

AGREEMENT

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3 THIS AGREEMENT is made and entered, in duplicate, as of October 24,
4 2017, for reference purposes only, pursuant to a minute order adopted by the City Council
5 of the City of Long Beach at its meeting on October 10, 2017, by and between UTILITY
6 COST MANAGEMENT LLC, a California limited liability company ("UCM"), with a place of
7 business at 1100 W. Shaw Avenue, Suite 126, Fresno, California 93711, and the CITY OF
8 LONG BEACH, a municipal corporation ("City").

9 WHEREAS, City requires specialized services requiring unique skills to be
10 performed in connection to an electric utility billing audit ("Project"); and

11 WHEREAS, City has selected UCM in accordance with City's administrative
12 procedures using a Request for Proposals ("RFP"), and City has determined that UCM and
13 its employees are qualified, licensed, if so required, and experienced in performing these
14 specialized services; and

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

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

19 1. DEFINITIONS.

20 A. "Effective Date" means the first day of the calendar month after
21 both UCM and City have signed this Agreement.

22 B. "Findings Letter" means one or more letters that generally sets
23 forth the basis for any refunds, credits or Future Savings identified by UCM. UCM
24 may, from time to time, supplement or amend the Findings Letter.

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

1 City's LED Streetlight Conversion Project.

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

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

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

8 A. UCM shall furnish specialized services more particularly
9 described in (i) the Scope of Work, attached to this Agreement as Exhibit "A-1" and
10 (ii) that certain Proposal submitted in response to the RFP, attached to this
11 Agreement as Exhibit "A-2", incorporated by this reference, according to the timeline
12 set forth in UCM's Proposal. In accordance with the standards of the profession,
13 and City shall pay for these services in the manner described below.

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

24 C. Future Savings. If City obtains Future Savings that were
25 identified in the Findings Letter, then City will pay UCM thirty-three percent (33%) of
26 such Future Savings that accrue during a Two-Year Savings Period. Future Savings
27 is the amount by which City's charges on its Utility Accounts are reduced as a result
28 of a change in the billing rate, calculation, method or procedure. Future Savings will

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

15 3. TERM. The term of this Agreement shall commence at midnight on
16 January 12, 2018, and shall terminate at 11:59 p.m. on January 11, 2020, unless sooner
17 terminated as provided in this Agreement, or unless the services or the Project is
18 completed sooner. At the end of the term, UCM will cease all work on behalf of City.
19 However, City will remain obligated to pay UCM, pursuant to this Agreement, for any
20 refunds, credits or Future Savings that were identified in the Findings Letter and that are
21 thereafter obtained by City. UCM may continue to obtain and review City's utility billing and
22 other information after the end of the term in order to periodically verify whether City has
23 obtained a refund, credit or Future Savings that was identified in the Findings Letter. The
24 parties have the option to renew the term for two (2) additional one-year periods, at the
25 discretion of the City Manager.

26 4. COORDINATION AND ORGANIZATION.

27 A. UCM shall coordinate its performance with City's
28 representative, if any, named in Exhibit "B", attached to this Agreement and

1 incorporated by this reference. UCM shall advise and inform City's representative
2 of the work in progress on the Project in sufficient detail so as to assist City's
3 representative in making presentations and in holding meetings on the Project. City
4 shall furnish to UCM information or materials, if any, described in Exhibit "C",
5 attached to this Agreement and incorporated by this reference, and shall perform
6 any other tasks described in the Exhibit.

7 B. The parties acknowledge that a substantial inducement to City
8 for entering this Agreement was and is the reputation and skill of UCM's key
9 employee, Michael Kerkorian. City shall have the right to approve any person
10 proposed by UCM to replace that key employee.

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

22 6. INSURANCE.

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

1 Best Company, the following insurance:

2 (a) Commercial general liability insurance (equivalent in scope to
3 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
4 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
5 coverage shall include but not be limited to broad form contractual liability,
6 cross liability, independent UCM's liability, and products and completed
7 operations liability. City, its boards and commissions, and their officials,
8 employees and agents shall be named as additional insureds by
9 endorsement (on City's endorsement form or on an endorsement equivalent
10 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance
11 shall contain no special limitations on the scope of protection given to City,
12 its boards and commissions, and their officials, employees and agents. This
13 policy shall be endorsed to state that the insurer waives its right of
14 subrogation against City, its boards and commissions, and their officials,
15 employees and agents.

16 (b) Workers' Compensation insurance as required by the California
17 Labor Code and employer's liability insurance in an amount not less than
18 \$1,000,000. This policy shall be endorsed to state that the insurer waives
19 its right of subrogation against City, its boards and commissions, and their
20 officials, employees and agents.

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

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

26 B. Any self-insurance program, self-insured retention, or
27 deductible must be separately approved in writing by City's Risk Manager or
28 designee and shall protect City, its officials, employees and agents in the same

1 manner and to the same extent as they would have been protected had the policy
2 or policies not contained retention or deductible provisions.

3 C. Each insurance policy shall be endorsed to state that coverage
4 shall not be reduced, non-renewed or canceled except after thirty (30) days prior
5 written notice to City, shall be primary and not contributing to any other insurance
6 or self-insurance maintained by City, and shall be endorsed to state that coverage
7 maintained by City shall be excess to and shall not contribute to insurance or self-
8 insurance maintained by UCM. UCM shall notify City in writing within five (5) days
9 after any insurance has been voided by the insurer or cancelled by the insured.

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

16 E. UCM shall require that all sub-contractor or contractors that
17 UCM uses in the performance of these services maintain insurance in compliance
18 with this Section unless otherwise agreed in writing by City's Risk Manager or
19 designee.

20 F. Prior to the start of performance, UCM shall deliver to City
21 certificates of insurance and the endorsements for approval as to sufficiency and
22 form. In addition, UCM shall, within thirty (30) days prior to expiration of the
23 insurance, furnish to City certificates of insurance and endorsements evidencing
24 renewal of the insurance. City reserves the right to require complete certified copies
25 of all policies of UCM and UCM's sub-contractors and contractors, at any time. UCM
26 shall make available to City's Risk Manager or designee all books, records and other
27 information relating to this insurance, during normal business hours.

28 G. Any modification or waiver of these insurance requirements

1 shall only be made with the approval of City's Risk Manager or designee. Not more
2 frequently than once a year, City's Risk Manager or designee may require that UCM,
3 UCM's sub-contractors and contractors change the amount, scope or types of
4 coverages required in this Section if, in his or her sole opinion, the amount, scope
5 or types of coverages are not adequate.

6 H. The procuring or existence of insurance shall not be construed
7 or deemed as a limitation on liability relating to UCM's performance or as full
8 performance of or compliance with the indemnification provisions of this Agreement.

9 7. ASSIGNMENT AND SUBCONTRACTING. This Agreement
10 contemplates the personal services of UCM and UCM's employees, and the parties
11 acknowledge that a substantial inducement to City for entering this Agreement was and is
12 the professional reputation and competence of UCM and UCM's employees. UCM shall
13 not assign its rights or delegate its duties under this Agreement, or any interest in this
14 Agreement, or any portion of it, without the prior approval of City, except that UCM may
15 with the prior approval of the City Manager of City, assign any moneys due or to become
16 due UCM under this Agreement. Any attempted assignment or delegation shall be void,
17 and any assignee or delegate shall acquire no right or interest by reason of an attempted
18 assignment or delegation. Furthermore, UCM shall not subcontract any portion of its
19 performance without the prior approval of the City Manager or designee, or substitute an
20 approved sub-contractor or contractor without approval prior to the substitution. Nothing
21 stated in this Section shall prevent UCM from employing as many employees as UCM
22 deems necessary for performance of this Agreement.

23 8. CONFLICT OF INTEREST. UCM, by executing this Agreement,
24 certifies that, at the time UCM executes this Agreement and for its duration, UCM does not
25 and will not perform services for any other City which would create a conflict, whether
26 monetary or otherwise, as between the interests of City and the interests of that other City.
27 And, UCM shall obtain similar certifications from UCM's employees, sub-contractors and
28 contractors.

1 9. MATERIALS – APPLICABLE TO CITY'S UTILITY ACCOUNTS.

2 Unless otherwise stated in an addendum initialed by both parties, this Agreement will apply
3 to all electricity accounts (and any related utility user taxes, other taxes, assessments,
4 surcharges or fees) with respect to which City:

5 A. is receiving utility service as of the Effective Date,

6 B. has received utility service within three years prior to the
7 Effective Date,

8 C. receives utility service within one year after the Effective Date,
9 or

10 D. has permitted or authorized UCM to obtain a copy of the utility
11 bill.

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

15 11. UCM AUTHORIZED TO OBTAIN INFORMATION ON UTILITY
16 ACCOUNTS. UCM is hereby authorized to obtain information relating to the Utility
17 Accounts directly from utility provider personnel and utility provider web sites. If site visits
18 are necessary, UCM will first obtain proper authorization from City.

19 12. UCM'S FINDINGS LETTER. UCM will use its best efforts to identify
20 the basis for any refunds, credits or Future Savings on City's Utility Accounts. UCM will
21 send one or more Findings Letters to City that generally sets forth the basis for any refunds,
22 credits or Future Savings identified by UCM. UCM may, from time to time, supplement or
23 amend the Findings Letter.

24 13. STEPS TO OBTAIN REFUNDS OR SAVINGS. UCM is authorized by
25 City to take steps to obtain the refunds, credits or Future Savings identified in the Findings
26 Letter. Such steps may include, but are not limited to, communicating, negotiating and
27 dealing with utility providers (or, in the case of utility user taxes or other governmental
28 charges, the appropriate government entity), and seeking relief from the California Public

1 Utilities Commission in a complaint proceeding or other proceeding.

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

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

9 16. OWNERSHIP OF DATA. All materials, information and data
10 prepared, developed or assembled by UCM or furnished to UCM in connection with this
11 Agreement, including but not limited to documents, estimates, calculations, studies, maps,
12 graphs, charts, computer disks, computer source documentation, samples, models,
13 reports, summaries, drawings, designs, notes, plans, information, material and
14 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
15 and City shall have the unrestricted right to use and disclose the Data in any manner and
16 for any purpose without payment of further compensation to UCM. Copies of Data may be
17 retained by UCM but UCM warrants that Data shall not be made available to any person
18 or entity for use without the prior approval of City. This warranty shall survive termination
19 of this Agreement for five (5) years.

20 17. TERMINATION. Either party shall have the right to terminate this
21 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
22 prior notice to the other party. Upon termination, UCM will cease all work on behalf of City.
23 However, if termination occurs after UCM has sent its Findings Letter to City, then City will
24 remain obligated to pay UCM, pursuant to this Agreement, for any refunds, credits or
25 Future Savings that were identified in the Findings Letter and that are thereafter obtained
26 by City. UCM may continue to obtain and review City's utility billing and other information
27 following termination in order to periodically verify whether City has obtained a refund,
28 credit or Future Savings that was identified in the Findings Letter. On the effective date of

1 termination, UCM shall deliver to City all Data developed or accumulated in the
2 performance of this Agreement, whether in draft or final form, or in process. And, UCM
3 acknowledges and agrees that City's obligation to make final payment is conditioned on
4 UCM's delivery of the Data to City.

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

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

19 20. ADDITIONAL SERVICES. The City has the right at any time during
20 the performance of the services, without invalidating this Agreement, to order extra work
21 beyond that specified in the RFP or make changes by altering, adding to or deducting from
22 the work. No extra work may be undertaken unless a written order is first given by the City,
23 incorporating any adjustment in the Agreement Sum, or the time to perform this Agreement.
24 Any increase in compensation of ten percent (10%) or less of the Agreement Sum, or in
25 the time to perform of One Hundred Eighty (180) days or less, may be approved by the
26 City Representative. Any greater increases, taken either separately or cumulatively, must
27 be approved by the City Council. It is expressly understood by UCM that the provisions of
28 this paragraph do not apply to services specifically set forth in the RFP or reasonably

1 contemplated in the RFP. UCM acknowledges that it accepts the risk that the services to
2 be provided pursuant to the RFP may be more costly or time consuming than UCM
3 anticipates and that UCM will not be entitled to additional compensation for the services
4 set forth in the RFP.

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

14 22. DISCLOSURE OF INFORMATION. UCM may obtain information that
15 pertains to City's business, operations, or affairs, including but not limited to its utility
16 charges and utility usage. City expressly authorizes UCM to use and disclose such
17 information to others as necessary or convenient to carry out the services contemplated
18 by this Agreement.

19 23. RELEASE OF CLAIMS AGAINST UCM. City acknowledges and
20 agrees that UCM has made no express or implied representation or warranty that it will be
21 successful in identifying or obtaining any refunds, credits, or Future Savings on City's Utility
22 Accounts. City hereby covenants not to bring any action for damages against UCM that is
23 based upon or relates to any failure by UCM to identify or obtain refunds, credits, or Future
24 Savings to which City was or is entitled.

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

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

4 26. LAW. This Agreement shall be construed in accordance with the laws
5 of the State of California, and the venue for any legal actions brought by any party with
6 respect to this Agreement shall be the County of Los Angeles, State of California for state
7 actions and the Central District of California for any federal actions. UCM shall cause all
8 work performed in connection with construction of the Project to be performed in
9 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
10 county or municipal governments or agencies (including, without limitation, all applicable
11 federal and state labor standards, including the prevailing wage provisions of sections 1770
12 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
13 marshal, health officer, building inspector, or other officer of every governmental agency
14 now having or hereafter acquiring jurisdiction. If any part of this Agreement is found to be
15 in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in
16 conflict with any applicable laws, but the remainder of the Agreement will remain in full
17 force and effect.

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

21 28. INDEMNITY.

22 A. UCM shall indemnify, protect and hold harmless City, its
23 Boards, Commissions, and their officials, employees and agents ("Indemnified
24 Parties"), from and against any and all liability, claims, demands, damage, loss,
25 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
26 costs and expenses, including attorneys' fees, court costs, expert and witness fees,
27 and other costs and fees of litigation, arising or alleged to have arisen, in whole or
28 in part, out of or in connection with (1) UCM's breach or failure to comply with any

1 of its obligations contained in this Agreement, including all applicable federal and
2 state labor requirements including, without limitation, the requirements of California
3 Labor Code section 1770 *et seq.* or (2) negligent or willful acts, errors, omissions or
4 misrepresentations committed by UCM, its officers, employees, agents, sub-
5 contractors, or anyone under UCM's control, in the performance of work or services
6 under this Agreement (collectively "Claims" or individually "Claim").

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

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

20 D. The provisions of this Section shall survive the expiration or
21 termination of this Agreement.

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

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

3 31. NONDISCRIMINATION.

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

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

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

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

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

28 C. If the UCM fails to comply with the EBO, the City may cancel,

1 terminate or suspend the Agreement, in whole or in part, and monies due or to
2 become due under the Agreement may be retained by the City. The City may also
3 pursue any and all other remedies at law or in equity for any breach.

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

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

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

19 34. COVENANT AGAINST CONTINGENT FEES. UCM warrants that
20 UCM has not employed or retained any entity or person to solicit or obtain this Agreement
21 and that UCM has not paid or agreed to pay any entity or person any fee, commission or
22 other monies based on or from the award of this Agreement. If UCM breaches this
23 warranty, City shall have the right to terminate this Agreement immediately notwithstanding
24 the provisions of Section 10 or, in its discretion, to deduct from payments due under this
25 Agreement or otherwise recover the full amount of the fee, commission or other monies.

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

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

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

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

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

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

UTILITY COST MANAGEMENT LLC, a California limited liability company

JANUARY 12, 2018

By [Signature]
Name GREG NORMAN
Title V.P. MARKETING

January 12, 2018

By [Signature]
Name Michael Kerkorian
Title Managing Member

"UCM"

CITY OF LONG BEACH, a municipal corporation

1/17, 2018

By [Signature]
City Manager

"City"

This Agreement is approved as to form on Jan. 17, 2018.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

EXHIBIT “A-1”

Scope of Work

City of Long Beach
Request for Proposal No. FM 17-009
Electric Utility Billing Audit Services

Prepared by:
Utility Cost Management LLC
1100 W. Shaw Avenue, Suite 126
Fresno, CA 93711
(559) 261-9230
www.utilitycostmanagement.com

RFP SECTION 7: PROJECT SPECIFICATIONS

Utility Cost Management LLC (“UCM”) has reviewed and understands the scope of work being requested in this RFP. UCM is confident that the firm will be able perform all tasks associated with the audit for the City of Long Beach (“City”) in a timely and efficient manner.

For more than 25 years, UCM has provided the highest quality utility bill auditing services. Unlike many other firms that use auditing as a way to sell software, equipment, or other services, auditing utility bills for public entities and other large customers in California is the *primary* focus of UCM’s business.

In fact, UCM’s record of accomplishment using bill reviews to reduce utility costs for more than 250 California public entities, including 90 Southern California cities, is unmatched. UCM’s in-depth experience in working with California regulations, and particularly Southern California Edison (“SCE”) tariffs, can benefit the City of Long Beach in many important ways:

- The process of gathering historical billing data and other information from SCE is streamlined because of UCM’s extensive experience representing SCE customers. UCM staff members have ongoing relationships with SCE personnel, which results in greater success processing routine requests, faster results, and fewer hassles.
- For more challenging requests, UCM works with various individuals at SCE’s highest levels on a daily basis – from SCE’s head of billing, to VP’s of Tariffs and Compliance, to the senior attorneys responsible for writing and interpreting tariffs. This means that UCM’s requests for tariff modifications are given the hearing they deserve, which produces *results* for UCM’s clients. Other firms may have their requests denied by customer service personnel or mid-level account representatives.
- When utility providers disagree with UCM’s findings, UCM has a proven track record of bringing about change through California Public Utilities Commission (“CPUC”) intervention. In fact, UCM has recovered more than \$20 million in electricity refunds for clients through the CPUC process alone, by proving that utilities are interpreting their regulations incorrectly. No other firm has demonstrated this level of CPUC competency.
- Street lights typically are a city’s largest electric cost, but the most difficult to verify. For SCE customers, hundreds of maps, and thousands of lights, must be checked for accuracy. This labor-intensive task can be daunting to less experienced firms, but UCM has a team devoted only to SCE street light bills, and has developed an approach that maximizes the identification of street light billing errors.
- Most city electricity accounts are small, often less than \$100 per month. While other firms don’t make the time and effort to thoroughly review these accounts, UCM has proven that they can produce material savings, and has developed an approach that ensures these valuable opportunities are not missed.
- UCM uses 15-minute interval data to augment its analyses, providing an unparalleled level of granularity in evaluating client accounts. UCM has developed proprietary

software programs that facilitate the analysis of SCE interval data, which is provided in a unique format that makes it difficult to access for other firms.

The scope of services provided by UCM is described in more detail below.

Objective

UCM's objective on this project will be to identify and obtain all refunds and ongoing savings opportunities on the City's electricity accounts, and to measure and verify those savings over the life of the contract. Furthermore, we aim to accomplish this objective without requiring significant time from City staff.

Tasks, approach, and brief description

Fact-finding: UCM gathers and organizes historical billing information on the utility accounts serving City facilities.

Typically, the simplest and most effective way to complete the fact-finding stage begins with clients providing one copy of each utility bill. From there, UCM utilizes a "Customer Information Release Form" authorizing utility providers to release historical billing data directly to UCM. This form is required by the utilities in accordance with CPUC directives. By utilizing this Customer Information Release Form, we avoid the need for significant involvement by client personnel in performing our fact-finding work.

If the City of Long Beach cannot provide one copy of each utility bill, it is possible for UCM to rely solely on the release form to complete its fact-finding efforts. However, if we adopt this approach, we require a list of the utility account numbers serving each facility.

Another option, if we are given access to files containing past utility bills, is for UCM to gather necessary information directly from the City's files. No City personnel are needed to assist with this effort. In this situation, the release form mentioned above is used to supplement information gathered.

In gathering utility data over the years from thousands of customers, including more than 250 California public entities, UCM has become very well-informed on industry best practices for processing utility bills and capturing, organizing, and summarizing utility data. This experience and knowledge will be put to use in UCM's evaluation of City's utility bill administrative functions.

Site Reviews: When necessary, UCM visits City locations to gather additional information. These site visits are sometimes helpful in verifying billing practices, metering configurations, or areas served by different accounts. Other than authorizing and providing physical access to non-public sites under review, there is typically no involvement required from City staff for site reviews.

Utility Bill Analysis: UCM analyzes the data accumulated in light of applicable tariffs, statutes, and CPUC decisions. All City utility accounts are reviewed to determine whether they are being billed appropriately, and whether they have been billed appropriately in the past. UCM's analysis includes, but is not limited to, the investigation of billing calculations, inapplicable rate

schedules, proper metering of services, optional rates, applicability of taxes and surcharges, baseline and lifeline allowance calculations, special facilities charges, meter errors, and the applicability of all rules and regulations affecting billing.

UCM has developed analytical tools and software to compare the financial impact of the myriad SCE rate choices under various scenarios of future usage characteristics. UCM's analyses include extensive use of "smart meter" data that provides electricity usage and demand data in 15-minute increments, which facilitates the detailed evaluation of customer usage characteristics. This historical data is normally the starting point for UCM's forecast of future consumption, but we believe it also is important to obtain an understanding of *how and why* a customer uses electricity services at a particular facility in order to gain additional insight into potential future usage scenarios.

We believe that UCM's analysis of the utility rates and tariffs is unique in that we do more than just compare potential rate options. Instead, we review the rates and tariffs in-depth, looking for areas where the utilities may be misapplying them. During the course of an audit we may come across a tariff provision that is new, different or unusual. This might lead us to conduct research into the background, purpose and intent behind the tariff provision to aid in our understanding of how it was meant to be applied in practice. This research may entail investigating the legislative history, enabling statutes, CPUC decisions and resolutions, utility advice letters, and other documentation related to the tariff provision. Furthermore, customers are often surprised to learn that tariffs are not always clear and unambiguous. In fact, over the years we have found that ambiguities often exist in the tariff language. Utilities often apply these ambiguities in their own favor, even though CPUC decisions clearly state that tariff ambiguities should be interpreted in favor of *the customer*. We make a point of spotting these tariff ambiguities and ensuring that they are applied in favor of our clients.

UCM also provides superior capabilities analyzing street light charges, which typically are cities' largest electricity costs. While street light billing errors occur, they are extremely difficult to spot because charges are based on several variables for each street light, such as location, type, wattage, metering, and rate schedule. For a city like Long Beach with 25,000 street lights, there are well over 100,000 variables that determine street light charges. As a result, most firms provide cursory reviews of street light charges, because it simply is too time-consuming. UCM, on the other hand, has developed processes that enable it to perform an in-depth review that focuses on problem areas in street light billings. Our experience working with more than 90 Southern California cities has proved invaluable because we understand *why* SCE makes street light billing errors, so that we can locate these hard-to-find overcharges.

During the analysis phase, questions about specific accounts sometimes arise. The most common questions concern what facilities are served by a particular account and whether the client has any reason to expect future usage characteristics on the account to vary dramatically from past usage characteristics. Questions and responses are normally handled via email, and require an insignificant amount of time from the client.

Utility Billing Findings Report: UCM submits a Findings Report summarizing the findings of its review. The report contains an explanation of the grounds for all refund and savings opportunities identified for each utility account, including calculations of the estimated savings and refunds expected to be achieved. The Findings Report can be discussed and explained more

thoroughly in a meeting with City personnel, where we hope to obtain City permission to proceed with all identified savings opportunities. If unresolved issues remain after the initial report submission, UCM keeps the City apprised of new developments.

Utility Bill Implementation of Changes/Recovery of Refunds: UCM takes all necessary steps to implement recommended changes and collect refunds for past overcharges. This work includes preparing documentation supporting UCM's requests and meeting with utility company personnel to discuss each request. UCM also negotiates with utility authorities to ensure that refund calculations are acceptable and are paid to the City in a timely manner. Once a rate change or a refund has been approved, we notify the City of this development. If UCM believes a utility provider has unfairly denied any request, we may, with the City's permission, appeal the utility's decision to the CPUC.

No involvement from City staff is required for the implementation of rate changes and refund requests, except that the City must authorize UCM to make the rate changes or refund requests that are described in the Findings Report.

The scope of UCM's work for its clients (including all of its past public entity clients) has always included not just *requesting* rate changes or refunds for the client, but also actually *obtaining* them. In other words, we submit requests for rate changes as well as any refund requests; we work closely and collegially with the utility personnel to obtain the requested rate change or refund from the utility voluntarily; and if the utility denies the rate change or refund request, then we may, with the client's permission, pursue the requests at the CPUC.

Ongoing Consultation, Measurement & Verification, and Invoicing: Because rates, regulations, and City electricity usage characteristics are constantly changing, UCM continues to advise City of new savings opportunities that arise during the term of our agreement with City. To facilitate this effort, we will continue to monitor City utility usage characteristics after our initial review, and may recommend new savings opportunities that arise from these changes.

During the period of shared savings, UCM sends invoices every three months that set forth UCM's measurement and verification of the City's savings. This measurement and verification uses the City's *actual* billing inputs (i.e., electricity usage, demand, "time-of-use", etc.) during the period covered by the invoice. Based on these actual billing inputs, we calculate the amount the City would have paid if it had remained on its old rate schedule. We then subtract this from the amount actually paid to SCE on the newly-assigned rate. The difference is the amount saved during the three-month invoice period.

Work Product

The written work product from the above tasks will be as follows.

Utility Billing Findings Report: The Findings Report states the expected amount of any refunds and ongoing savings identified. For identified refunds, the Findings Report describes the justification for the refunds by making reference to supporting tariffs, statutes or CPUC decisions. For identified ongoing savings, the Findings Report recommends the specific rate schedule, program, tariff, option, or billing change the City can benefit from, the tariff justification for making the change, and the estimated ongoing savings that will result. The

written report is accompanied by a “savings chart” that lists each electricity account that offers opportunities for refunds or savings. (See attached sample Findings Report and savings chart.)

For the City of Long Beach, UCM’s Utility Billing Findings Report also will include an evaluation of the City’s current process for receiving, processing, and monitoring utility bills. UCM will provide recommendations and information on opportunities to streamline the utility bill administration process, including bill delivery options provided by SCE, third-party software providers, and payment options such as Electronic Funds Transfer (EFT). UCM also will recommend to City the utility data that it needs to capture to ensure ongoing minimization of utility costs and effective implementation of energy and water conservation initiatives.

Supplemental Utility Billing Findings Report for Unmetered Street Light Charges: The acquisition of street light inventories, maps, and other information from SCE can take several weeks or longer. Once the SCE information is received, the review and analysis of 25,000 street lights for the City of Long Beach will take approximately 12 weeks. Therefore, UCM will provide a separate Utility Bill Findings Report (anticipated to be completed 18 to 22 weeks after project commencement) that will address billing errors affecting only unmetered street light charges. This report will include an attachment that will list each billing error, the specific street light affected, an explanation of the error, and the amount of the overcharges and refunds.

Invoices: Since UCM’s fees are calculated based on the refunds and ongoing savings achieved, we believe it is critical to verify that ongoing savings have *actually* been achieved and to provide the City with detailed *support for how we calculated those savings*. This support is contained in the invoices we send to clients every three months. We calculate savings as the difference between the amount actually paid on the newly-assigned rate schedule, or due to the revised billing procedure, during the invoice period (three months) and the amount that the client would have paid on the old rate schedule or billing procedure during the same period. Determining what the client “would have paid” requires that we apply the client’s actual billing inputs (including usage, demand, time-of-use shares, connected load, taxes, surcharges etc.) during the invoice period to the old rate schedule. UCM’s proprietary invoicing software makes this calculation simple and accurate, and allows for a very detailed, but easy-to-read, presentation of these calculations on the invoice itself. (See attached sample invoice.)

User-Friendly Guide to Identify Common Utility Billing Errors: UCM will provide a separate written report that will provide explanations on the billing errors discovered for the City of Long Beach, as well as common errors that UCM has encountered in working with more than 250 other California public entities. UCM’s report will provide recommendations on how to spot billing errors and discrepancies, including the best use of on-bill data, “smart meter” 15-minute interval data, and other sources of information. The report will advise the City on navigating and leveraging analytical tools available through SCE’s web site. In addition, in order to augment the written report, UCM is available to provide hands-on, in-person assistance and instruction to designated City staff to assist them in getting “up to speed” on identifying billing errors.

Meetings

UCM strives to perform its services with minimal need for time from client personnel, and therefore frequent meetings typically are not necessary. However, it is common for UCM to meet with clients when the project begins, to discuss the best ways to gather utility bills, facility

information, and other data. Additionally, UCM frequently meets with clients to review its Findings Report and obtain permission to proceed. UCM also may meet with client personnel when site visits are required, when complex issues arise that require additional explanation or client involvement, or any other time that clients would like information. Because of UCM's Central California location, we are always available and happy to meet with our clients throughout the state whenever necessary or desired.

Timeline

We estimate the following timeline for the Utility Billing Audit Services project.

Time from contract signing...	Task to be completed...
2 weeks	1. UCM obtains copies of one month's electricity bills.
4 weeks	2. UCM conducts initial analysis of all bills.
6 weeks	3. UCM obtains historical billing records and data from utility provider for those accounts that require historical analysis.
8 weeks	4. Site visits, if any, are completed.
12 weeks	5. UCM sends Utility Billing Findings Report to City.
14 weeks	6. UCM obtains City's approval to pursue recommended rate changes and refunds.
16 weeks	7. UCM provides guide on identifying common billing errors, and meets with City staff to explain.
18 weeks to 22 weeks	8. UCM completes supplemental Utility Billing Findings Report for unmetered street light billing errors
20 weeks	9. UCM obtains utility provider's approval of routine rate changes or refunds identified in the Findings Report.
22 weeks	10. Utility rate changes are implemented and reflected on City's utility bills.
34 weeks	11. UCM sends first invoice to City covering prior three months of savings.
Ongoing for duration of contract term.	12. UCM works with utility and/or CPUC to implement any unresolved rate changes, and continues to monitor City's electricity bills to quantify actual savings.

Completion Date

The initial Utility Billing Findings Report will be submitted to the City within 12 weeks from project commencement. After receiving permission from the City to pursue the savings opportunities identified in the report, UCM will work to implement the changes as quickly as possible. As the schedule above indicates, routine changes can be implemented as soon as six weeks after UCM contacts SCE. However, changes that are unusual, complex, particularly significant, or that require CPUC intervention can take several months or longer to resolve.

After the initial Utility Billing Findings Report has been completed, UCM will also prepare a Supplemental Utility Billing Findings Report for Unmetered Street Light Charges, estimated to be completed at 18 to 22 weeks after project commencement, depending on SCE's responsiveness in providing requested information. Additionally, UCM will prepare a "Guide to Identify Common Utility Billing Errors", and will meet with City staff to provide training and assistance, estimated to be completed 16 weeks after project commencement.

Sample Report

Please see attached sample Utility Billing Findings Report, as well as attached sample savings chart.

RFP SECTION 9: COMPANY BACKGROUND AND REFERENCES

Company Profile: UCM is classified as an Individual / Sole Proprietor or Single Member LLC. Utility Cost Management LLC company headquarters is located at 1100 W. Shaw Avenue, Suite 126, Fresno, CA 93711. Phone: (559) 261-9230, Fax: (559) 261-9231. Website: www.utilitycostmanagement.com . All work will be performed out of the Fresno office.

UCM has 10 employees. The five individuals profiled below would be involved providing services to the City of Long Beach, as well as two administrative staff members.

Contractor's Point of Contact / Project Manager will be Michael Kerkorian, Managing Member for UCM. Tel: (559) 261-9230, e-mail: mk@utilitycostmanagement.com

Company Background and History: When UCM opened for business in 1991, it started by reviewing bills for a variety of small retail establishments. In the early 1990's, the business grew gradually, working with mid-sized commercial customers, such as shopping centers, real estate companies, office buildings, and multifamily housing providers.

By 1995, the firm began attracting the attention of school districts, colleges, and universities. UCM eventually analyzed the bills for hundreds of educational sites that serve more than one million California students, including the University of California, Berkeley.

UCM's work for public educational institutions led to its involvement in the State of California's Utility Bill Auditing Program in 1997. In a statewide search for capable utility auditing firms conducted by the California Department of General Services, UCM received the highest point total of any bidder. This project proved to be a milestone in UCM's development for two reasons. First, the sheer size of the project established UCM as capable of handling even the largest, most geographically diverse clients. Second, the project enhanced a long relationship with public entities that continues to this day.

Since 1997, UCM's public entity clients in California have included approximately 100 cities, 120 special districts, two counties, five departments of the State of California (Department of Corrections, Department of Consumer Affairs, Military Department, Department of General Services, State Lottery Commission), and 25 school and college districts.

Key Staff Responsible for Performance

The UCM staff assigned to this project will be Michael Kerkorian (Project Manager), Dara Kerkorian, Chris Wiehl, Greg Normart, and Beth Rogers.

Michael Kerkorian – Project Manager

Specific tasks assigned: Overall project management, analysis of SCE and CPUC data, organizing and drafting of written reports, negotiations with SCE, presentation of findings.

Job classification: Managing Member of UCM

Academic degrees and professional registrations: Bachelor of Science, Industrial Engineering (Stanford University 1988); Member of Association of Energy Engineers; Certified Energy Auditor (CEA)

Number of years of utility audit experience: 25 years

In 1991, Michael Kerkorian founded Utility Cost Management LLC (UCM). Today, Michael serves as UCM's Managing Member and is responsible for the firm's efforts to reduce clients' costs through the informed application of utility data, rates, and regulations. While he has continued to work in all facets of UCM's business, he has developed a special expertise in electricity rate and tariff issues.

Michael has analyzed utility charges for more than one thousand California utility customers. He has successfully resolved numerous rate and tariff issues on behalf of clients, through negotiations with utilities and through CPUC intervention. He has directly supervised the payment of more than \$50 million dollars in utility refunds to UCM clients, and has been responsible for initiating rate changes to utility accounts that have reduced clients' ongoing costs by more than \$100 million.

Michael has testified before the CPUC more than fifteen times, and has also testified on utility-related issues in California Superior Court. He has represented various parties in the CPUC's "General Rate Case" process, requiring him to analyze utility company costs to evaluate requested utility rate increases. Through this work, Michael has developed an in-depth understanding of utility cost accounting methods. Michael also led a team that was selected by the CPUC to investigate, and report on, the billing practices of an electric service provider with more than 100,000 customers.

Michael has initiated and been involved in many CPUC proceedings that have resulted in important changes to rates and policies affecting California's agricultural, multifamily, low-income, governmental, and commercial customers. These changes frequently have had far-reaching impacts benefitting thousands of utility customers. He has authored articles and given presentations on utility rate reductions for various organizations, including the Institute of Real Estate Managers, the Association of Housing Management Agents, the Western Growers Association, the California Special Districts Association, the California Street Light Association, and the California Municipal Revenue & Tax Association.

Before founding Utility Cost Management, Michael served as a Senior Consultant in the San Francisco office of Peterson Consulting, where he worked primarily in the area of forensic accounting in a litigation support role. His assignments included financial analysis of CPUC filings of the firm's largest client, Pacific Gas & Electric Company.

Dara Kerkorian

Specific tasks assigned: Regulatory research, analysis of SCE and CPUC data, statistical analyses

Job classification: Analyst

Academic degrees and professional registrations: Bachelor of Arts (Stanford University 1984); M.S. in Social Welfare (Columbia University 1992); Ph.D. in Social Welfare (Columbia University 2003)

Number of years of utility audit experience: 10 years

Dara joined UCM in 2006 and has played a key role in all facets of the organization: auditing, tariff analysis and regulatory research, and advocacy before the CPUC. As lead auditor, she has performed and overseen the completion of hundreds of utility audits for UCM clients served by SCE and SCG. Her audits of cities within the past three years include Walnut Creek, Redondo Beach, Hermosa Beach, Vista, Montclair, Laguna Niguel and Rohnert Park. Currently, she is in the process of completing audits for two cities served by SCE: Santa Clarita and Blythe.

While her knowledge of the tariffs of California's four major utilities (i.e. PG&E, SCE, SCG, and SDG&E) is extensive, she also has undertaken numerous research projects involving regulatory cases and CPUC decisions related to policy and rate structure of California electric, gas, and water utilities. Her tariff analysis and research has resulted in her playing a key role in UCM's advocacy work before the CPUC, and has helped to clarify tariff language and to secure hundreds of thousands of dollars in savings for UCM's clients.

Chris Wiehl

Specific tasks assigned: Analysis of street light charges, identification of billing errors, and resolution of billing issues with SCE

Job classification: Director of Street Light Services

Academic degrees and professional registrations: Bachelor of Arts (University of California, Los Angeles 1989); Certified PG&E Energy Efficiency Specialist

Number of years of utility audit experience: 17 years

Chris joined UCM in 1998, just after the firm was selected by the State of California Department of General Services to provide utility bill auditing services to public entities throughout the state. Chris' first assignment with UCM was to lead the marketing and administrative efforts on the state project. Under his guidance, the project was a tremendous success, UCM worked with dozens of public entities, and the state extended the program for three years beyond its initial three-year term. Building on that success, over the years Chris has led UCM's outreach to public entities and has developed relationships with cities and special districts throughout California.

In recent years, Chris has taken a lead role in working with UCM clients that are considering purchasing or upgrading their street light systems. As a result, he has developed an in-depth understanding of street light issues and how California's major utilities implement street light rates and regulations. In May 2014, Chris was the featured speaker at the California Street Light Association's annual conference, where he presented information on new policies and regulations affecting street lights.

Prior to joining UCM, Chris was a manager with Richard Heath & Associates, a firm that administers programs for California's public utilities, among others. One of his main assignments with RHA was to manage PG&E's "Energy Partners" program.

Greg Normart

Specific tasks assigned: Marketing/Sales

Job classification: Marketing/Sales & Business Development

Academic degrees and professional registrations: Bachelor of Arts (California State University, Long Beach, 1990), Degree in Speech Communication

Number of years of experience: 6 years

Greg joined UCM in 2010, and quickly became a leading member of the firm's marketing team. He has successfully designed and developed a variety of marketing materials over the past 6 years with an emphasis on building UCM's online presence, trade show attendance, client outreach and e-mail campaigns directly marketed to new business development specific to public entities and municipalities.

Greg's success is based on his creativity, his commitment to his clients, and his understanding that UCM's clients deserve the highest level of customer service. If the City of Long Beach retains UCM, Greg will continue to be the Management Contact, and will ensure that all of the City's needs are being met by UCM's team.

Beth Rogers

Specific tasks assigned: Invoicing, measurement and verification of savings, collection of billing data, implementation of rate changes and refund requests

Job classification: Accounts Receivable, Administrative Support

Number of years of experience: 16 years

Beth joined UCM in 2000. Initially, her primary tasks involved supporting UCM's efforts in CPUC proceedings, and performing various administrative and research tasks. For the past 9 years, she has been in charge of three areas that are critical to a well-conducted audit: (1) collection and organization of billing data, (2) implementation of rate changes and refund requests to utility providers, and (3) invoicing and measurement and verification. Over the years, Beth has developed sound working relationships with her counterparts at California's major utility providers, which helps her in deftly navigating the utility organizations to quickly and efficiently procure billing data and obtain utilities' approval of requested rate changes and refunds.

Financial Stability: The Financial Stability report is being submitted under separate cover marked **CONFIDENTIAL**.

Subcontractor Information: No subcontractors will be used during this audit.

References

UCM has performed similar services for public and private sector clients. Since 1997, UCM's public entity clients in California have included approximately 100 cities, 120 special districts, two counties, five departments of the State of California (Department of Corrections, Department of Consumer Affairs, Military Department, Department of General Services, State Lottery Commission), and 25 school and college districts.

The following is a partial list of California public entities that have retained UCM to provide Utility Cost Recovery and Reduction Services:

State of California, Dept. of General Services	State of California, Dept. of Health Services	California Military Dept. / National Guard	California Lottery Commission
State of California, Dept. of Consumer Affairs	State of California, Dept. of Corrections	California Public Utilities Commission	
County of Fresno	Inyo County	County of San Luis Obispo	
City of Adelanto	City of El Monte	City of Laguna Niguel	City of Rancho Mirage
City of Aliso Viejo	City of El Segundo	City of Lake Elsinore	City of Rialto
City of Apple Valley	City of Encinitas	City of Lakewood	City of Redondo Beach
City of Artesia	City of Escondido	City of Lemon Grove	City of Ridgecrest
City of Baldwin Park	City of Exeter	City of Lomita	City of San Gabriel
City of Barstow	City of Farmersville	City of Lynwood	City of San Marcos
City of Bell Gardens	City of Fillmore	City of Maywood	City of San Marino
City of Blythe	City of Fountain Valley	City of McFarland	City of San Pablo
City of Brawley	City of Gardena	City of Mission Viejo	City of Santa Barbara
City of Buena Park	City of Glendora	City of Moorpark	City of Santa Clarita
City of Calabasas	City of Goleta	City of Montclair	City of Santee
City of California City	City of Grand Terrace	City of Monterey Park	City of Shafter
City of Canyon Lake	City of Hawthorne	City of Moreno Valley	City of South El Monte
City of Carpinteria	City of Hercules	City of Newport Beach	City of South Gate
City of Chino	City of Hermosa Beach	City of Norco	City of Stanton
City of Chula Vista	City of Highland	City of Norwalk	City of Tehachapi
City of Claremont	City of Hollister	City of Oceanside	City of Tulare
City of Costa Mesa	City of Huntington Park	City of Orange	City of Twentynine Palms
City of Covina	City of Imperial Beach	City of Oxnard	City of Upland
City of Cudahy	City of Inglewood	City of Paramount	City of Villa Park
City of Culver City	City of La Mirada	City of Paso Robles	City of Visalia
City of Desert Hot Springs	City of Laguna Beach	City of Pleasant Hill	City of Walnut Creek
City of Downey	City of El Monte	City of Port Hueneme	City of Yorba Linda
City of Duarte	City of El Segundo	City of Porterville	
Berkeley Unified School District	Fresno Unified School District	City of Poway	Contra Costa Community College District
Clovis Unified School District	Hayward Unified School District	University of California, Berkeley	Rancho Simi Recreation & Park District
Arrowbear County Water District	Lamont Public Utilities District	Palm Springs Unified School District	
			Continued on next page.

Castaic Lake Water Agency	Laton Community Services District	Peralta Community College District	South Coast Water District
Central Contra Costa Sanitary District	Livermore Area Rec. & Park District	Pico Water District	South San Luis Obispo County Sanitation District
Chico Area Recreation & Park District	Metropolitan Water District of Southern California	Pleasant Valley Rec & Park District	Stockton East Water District
Costa Mesa Sanitary District	Nipomo Community Services District	Rancho California Water District	Valley-Wide Rec. & Park District
Fallbrook Public Utilities District	Olivehain Municipal Water District	Ross Valley Sanitary District	West County Wastewater District
Goleta Sanitary District	Orange County Water District	Rubidoux Community Services District	Western Municipal Water District
Hi-Desert Water District	Pajaro Valley Water Management Agency	San Bernardino County Special Districts	Santa Margarita Water District
San Mateo County Harbor District			

In each instance, UCM's services were identical, or virtually identical, to the services requested in this RFP.

Since 2008, UCM has also been an "Endorsed Affiliate" of the California Special Districts Association (CSDA). UCM and CSDA continue to work together to bring quality utility bill auditing services to many CSDA members. CSDA selected UCM as its exclusive utility bill auditing vendor after a thorough search for qualified vendors.

UCM is attaching 41 letters of recommendation that have been provided to us over the years.

In addition, in accordance with the RFP Section 9.4 requirements, we are providing the following five references for similar projects completed in the last three years.

City of Santa Clarita

Project Description: Identify refund and savings opportunities on the city's electricity, gas, and water accounts, report refund and savings opportunities, obtain refunds and savings for city, invoice based on percentage of refund and ongoing savings.

Project Dates: May 22, 2015 – Present

Technical Environment: UCM gathers historical billing data in electronic format from SCE. UCM utilizes proprietary software programs that facilitate analyses of SCE tariff options, programs, and billing procedures, as well as 15-minute interval data. UCM also maintains a database that tracks SCE rate components from 2009 to the present.

Staff Assigned to this Audit: Michael Kerkorian, Chris Wiehl, Dara Kerkorian, Beth Rogers

Contact: Carmen Magana, Finance Director, Tel: 661/ 255-4920

City of Orange

Project Description: Identify refund and savings opportunities on the city's electricity, gas and water accounts, report refund and savings opportunities, obtain refunds and savings for city, invoice based on percentage of refund and ongoing savings.

Project Dates: April 25, 2013 – Present

Technical Environment: UCM gathers historical billing data in electronic format from SCE. UCM utilizes proprietary software programs that facilitate analyses of SCE tariff options, programs, and billing procedures, as well as 15-minute interval data. UCM also maintains a database that tracks SCE rate components from 2009 to the present.

Staff Assigned to this Audit: Michael Kerkorian, Greg Normart, Beth Rogers

Contact: Katrin Bandhauer, Assistant Finance Director, Tel: 714/ 744-2251

City of Inglewood

Project Description: Identify refund and savings opportunities on the city's electricity, gas, water, sewer and garbage accounts, report refund and savings opportunities, obtain refunds and savings for city, invoice based on percentage of refund and ongoing savings.

Project Dates: March 24, 2015 – Present

Technical Environment: UCM gathers historical billing data in electronic format from SCE. UCM utilizes proprietary software programs that facilitate analyses of SCE tariff options, programs, and billing procedures, as well as 15-minute interval data. UCM also maintains a database that tracks SCE rate components from 2009 to the present.

Staff Assigned to this Audit: Michael Kerkorian, Chris Wiehl, Dara Kerkorian, Beth Rogers

Contact: David Esparza, Chief Financial Officer, Tel: 310/ 412-8701

City of Lakewood (See attached letter of reference.)

Project Description: Identify refund and savings opportunities on the city's electricity and gas accounts, report refund and savings opportunities, obtain refunds and savings for city, invoice based on percentage of refund and ongoing savings.

Project Dates: January 29, 2014 – Present

Technical Environment: UCM gathers historical billing data in electronic format from SCE. UCM utilizes proprietary software programs that facilitate analyses of SCE tariff options, programs, and billing procedures, as well as 15-minute interval data. UCM also maintains a

database that tracks SCE rate components from 2009 to the present.

Staff Assigned to this Audit: Michael Kerkorian, Chris Wiehl, Beth Rogers

Contact: Diane Perkin, Director of Administrative Services, Tel: 562/ 866-9771

City of Mission Viejo (See attached letter of reference.)

Project Description: Identify refund and savings opportunities on the city's electricity, gas, water and sewer accounts, report refund and savings opportunities, obtain refunds and savings for city, invoice based on percentage of refund and ongoing savings.

Project Dates: January 5, 2010 – September 2014

Technical Environment: UCM gathers historical billing data in electronic format from SCE. UCM utilizes proprietary software programs that facilitate analyses of SCE tariff options, programs, and billing procedures, as well as 15-minute interval data. UCM also maintains a database that tracks SCE rate components from 2009 to the present.

Staff Assigned to this Audit: Michael Kerkorian, Chris Wiehl, Beth Rogers

Contact: Cheryl Dyas, Director of Administrative Services, Tel: 949/ 470-3059

Please see additional Letters of Recommendation attached to this RFP.

Business License

Yes, UCM will obtain a business license with the City of Long Beach.

RFP SECTION 10: COST

UCM's Proposed Fee Structure has been provided under separate, sealed cover as a part of this RFP's instructions.

Under UCM's proposal, there are no upfront fees or charges to the City. UCM's contract is completely contingency-based, and all invoices are submitted only *after* the City has received a refund, or has actually seen real savings on its SCE bills.

When UCM invoices for refunds, generally we are able to receive an actual copy of the rebilled statement or a refund check and supporting documentation to substantiate the amount the City has received.

UCM's invoices for ongoing savings show the amount actually paid to SCE over a given three-month period, and the amount that would have been paid *for the same electricity usage* if the billing changes identified by UCM had not been implemented. The invoices show the calculation of the "would-have-been charges" line by line (e.g. customer charges, cost per unit of energy, taxes), so that all figure on the invoices can be reconciled to clients' SCE bills or to SCE rate schedules that are posted at www.sce.com.

UCM's invoicing methodology results in accurate, precise measurement and verification of the results of our work. We do not use estimates or projections to quantify client savings. Furthermore, UCM's invoicing approach ensures that we are never paid for reductions in electricity consumption resulting from energy efficiency or conservation measures, or other client efforts that are not attributable to our work. UCM is paid only for savings associated with clients' *actual* electricity consumption.

For additional information on UCM's quantification of client savings, please see "Ongoing Consultation, Measurement & Verification, and Invoicing" (page 4), and "Invoicing" (page 5).

EXHIBIT “A-2”

Request for Proposals (RFP)



City of Long Beach
 Purchasing Division
 333 West Ocean Boulevard, 7th Floor
 Long Beach, CA 90802

City of Long Beach
Request For Proposals Number FM 17-009
 For
Electric Utility Billing Audit Services

Release Date:	11/03/2016
Contractor Questions Due:	11/10/2016
Posting of the Q & A:	11/17/2016
Due Date:	11/29/2016

For additional information, please contact:
Michelle King, Buyer, 562-570-6020

See Section 4 for instructions on submitting proposals.

Company Name _____ Contact Person _____

Address _____ City _____ State _____ Zip _____

Telephone (____) _____ Fax (____) _____ Federal Tax ID No. _____

E-mail: _____

Prices contained in this proposal are subject to acceptance within _____ calendar days.

I have read, understand, and agree to all terms and conditions herein. Date _____

Signed _____

Print Name & Title _____

Rev 2014 1001



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ATTACHMENTS

- A. CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP
- B. PRO-FORMA AGREEMENT SAMPLE
- C. STATEMENT OF NON-COLLUSION
- D. DEBARMENT, SUSPENSION, INELIGIBILITY CERTIFICATION
- E. W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION
- F. SECRETARY OF STATE CERTIFICATION



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1. OVERVIEW OF PROJECT

The City of Long Beach (City) requests proposals for Electric Utility Billing Audit Services from firms to analyze the City's electric utility accounts to ensure that all accounts are correctly billed and error free, and that the City receives the most advantageous rates available to them in the marketplace, and to work with the utility provider to recoup refunds if overcharges have occurred.

Purpose

The purpose of the City's proposed Electric Utility Billing Audit Services is to identify and recover past overcharges on the utility accounts; to identify and obtain ongoing cost reductions based on the new or different rate schedules, rate options, or other billing adjustments; and to measure and report the refunds recouped and ongoing savings realized as a result of the consultants work.

Background

The City has approximately 260 meters associated with City-owned structures, 2,301 electricity meters as of July 2016, and approximately 25,000 streetlights. Southern California Edison provides electricity service to the City. Currently, the City spends approximately \$17 million dollars every year for electricity services.



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2. ACRONYMS/DEFINITIONS

For purposes of this RFP, the following acronyms/definitions will be used:

Awarded Contractor	The organization/individual that is awarded and has an approved contract with the City of Long Beach, California for the services identified in this RFP.
City	The City of Long Beach and any department or agency identified herein.
Contractor	Organization/individual submitting a proposal in response to this RFP.
Department / Division	City of Long Beach, Financial Management Department,
Evaluation Committee	An independent committee comprised solely of representatives of the City established to review proposals submitted in response to the RFP, score the proposals, and select a Contractor.
May	Indicates something that is not mandatory but permissible.
RFP	Request for Proposals.
Shall / Must	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
Should	Indicates something that is recommended but not mandatory. If the Contractor fails to provide recommended information, the City may, at its sole option, ask the Contractor to provide the information or evaluate the proposal without the information.
Subcontractor	Third party not directly employed by the Contractor who will provide services identified in this RFP.



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3. SCOPE OF PROJECT

The following is an outline of the desired services to be performed. The City of Long Beach will consider input from respondents as to other suggested services to be considered for inclusion.

Through this RFP, the City of Long Beach is soliciting qualified proposals for Electric Utility Billing Audit Services. It is required that respondents propose a comprehensive plan for the auditing of the City's electricity accounts.

The Contractor should include a response for electric billing audit services. The billing audit project, as envisioned in the scope of work, 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.

- 3.1 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.
- 3.2 Contractor shall compile historical data of no less than 36-48 months and conduct a comprehensive review of the billing information.
- 3.3 Contractor shall compare usage and demand amounts for electricity to determine if the quantities billed are reasonable.
- 3.4 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.
- 3.5 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



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- 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.
- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 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; an



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- 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.
- 3.10 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.
- 3.11 The City will supply a list of locations, service addresses, meters, rates and utility account numbers.



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4. SUBMITTAL INSTRUCTIONS

4.1 For questions regarding this RFP, submit all inquiries via email to rfppurchasing@longbeach.gov by November 2, 2016 at 11:00 a.m. Responses to the questions will be posted on the City's website purchasing.longbeach.gov under the "Bids/RFPs" tab no later than November 8, 2016. All proposers are recommended to visit the abovementioned City website on a regular basis as the responses may be posted earlier than the date above.

4.1.1 The City will not be responsible for or bound by (1) any oral communication or (2) any other information or contact that occurs outside the official communication process specified herein, unless confirmed in writing by the City Contact.

4.2 RFP Timeline

TASK	DATE/TIME
Deadline for submitting questions	November 10, 2016 at 11:00 a.m.
Answers to all questions submitted available	November 17, 2016 at 11:00 a.m.
Deadline for submission of proposals	November 29, 2016 at 11:00 a.m.
Evaluation period	November 29- December 6, 2016
Selection of Contractor	On or about December 9, 2016

NOTE: These dates represent a tentative schedule of events. The City reserves the right to modify these dates at any time, with appropriate notice to prospective Contractors.

4.3 Method of Submission

Electronic proposals shall be submitted via the City's secure online bidding system. All required sections of the proposal must be submitted via the website. Proposer is solely responsible for "on time" submission of their electronic narrative proposal and cost proposal. The Bid Management System will not accept late proposals and no exceptions shall be made. Proposers will receive an e-bid confirmation number with a time stamp from the Bid Management System indicating that their proposal was submitted successfully. The City will only receive those proposals that were transmitted successfully.



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RFP cover page shall be signed in ink, scanned and included with narrative proposal in the electronic submission.

Submit proposal online at:
<http://www.planetbids.com/portal/portal.cfm?CompanyID=15810>

In addition to the electronic submission, Proposers shall submit an original RFP signature/cover page with wet signature(s) in a sealed envelope to the address shown below:

City of Long Beach
c/o City Clerk – Attn: Michelle King
333 W. Ocean Blvd., Plaza Level
Long Beach, CA 90802

Documents shall be clearly labeled in a sealed envelope or box as follows:

Request for Proposals No.: RFP FM 17-009
Title: Electric Utility Billing Audit Services

- 4.4 Proposals must be received by 11:00 a.m. local time, November 29, 2016. Proposals that do not arrive by the specified date and time WILL NOT BE ACCEPTED. Contractors may submit their proposal any time prior to the above stated deadline. The City will not be held responsible for proposal mishandled as a result of technical error. Facsimile or telephone proposals will NOT be considered unless otherwise authorized; however, proposals may be modified by fax or written notice provided such notice is received prior to the opening of the proposals.
- 4.5 The proposal should be presented in a format that corresponds to and references sections outlined below and should be presented in the same order. Responses to each section and subsection should be labeled so as to indicate which item is being addressed. For ease of evaluation, proposals should be presented in the format described within this RFP.
- 4.6 Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- 4.7 Descriptions on how any and all equipment and/or services will be used to meet the requirements of this RFP shall be given, in detail, along with any additional information documents that are appropriately marked.



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- 4.8 The proposal must be signed by the individual(s) legally authorized to bind the Contractor.
- 4.9 If complete responses cannot be provided without referencing supporting documentation, such documentation must be provided with the proposal and specific references made to the tab, page, section and/or paragraph where the supplemental information can be found.
- 4.10 Proposals shall be submitted in two (2) distinct parts - the **narrative/technical proposal** and the **cost proposal**. **THE NARRATIVE/TECHNICAL PROPOSAL MUST NOT INCLUDE COST AND PRICING INFORMATION.** The narrative/technical proposal will be reviewed first and then the cost proposal. Therefore, each part should be **packaged separately, but submitted together.**

5. PROPOSAL EVALUATION AND AWARD PROCESS

- 5.1 Proposals shall be consistently evaluated based upon the following criteria:
 - 5.1.1 Demonstrated competence;
 - 5.1.2 Experience in performance of comparable engagements;
 - 5.1.3 Expertise and availability of key personnel;
 - 5.1.4 Financial stability;
 - 5.1.5 Conformance with the terms of this RFP;
 - 5.1.6 Reasonableness of cost; and
 - 5.1.7 Schedule for Delivery.
- 5.2 Proposals shall be kept confidential until a contract is awarded.
- 5.3 The City may also contact the references provided in response to Section 9.3; contact any Contractor to clarify any response; contact any current users of a Contractor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The City shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the City of Long Beach.
- 5.4 The City reserves the right to request clarification of any proposal term from prospective Contractors.
- 5.5 Selected Contractor(s) will be notified in writing. Any award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Contractors unless and until an agreement is reached. If contract negotiations cannot be concluded successfully, the City reserves the right to negotiate a contract with another Contractor or withdraw the RFP.
- 5.6 Any contract resulting from this RFP shall not be effective unless and until approved by the City Council / City Manager, as applicable.



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6. PROTEST PROCEDURES

6.1 Who May Protest

Only a proposer who has actually submitted a proposal is eligible to protest a contract awarded through a Request for Proposals ("RFP"). A proposer may not rely on the protest submitted by another proposer but must pursue its own protest.

6.2 Time for Protest

The City will post a notice of the intent to award a contract at least ten (10) business days before an award is made. The notice will be available to all proposers who submitted a proposal via the City's electronic bid notification system at <http://www.longbeach.gov/purchasing/default.asp>. A proposer desiring to submit a protest for a proposal must do so within five (5) business days of the electronic notification of intent to award. The City Purchasing Agent must receive the protest by the close of business on the fifth (5th) business day following posting of notification of intent to award the contract. Proposers are responsible for registering with the City's electronic bid notification system and maintaining an updated Contractor profile. The City is not responsible for proposers' failure to obtain notification for any reason, including but not limited to failure to maintain updated email addresses, failure to open/read electronic messages and failure of their own computer/technology equipment. The City's RFP justification memo will be available for review by protestors once the notification of intent to award has been posted via the City's electronic bid notification system.

6.3 Form of Protest

The protest must be in writing and signed by the individual who signed the proposal or, if the proposer is a corporation, by an officer of the corporation, and addressed to the City Purchasing Agent. Protests may be submitted via US Mail, hand delivery or email, and must include a valid email address, street address and phone number sufficient to ensure that the City's decision concerning the protest will be received. Protests must set forth a complete and detailed statement of the grounds for the protest and include all relevant information to support the grounds stated, and must refer to specific portions of the RFP and attachments upon which the protest is based. Once the protest is received by the City Purchasing Agent, the City will not accept additional information on the protest unless the City requests it.

6.4 City Response to Protest

The City Purchasing Agent or designee will respond with a decision regarding the protest within five (5) business days of receipt of protest by email or US Mail to the address provided in the protest. This decision shall be final.



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6.5 Limitation of Remedy

The procedure and time limits set forth herein are mandatory and are the proposer's sole and exclusive remedy in the event of a protest. The proposer's failure to comply with these procedures shall constitute a waiver of any right to further pursue a protest, including filing a Government Code Claim or initiation of legal proceedings.

7. **PROJECT SPECIFICATIONS**

Describe your firm's capabilities, experience and approach in preparing utility rate analyses for city governments or other public entities. Include your project implementation experience evaluating accounts of the utilities that provide service to the City. Summarize your approach and understanding of the project and any special considerations of which the City should be aware. Indicate clearly, the levels of participation you will expect from City staff in the fulfillment of the contract. The information in this section will aid the City in the refinement of the scope of work during contract negotiations.

This section shall outline the proposed approach to the project. This approach or scope of work shall consist of:

- Objective(s)
- Task(s), approach, and brief description
- Work products
- Meeting(s)
- Timeline
- Completion date
- Sample report consisting of a completed Utility Billing Audit Analysis in PDF or electronic versions.

As part of the Company Background and References, the proposal should include the following information:

- Name and telephone number of the principal/project manager who will be in charge of the actual work performed on the project;
- The address and telephone number of the specific office where the work is to be undertaken.

8. **WARRANTY/MAINTENANCE AND SERVICE. Not applicable.**

9. **COMPANY BACKGROUND AND REFERENCES**

9.1 Primary Contractor Information

Contractors must provide a company profile. Information provided shall include:



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- Company ownership. If incorporated, the state in which the company is incorporated and the date of incorporation. An out-of-state Contractor must register with the State of California Secretary of State before a contract can be executed (<http://www.sos.ca.gov/business/>).
- Location of the company offices.
- Location of the office servicing any California account(s).
- Number of employees both locally and nationally.
- Location(s) from which employees will be assigned.
- Name, address and telephone number of the Contractor's point of contact for a contract resulting from this RFP.
- Company background/history and why Contractor is qualified to provide the services described in this RFP.
- Length of time Contractor has been providing services described in this RFP to the **public and/or private sector**. Please provide a brief description.
- Resumes for key staff to be responsible for performance of any contract resulting from this RFP.
- Financial stability. Proposers shall submit a copy of their company's most recent professionally prepared un-audited Financial Statements (Income Statement and Balance Sheet). The statement shall be accompanied by a cover letter that states the name and title of the preparer, the basis of the financial statement presentation (cash or accrual) and where these statements have been prepared in accordance with Generally Accepted Accounting Principles for the most recent fiscal year end of the proposer.

9.2 Subcontractor Information

9.2.1 Does this proposal include the use of subcontractors?

Yes _____ No _____ Initials _____

If "Yes", Contractor must:

- 9.2.1.1 Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.
- 9.2.1.2 Provide the same information for any subcontractors as is indicated in Section 9.1 for the Contractor as primary contractor.
- 9.2.1.3 References as specified in Section 9.3 below must also be provided for any proposed subcontractors.
- 9.2.1.4 The City requires that the awarded Contractor provide proof of payment of any subcontractors used for this project. Proposals shall include a plan by which the City will be notified of such payments.



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9.3 Primary contractor shall not allow any subcontractor to commence work until all insurance required of subcontractor is obtained.

9.4 References

Contractors should provide a minimum of five (5) references from similar projects performed for state and/or large local government clients within the last three years. Information provided shall include:

- Client name;
- Project description;
- Project dates (starting and ending);
- Technical environment;
- Staff assigned to reference engagement that will be designated for work per this RFP;
- Client project manager name and telephone number.

9.5 Business License

The Long Beach Municipal Code (LBMC) requires all businesses operating in the City of Long Beach to pay a business license tax. In some cases the City may require a regulatory permit and/or evidence of a State or Federal license. Prior to issuing a business license, certain business types will require the business license application and/or business location to be reviewed by the Development Services, Fire, Health, and/or Police Departments. For more information, go to www.longbeach.gov/finance/business_license.

10. **COST**

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

10.2 City plans to pay as a percentage of refunds or savings actually achieved for these consulting services as contingency fees. Proposers should review the requirements of this RFP and propose a fee based on percentage of refunds or credits actually obtained for the City by Proposer and/or ongoing savings identified by the Proposer and actually realized by the City for a period negotiated between the City and the Consultant.

- Indicate how the City will be invoiced for refunds/credits and ongoing savings.
- The proposer should clearly describe how the fee is calculated.
- The proposer should stipulate the term of the agreement for sharing potential cost savings identified by Proposer and actually realized by the City.



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- The fee proposal submitted will be used as a basis for any contract negotiations. The actual scope of services and fees included in the contract may be negotiated and may vary to satisfy the City's actual needs
- The proposer should include a copy of the agreement or agreements it customarily uses. The agreement may provide a basis for further contract negotiations.
- The agreement should include an exception that prevents the Proposer from using savings incurred from current and pending energy saving projects in the City in their calculations as cost savings actually realized by the City (Please refer to Section 13 below).

10.3 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 collaborate the calculated savings.

10.4 Consultants must submit a fixed-hourly rate for additional consulting services.

11. **BONDS – Not Applicable**

12. **ADDITIONAL REQUIREMENTS FROM FUNDING SOURCE – Not Applicable**

13. **TERMS, CONDITIONS AND EXCEPTIONS**

13.1 The City will not consider any percentage of savings from current or pending energy saving projects, including the current LED Streetlight Conversion Project as payable under this RFP.

13.2 The requires that this study be completed within two (2) months following issuance of a notice to proceed, subject to extension based on mutual agreement. Consultant shall provide a schedule that the Consultant believes is most appropriate to complete the scope of work for this project within this timeframe. The timing of each deliverable should be based upon the number of calendar days or weeks needed to complete the study.

13.2 This contract will be for a one-time retention of Consultant for Electricity Utility Billing Audit services.

13.2 The City reserves the right to alter, amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a contract pursuant hereto, if it is in the best interest of the City to do so.

13.3 The City reserves the right to waive informalities and minor irregularities in proposals received.



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- 13.4 The City reserves the right to reject any or all proposals received prior to contract award.
- 13.5 The City shall not be obligated to accept the lowest priced proposal, but will make an award in the best interests of the City of Long Beach after all factors have been evaluated.
- 13.6 Any irregularities or lack of clarity in the RFP should be brought to the Purchasing Division designee's attention as soon as possible so that corrective addenda may be furnished to prospective Contractors.
- 13.7 Proposals must include any and all proposed terms and conditions, including, without limitation, written warranties, maintenance/service agreements, license agreements, lease purchase agreements and the Contractor's standard contract language. The omission of these documents may render a proposal non-responsive.
- 13.8 Alterations, modifications or variations to a proposal may not be considered unless authorized by the RFP or by addendum or amendment.
- 13.9 Proposals which appear unrealistic in the terms of technical commitments, lack of technical competence, or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected.
- 13.10 Proposals may be withdrawn by written or facsimile notice received prior to the proposal opening time.
- 13.11 The price and amount of this proposal must have been arrived at independently and without consultation, communication, agreement or disclosure with or to any other contractor, Contractor or prospective Contractor.
- 13.12 No attempt may be made at any time to induce any firm or person to refrain from submitting a proposal or to submit any intentionally high or noncompetitive proposal. All proposals must be made in good faith and without collusion.
- 13.13 Prices offered by Contractors in their proposals are an irrevocable offer for the term of the contract and any contract extensions. The awarded Contractor agrees to provide the purchased services at the costs, rates and fees as set forth in their proposal in response to this RFP. No other costs, rates or fees shall be payable to the awarded Contractor for implementation of their proposal.
- 13.14 The City is not liable for any costs incurred by Contractors prior to entering into a formal contract. Costs of developing the proposals or any other such expenses incurred by the Contractor in responding to the RFP, are entirely the responsibility of the Contractor, and shall not be reimbursed in any manner by the City.



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- 13.15 Proposal will become public record after the award of a contract unless the proposal or specific parts of the proposal can be shown to be exempt by law. Each Contractor may clearly label all or part of a proposal as "CONFIDENTIAL" provided that the Contractor thereby agrees to indemnify and defend the City for honoring such a designation. The failure to so label any information that is released by the City shall constitute a complete waiver of any and all claims for damages caused by any release of the information.
- 13.16 A proposal submitted in response to this RFP must identify any subcontractors, and outline the contractual relationship between the awarded Contractor and each subcontractor. An official of each proposed subcontractor must sign, and include as part of the proposal submitted in response to this RFP, a statement to the effect that the subcontractor has read and will agree to abide by the awarded Contractor's obligations.
- 13.17 The awarded Contractor will be the sole point of contract responsibility. The City will look solely to the awarded Contractor for the performance of all contractual obligation which may result from an award based on this RFP, and the awarded Contractor shall not be relieved for the non-performance of any or all subcontractors.
- 13.18 The awarded Contractor must maintain, for the duration of its contract, insurance coverages as required by the City. Work on the contract shall not begin until after the awarded Contractor has submitted acceptable evidence of the required insurance coverages.
- 13.19 Each Contractor must disclose any existing or potential conflict of interest relative to the performance of the contractual services resulting from this RFP. Any such relationship that might be perceived or represented as a conflict should be disclosed. The City reserves the right to disqualify any Contractor on the grounds of actual or apparent conflict of interest.
- 13.20 Each Contractor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, any civil or criminal litigation or investigation pending which involves the Contractor or in which the Contractor has been judged guilty or liable. Failure to comply with the terms of this provision will disqualify any proposal. The City reserves the right to reject any proposal based upon the Contractor's prior history with the City or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures.
- 13.21 The City will not be liable for Federal, State, or Local excise taxes.
- 13.22 Execution of Attachment A of this RFP shall constitute an agreement to all terms and conditions specified in the RFP, including, without limitation, the Attachment B contract form and all terms and conditions therein, except such terms and conditions that the Contractor expressly excludes.



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- 13.23 The City reserves the right to negotiate final contract terms with any Contractor selected. The contract between the parties will consist of the RFP together with any modifications thereto, and the awarded Contractor's proposal, together with any modifications and clarifications thereto that are submitted at the request of the City during the evaluation and negotiation process. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the final executed contract, the RFP, any modifications and clarifications to the awarded Contractor's proposal, and the awarded Contractor's proposal. Specific exceptions to this general rule may be noted in the final executed contract.
- 13.24 Contractor understands and acknowledges that the representations above are material and important, and will be relied on by the City in evaluation of the proposal. Any Contractor misrepresentation shall be treated as fraudulent concealment from the City of the true facts relating to the proposal.
- 13.25 No announcement concerning the award of a contract as a result of this RFP may be made without the prior written approval of the City.
- 13.26 Proposers are advised that any contract awarded pursuant to this procurement process shall be subject to the applicable provisions of Long Beach Municipal Code Section 2.73 et seq, the Equal Benefits Ordinance. Proposers shall refer to attachment/appendix for further information regarding the requirements of the ordinance.

All Proposers shall complete and return, with their bid, the Equal Benefits Ordinance Compliance form contained in the attachment/appendix. Unless otherwise specified in the procurement package, Proposers do not need to submit with their bid supporting documentation proving compliance. However, supporting documentation verifying that the benefits are provided equally shall be required if the proposer is selected for award of a contract.

- 13.27 All work performed in connection with construction shall be performed in compliance with all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 et seq. of the California Labor Code), and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The Contractor shall indemnify, defend and hold the City harmless from any and all claims, causes of action and liabilities based upon or arising from the failure of any work related to the Project to comply with all such applicable legal requirements, including, without limitation, any such claims, causes of action or liabilities that may be asserted against or incurred by City with respect to or in any way arising from the Project's compliance with or failure to comply with applicable laws, including all applicable federal and state



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labor requirements including, without limitation, the requirements of California Labor Code section 1770 *et seq.*

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

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



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Attachment B

PRO-FORMA AGREEMENT SAMPLE

[Depending on service, a different pro-forma agreement may be used. Contact Purchasing or your department's attorney.]

[Insurance requirements may also change; contact Risk Management.]

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

AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of _____,
for reference purposes only, pursuant to a minute order adopted by the City Council of
the City of Long Beach at its meeting on _____, 20__, by and between
_____, a _____ corporation/limited liability
company etc ("Consultant"), with a place of business at _____,
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"); 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 _____ Dollars
(\$ _____), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one
fiscal year shall be contingent upon the City Council of the City appropriating the
necessary funds for such payment by the City in each fiscal year during the term

1 of this Agreement. For the purposes of this Section, a fiscal year commences on
2 October 1 of the year and continues through September 30 of the following year.
3 In the event that the City Council of the City fails to appropriate the necessary
4 funds for any fiscal year, then, and in that event, the Agreement will terminate at
5 no additional cost or obligation to the City.

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

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

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

27 F. CAUTION: Consultant shall not begin work until this
28 Agreement has been signed by both parties and until Consultant's evidence of

1 insurance has been delivered to and approved by City.

2 2. TERM. The term of this Agreement shall commence at midnight on
3 (BEGINNING DATE), and shall terminate at 11:59 p.m. on (ENDING DATE), unless
4 sooner terminated as provided in this Agreement, or unless the services or the Project is
5 completed sooner.

6 3. COORDINATION AND ORGANIZATION.

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

15 B. The parties acknowledge that a substantial inducement to City
16 for entering this Agreement was and is the reputation and skill of Consultant's key
17 employee, _____. City shall have the right to approve any person
18 proposed by Consultant to replace that key employee.

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

1 privileges of City employees. Consultant expressly warrants that neither Consultant nor
2 any of Consultant's employees or agents shall represent themselves to be employees or
3 agents of City.

4 5. INSURANCE.

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

12 (a) Commercial general liability insurance (equivalent in scope to
13 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
14 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
15 coverage shall include but not be limited to broad form contractual liability,
16 cross liability, independent contractors liability, and products and
17 completed operations liability. City, its boards and commissions, and their
18 officials, employees and agents shall be named as additional insureds by
19 endorsement (on City's endorsement form or on an endorsement
20 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or
21 both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and
22 CG 20 37 07 04), and this insurance shall contain no special limitations on
23 the scope of protection given to City, its boards and commissions, and
24 their officials, employees and agents. This policy shall be endorsed to
25 state that the insurer waives its right of subrogation against City, its boards
26 and commissions, and their officials, employees and agents.

27 (b) Workers' Compensation insurance as required by the California
28 Labor Code and employer's liability insurance in an amount not less than

1 \$1,000,000. This policy shall be endorsed to state that the insurer waives
2 its right of subrogation against City, its boards and commissions, and their
3 officials, employees and agents.

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

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

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

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

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

28 E. Consultant shall require that all subconsultants or contractors

1 that Consultant uses in the performance of these services maintain insurance in
2 compliance with this Section unless otherwise agreed in writing by City's Risk
3 Manager or designee.

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

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

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

23 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
24 contemplates the personal services of Consultant and Consultant's employees, and the
25 parties acknowledge that a substantial inducement to City for entering this Agreement
26 was and is the professional reputation and competence of Consultant and Consultant's
27 employees. Consultant shall not assign its rights or delegate its duties under this
28 Agreement, or any interest in this Agreement, or any portion of it, without the prior

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

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

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

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

1 Data shall not be made available to any person or entity for use without the prior approval
2 of City. This warranty shall survive termination of this Agreement for five (5) years.

3 10. 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 written notice to the other party. In the event of termination under this Section, City
6 shall pay Consultant for services satisfactorily performed and costs incurred up to the
7 effective date of termination for which Consultant has not been previously paid. The
8 procedures for payment in Section 1.B. with regard to invoices shall apply. On the
9 effective date of termination, Consultant shall deliver to City all Data developed or
10 accumulated in the performance of this Agreement, whether in draft or final form, or in
11 process. And, Consultant acknowledges and agrees that City's obligation to make final
12 payment is conditioned on Consultant's delivery of the Data to City.

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

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

28 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

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

1 governmental agency now having or hereafter acquiring jurisdiction.

2 16. PREVAILING WAGES.

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

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

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

23 18. INDEMNITY.

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

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

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

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

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

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

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20. NONDISCRIMINATION.

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

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

21. 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 Consultant

1 certifies and represents that the Consultant will comply with the EBO. The
2 Consultant agrees to post the following statement in conspicuous places at its
3 place of business available to employees and applicants for employment:

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

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

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

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

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

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

1 given in the same manner as stated for other notices. Notice shall be deemed given on
2 the date deposited in the mail or on the date personal delivery is made, whichever occurs
3 first.

4 23. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

26 25. WAIVER. The acceptance of any services or the payment of any
27 money by City shall not operate as a waiver of any provision of this Agreement or of any
28 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
15 officials or employees in any advertising or solicitation for business or as a reference,
16 without the 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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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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

(NAME OF CONSULTANT)

_____, 2015

By _____
Name _____
Title _____

_____, 2015

By _____
Name _____
Title _____

"Consultant"

CITY OF LONG BEACH, a municipal corporation

_____, 2015

By _____
City Manager

"City"

This Agreement is approved as to form on _____, 2015.

CHARLES PARKIN, City Attorney

By _____
Deputy



City of Long Beach
Purchasing Division
333 West Ocean Boulevard, 7th Floor
Long Beach, CA 90802

Attachment C

Statement of Non-collusion

The proposal is submitted as a firm and fixed request valid and open for 90 days from the submission deadline.

This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the proposer has not directly or indirectly induced or solicited any other proposer to put in a sham proposal and the proposer has not in any manner sought by collusion to secure for himself or herself an advantage over any other proposer.

In addition, this organization and its members are not now and will not in the future be engaged in any activity resulting in a conflict of interest, real or apparent, in the selection, award, or administration of a subcontract.

Authorized signature and date

Print Name & Title



City of Long Beach
Purchasing Division
333 West Ocean Boulevard, 7th Floor
Long Beach, CA 90802

Acceptance of Certification

1. This bid/agreement/proposal or like document has the potential to be a recipient of Federal funds. In order to be in compliance with Code of Federal Regulations, the City requires this completed form. By signing and submitting this document, the prospective bidder/proposer is providing the certification and acknowledgement as follows:
2. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
3. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
4. The potential recipient of Federal assistance funds agrees by submitting this bid/agreement/proposal or like document that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

Instructions for completing the form, Attachment –Debarment Certification

1. The City of Long Beach sometimes receives Federal funding on certain purchases/projects. To ensure that the City is in compliance with Federal regulations we require this form to be completed.
2. The City of Long Beach checks the System for Award Management at www.sam.gov to make sure that Contractors who are awarded City contracts and/or purchase orders are not debarred or suspended. Prospective contractors should perform a search on this website for your company and or persons associated with your business.
3. If your business is in compliance with the conditions in the form, please have the appropriate person complete and sign this form and return with your bid/proposal/agreement.
4. If at anytime, your business or persons associated with your business become debarred or suspended, we require that you inform us of this change in status.
5. If there are any exceptions to the certification, please include an attachment. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception, indicate to whom it applies, initiating agency and dates of action.
6. Note: Providing false information may result in criminal prosecution or administrative sanctions.

***If you have any questions on how to complete this form, please contact the
Purchasing Division in the City of Long Beach Business Relations Bureau at 562-570-6200***

Rev 12.11.13



City of Long Beach
Purchasing Division
333 West Ocean Boulevard, 7th Floor
Long Beach, CA 90802

Attachment E

W-9 Request for Taxpayer Identification Number and Certification

[Form must be signed and dated]



City of Long Beach
 Purchasing Division
 333 West Ocean Boulevard, 7th Floor
 Long Beach, CA 90802

Attachment F

Secretary of State Certification

Please provide print out showing your business is registered with the California Secretary of State. Individual and sole proprietor companies are exempt.

Awarded vendors/contractors must be registered with the California Secretary of State prior to contract execution. For more information, please consult:

www.sos.ca.gov/

The screenshot shows a web browser window with the URL <http://kepler.sos.ca.gov/>. The browser's address bar shows "Business Search - Bu...". The page header includes the California Secretary of State logo and the name "Alex Padilla". Below the header is a navigation menu with links for "Business Programs", "Notary & Authentications", "Elections", "Campaign & Lobbying", "State Archives", and "Registries".

The main content area is titled "Business Search". It contains the following text:

This search provides access to domestic stock, domestic nonprofit and qualified foreign corporations, limited liability company and limited partnership information of record with the California Secretary of State. For additional information about entity addresses and the names and addresses of the principals of the entity, order a copy of the last complete Statement of Information (for corporations and limited liability companies) or formation and amendment documents (for limited partnerships). For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).

Please note: This search is not intended to serve as a name availability search. For information on checking or reserving a name, refer to [Name Availability](#).

To conduct a search:

- Select the applicable search type.
- Enter the entity name or number you wish to search. Note: If entering the entity number of a corporation, the number must begin with the letter C.
- Select the Search button.
- For help with searching an entity name or number, refer to [Search Tips](#).

Search Type:

Corporation Name Limited Liability Company/Limited Partnership Name Entity Number

Entity Name or Number:

Disclaimer: This tool allows you to search the Secretary of State's California Business Search database for abstracts of information for domestic stock, domestic nonprofit and qualified foreign corporations, limited liability companies and limited partnerships that have filed with this office. This search tool groups corporations separately from limited liability companies and limited partnerships and returns all entities for the search criteria in the respective groups regardless of the current status.

Although every attempt has been made to ensure that the information contained in the database is accurate, the Secretary of State's office is not responsible for any loss, consequence, or damage resulting directly or indirectly from reliance on the accuracy, reliability, or timeliness of the information that is provided. All such information is provided "as is." For information on ordering copies of the official business entity records for a particular entity, please refer to [Information Requests](#).

The left sidebar contains a menu with the following items:

- Business Entities (BE)
- Online Services
 - E-File Statements of Information for Corporations
 - Business Search
 - Processing Times
 - Disclosure Search
- Main Page
- Service Options
- Name Availability
- Forms, Samples & Fees
- Statements of Information (annual/biennial reports)
- Filing Tips
- Information Requests (certificates, copies & status reports)
- Service of Process
- FAQs
- Contact Information
- Resources
 - Business Resources
 - Tax Information
 - Starting A Business
- Customer Alerts
 - Business Identity Theft
 - Misleading Business Solicitations

EXHIBIT “B”

City’s Representative:

Luis Frausto

(562) 570-6233

EXHIBIT “C”

Materials/Information Furnished: None