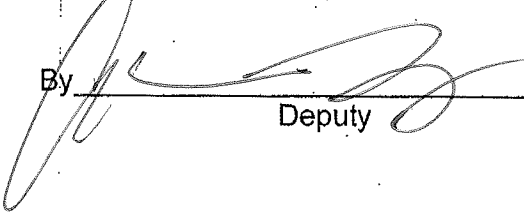
May 30, 2023

By 
City Manager

"City"

This Contract is approved as to form on May 18, 2023.

DAWN MCINTOSH, City Attorney

By 
Deputy

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

EXHIBIT “A”

Scope of Work and Cost

SCOPE OF PROJECT

Electric Utility Billing Audit Services

The billing audit project consists of at least the following types of services:

Past Cost Recovery Services: The examination of the bills of existing energy suppliers to identify errors, submit claims, and obtain refunds.

Future Cost Containment Services: Performing a comprehensive comparative analysis of rate plans and/or providers for those energy services that can be purchased from alternate sources.

Contractor shall review bills and evaluate for errors from all utility providers that the City pays for electricity, including identifying facilities that should be added to or removed from the City's utility franchise agreements.

Contractor shall compile historical data of no less than 36-48 months and conduct a comprehensive review of the billing information.

Contractor shall compare usage and demand amounts for electricity to determine if the quantities billed are reasonable.

At a minimum, Contractor shall identify errors related to:

- meter reading,
- rates not in accordance with City's contracts,
- charges billed for incorrect or non-existent equipment,
- meter malfunctions,
- incorrect meter type installed by the utility,
- clerical errors in bill computations,
- wrong factors applied, and
- Incorrect tax charges.

In addition to error detection, the Contractor shall analyze rates, looking for other solutions that will result in reduced expenses for the City in the future. Cost-saving recommendations may include, but not limited to:

- Alternate rates and riders offered by existing suppliers that may result in lower costs,
- combination or splitting of meters for billing purposes,
- correction of power factor penalties, and
- negotiation of special contracts to eliminate punitive clauses.

After approval by the City of particular recommendations, the Contractor shall act as a representative for the City to specified utility providers to obtain any available refunds for past overcharges and communicate to the companies providing utility services any corrections or execute changes necessary to realize future savings from incorrect billing of charges, rate, or tariff application.

Cost-savings recommendations are always subject to the review and approval of the City prior to implementation. The City is under no obligation to implement the recommendations of the Contractor or to compensate for unimplemented recommendation(s). After approval by the City of particular recommendations, the Contractor shall assume full responsibility for the implementation of such, or shall provide assistance if the City prefers to implement them on its own.

Contractor shall review current City process for intake, review, processing, and record keeping of utility bills and offer guidance on process improvements that could increase efficiency, ability of the staff to identify billing errors, reader friendliness of records, and best practices for data entry of utility bills. The Contractor should explore the electronic transfer of data (EFT), and how this might be implemented. This shall include but is not limited to creating a Microsoft Excel template for inputting and tracking pertinent utility bill information for each utility bill reviewed. Contractor may also recommend software solutions for tracking utility bill information.

Contractor shall review current City processes, then, at the end of the review and evaluation period, submit a report detailing its findings. At a minimum, the report should identify:

- utility bills that have been reviewed and evaluated;
- refunds due to the City;
- current list of all accounts/meters/buildings/facilities covered under utility franchise agreements listing at a minimum, facility name, address, utility usage, and meter numbers servicing facility;
- correspondence from the utility providers agreeing to the amount of the refund due to the City, and the method to be used to refund the moneys owed the City;
- recommendations and guidance on industry best practices for utility bill intake, processing, data entry, and record keeping, including how the electronic transfer of information (EFT) could be implemented;
- a user-friendly guide to identify common utility billing errors - for each type of utility bill reviewed to be used by the City for staff training purposes.

The City reserves the right to add utility bills for review and evaluation by the vendor under the same terms and conditions as the original contract.

The City will supply a list of locations; service addresses; meters; rates and utility account numbers.

COST

There will be no up-front fees or any charges to the City. Compensation will be on a contingency basis.

City will pay 33 percent of refunds or savings actually achieved for these consulting services as contingency fees for a period of 2 years.

Savings incurred from current and pending energy saving projects in the City may not be used in the Contractor's calculations as cost savings actually realized by the City.

All Consultant's fee-for-service invoices submitted to the City will be accompanied by verifiable documentation from the utility company that the correction/retroactive refund/credit/recommendation has been accomplished and savings implemented. A detailed explanation of savings for each invoice presented will clarify and further corroborate the calculated savings.

EXHIBIT “B”

City’s Representative(s):

Jacqueline Deemak, Special Projects Officer

Office: 562.570.6649

Jacqueline.deemak@longbeach.gov

EXHIBIT “C”

Materials/Information Furnished: None

EXHIBIT “D”

Consultant’s Key Employee(s):

Chris Wiehl - Utility Cost Management, LLC