

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. SCOPE OF WORK OR SERVICES AND FEES.

A. Consultant shall furnish City with specialized services for Special Projects more particularly described in Exhibit "A", (Scope of Services). Exhibit "A" is attached to this Agreement and incorporated by this reference.

B. City shall pay Consultant a semi-annual amount not to exceed One Hundred Twenty-Seven Thousand Dollars (\$127,300), for a period of six months, with an option to renew for an additional six months, at the discretion of the City Manager. Said services shall be performed in accordance with the standards of the profession. Consultant shall provide a not to exceed cost as well as pricing for each deliverable within a project's scope. Monthly progress payments will be made based on deliverables. Where intermediate deliverables cannot be specified, the monthly billings will be based on the ratio of documented actual hours to estimated total hours, not to exceed 100% of the estimated total hours.

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

D. Consultant has requested to receive regular payments. City shall pay Consultant in due course following receipt from Consultant and approval by City of invoices showing the services or task performed, and the name of the Project. Consultant shall certify on the invoices that Consultant has performed the services in full conformance with this Agreement and is entitled to receive payment.

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

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

1 2. TERM. The term of this Agreement shall commence on
2 September 7, 2021, for a period of six months, with an option to renew for an additional
3 six months, at the discretion of the City Manager.

4 3. COORDINATION AND ORGANIZATION.

5 Consultant shall coordinate its performance with City's representative, Kevin
6 Riper, Director of Financial Management. Consultant shall advise and inform City's
7 representative of the work in progress on the Project in sufficient detail so as to assist City's
8 representative in making presentations and in holding meetings on the Project.

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

21 5. INSURANCE.

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

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

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

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

28 D. If this coverage is written on a "claims made" basis, it must

1 provide for an extended reporting period of not less than one hundred eighty (180)
2 days, commencing on the date this Agreement expires or is terminated, unless
3 Consultant guarantees that Consultant will provide to the City evidence of
4 uninterrupted, continuing coverage for a period of not less than three (3) years,
5 commencing on the date this Agreement expires or is terminated.

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

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

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

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

28 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement

1 contemplates the personal services of Consultant and the parties acknowledge that a
2 substantial inducement to City for entering this Agreement was and is the professional
3 reputation and competence of Consultant. The parties acknowledge neither party may
4 assign or otherwise dispose of its rights or obligations under this Agreement without the
5 prior written consent of the other party. Any unapproved assignment or delegation shall
6 be void, and any assignee or delegate shall acquire no right or interest by reason of an
7 attempted assignment or delegation

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

14 8. MATERIALS. Consultant shall furnish all labor and supervision,
15 supplies, materials, tools, machinery, equipment, appliances, transportation, and services
16 necessary to or used in the performance of Consultant's obligations under this Agreement.

17 9. OWNERSHIP OF DATA. All materials, information and data
18 prepared, developed or assembled and exclusively controlled by Consultant, in connection
19 with this Agreement, including but not limited to documents, estimates, calculations,
20 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
21 models, reports, summaries, drawings, designs, notes, plans, information, material, and
22 memorandum ("Data") shall be the exclusive property of City. Copies of Data may be
23 retained by Consultant but Consultant warrants that Data shall not be made available to
24 any person or entity for use without the prior approval of City. This warranty shall survive
25 termination of this Agreement for five (5) years.

26 Consultant retains all rights to any information, work, invention, or
27 development in any form or medium, including all materials, documents, information,
28 software, or technology, created by Consultant as a result of performing the services

1 except as otherwise provided in this Agreement.

2 10. TERMINATION. Either party shall have the right to terminate this
3 Agreement for any reason or no reason, at any time, by giving ten (10) calendar days prior
4 notice to the other party. In the event of termination under this Section, City shall pay
5 Consultant for services satisfactorily performed and costs incurred up to the effective date
6 of termination for which Consultant has not been previously paid.

7 11. CONFIDENTIALITY. The obligations of confidentiality and
8 nondisclosure survive the termination of this Agreement. Either party may disclose to other
9 party information, data, concepts, ideas, processes, methods, techniques, formulas, know-
10 how, trade secrets, and improvements which are confidential and proprietary to the
11 disclosing party (hereinafter referred to as "Confidential Information") so that Consultant
12 can perform the Services. Confidential Information shall remain the property of the
13 disclosing party. The receiving party agrees to hold all Confidential Information in
14 confidence and will exercise the same degree of care to prevent disclosure to others as it
15 takes to preserve and safeguard his/its own Confidential Information, but not less than a
16 reasonable degree of care. The receiving party agrees not to disclose otherwise
17 disseminate the Confidential Information to others. The receiving party will not reproduce
18 Confidential Information nor use Confidential Information commercially or for any purpose
19 other than the performance of his or its obligations under this Agreement.

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

27 13. ADDITIONAL COSTS AND REDESIGN.

28 Any costs incurred by the City due to Consultant's failure to meet the

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

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

9 15. LAW. This Agreement shall be governed by and construed pursuant
10 to the laws of the State of California (except those provisions of California law pertaining
11 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and
12 regulations of and obtain all permits, licenses, and certificates required by all federal, state
13 and local governmental authorities.

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

17 17. INDEMNITY. Consultant shall, with respect to services performed in
18 connection with this Agreement, indemnify and hold harmless the City, its Boards,
19 Commissions, and their officials, employees and agents (collectively in this Section, "City")
20 from and against any and all liability, claims, demands, damage, loss, causes of action,
21 proceedings, penalties, costs and expenses (including attorney's fees, court costs, and
22 expert and witness fees) (collectively "Claims" or individually "Claim"). Claims include
23 allegations and include Claims for property damage, personal injury or death arising in
24 whole or in part from any negligent act or omission of Consultant, its officers, employees,
25 agents, sub-consultants, or anyone under Consultant's control (collectively "Indemnitor");
26 recklessness; and willful misconduct. Independent of the duty to indemnify, but only to the
27 extent permitted by law and specifically by Civil Code Section 2782.8, and as a free-
28 standing duty on the part of Consultant, Consultant shall defend City and shall continue

1 this defense until the Claim is resolved, whether by settlement, judgment or otherwise. No
2 finding or judgment of negligence, fault, breach, or the like on the part of Indemnitor shall
3 be required for the duty to defend to arise. Consultant shall notify the City of any Claim
4 within ten (10) days. Likewise, City shall notify Consultant of any Claim, shall tender the
5 defense of the Claim to Consultant, and shall assist Consultant at Consultant's sole
6 expense, as may be reasonably requested, in the defense.

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

9 19. COSTS. If there is any legal proceeding between the parties to
10 enforce or interpret this Agreement or to protect or establish any rights or remedies under
11 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

12 20. NONDISCRIMINATION.

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

22 B. It is the policy of City to encourage the participation of
23 Disadvantaged, Minority and Women-owned Business Enterprises in City's
24 procurement process, and Consultant agrees to use its best efforts to carry out this
25 policy in its use of subconsultants and contractors to the fullest extent consistent
26 with the efficient performance of this Agreement. Consultant may rely on written
27 representations by subconsultants and contractors regarding their status.
28 Consultant shall report to City in May and in December or, in the case of short-term

1 agreements, prior to invoicing for final payment, the names of all subconsultants
2 and contractors hired by Consultant for this Project and information on whether or
3 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
4 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

5 21. NOTICES. Any notice or approval required by this Agreement shall
6 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
7 postage prepaid, addressed to Consultant at the address first stated above, and to the City
8 at 411 West Ocean Boulevard, Long Beach, CA 90802, Attn: City Manager. Notice of
9 change of address shall be given in the same manner as stated for other notices. Notice
10 shall be deemed given on the date deposited in the mail or on the date personal delivery
11 is made, whichever occurs first.

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

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

27 24. WAIVER. The acceptance of any services or the payment of any
28 money by City shall not operate as a waiver of any provision of this Agreement or of any

1 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
2 Agreement shall not constitute a waiver of any other or subsequent breach of this
3 Agreement.

4 25. CONTINUATION. Termination or expiration of this Agreement shall
5 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
6 17, 19, and 22 prior to termination or expiration of this Agreement.

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

15 27. AUDIT. City shall have the right at all reasonable times during the
16 term of this Agreement and for a period of two (2) years after termination or expiration of
17 this Agreement to examine, audit, inspect, review, extract information from, and copy all
18 books, records, and other documents of Consultant relating to this Agreement.

19 28. CITY'S RESPONSIBILITIES. Without limiting the generalities of any
20 exclusion set forth in this Agreement, City will be exclusively responsible as between the
21 parties for and Consultant expressly makes no warranty or representation with respect to
22 ensuring the accuracy of information or data provided from City to Consultant;

23 It is the intent of the parties that in Consultant's performance under this
24 agreement, Consultant shall at all times be considered a wholly independent contractor. It
25 is agreed that City has no right to control the manner nor means under which Consultant
26 performs the specialized services contracted for.

27 29. DISCLAIMER BY CONSULTANT. The express warranties and
28 representations set forth in this Agreement are in lieu of and Consultant expressly disclaims

1 all other warranties, conditions, representations (expressed or implied, oral or written), with
2 respect to the services, any products developed as a result of the services, or any activities
3 undertaken by anyone as a result of the services, including all implied warranties or
4 conditions of title, noninfringement, merchantability, or fitness or suitability for any purpose,
5 whether alleged to arise by law, by reason or custom or usage in the trade, or by course of
6 dealing. In addition, Consultant expressly disclaims any warranty or representation to any
7 person other than City with respect to the services, any products developed as a result of
8 the services, or any activities undertaken by anyone as a result of the services. The
9 language in this provision is not meant or intended to negate or be in conflict with provision
10 No. 13 which Consultant agrees to honor.

11 30. FORCE MAJEURE. Either party shall be temporarily excused from
12 performing under this agreement if any force majeure or other occurrence beyond the
13 reasonable control of either party makes such performance impossible. Under such
14 circumstances, performance under this agreement related to the delay shall be suspended
15 for the duration of the delay. Once the delaying event subsides, the delayed party shall
16 resume performance of its obligations with due diligence. The parties shall use their best
17 efforts to overcome the cause and effect of any such suspension.

18 //

19 //

20

21

22

23

24

25

26

27

28


OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

JOHN GROSS, DBA FINANCIAL
MANAGEMENT AND SYSTEMS
CONSULTING, an Independent Contractor

12/7 2021

By 

"Consultant"

CITY OF LONG BEACH, a municipal
corporation

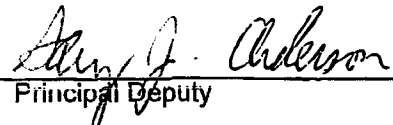
December 9, 2021

By 
City Manager

"City"

This Agreement is approved as to form on
12/9, 2021.

CHARLES PARKIN, City Attorney

By 
Principal Deputy

LB COAST Embedded QA Scope of Work

This document describes the scope of work desired by the City of Long Beach, for Embedded Quality Assurance (QA) support for the LB COAST ERP Project (Project). The City anticipates that a vendor (Consultant) will be actively engaged throughout each week to assess the status of the Project in various areas and to develop and make recommendations to help the Project be successful. This includes assessing the overall status of the Project, identifying risk areas, identifying priorities, developing recommendations and providing associated reports relaying the assessments and recommendations and providing ongoing verbal communications that aid the Project Sponsors and Project Team to identify and make adjustments to improve Project outcomes. The main physical deliverable will a monthly report on the progress of, and/or issues with, and recommendations for, the Project. Brief weekly reports may also be provided to apprise the Project Leader (Sponsor Group Chair) of status of key issues. Ongoing verbal communications on issues and recommendations are a significant component of this Scope and are intended to provide the opportunity for immediate positive impacts.

Objective

The Scope provides QA services on an ongoing weekly basis to assess and monitor the Project, and to analyze, develop recommendations and associated reports regarding the City's and Tyler efforts in ensuring:

1. That the project is progressing appropriately and productively;
2. That project priorities, issues, and risks are being identified, escalated, and resolved;
3. That the solutions being developed will meet the City's technical, operational, and business needs in the most effective manner that is available.

The Scope is designed to develop recommendations and to facilitate implementation of recommendations that the City determines are appropriate and feasible. The scope does not include implementation - work that would normally be done by the Project Team or Project Sponsors, i.e., the production of material, work or direction that may be required to implement recommendations or resolve issues.

Tasks

Task 1. Attend meetings and conduct interviews to be informed and provide verbal assessments and recommendations

- 1.1 Attend selected meetings involving Tyler assistance, support, issues and negotiations
- 1.2 Meet with Stream leads, project manager and Project Leader (Sponsor Group Chair) periodically to get updates, issues and concerns
- 1.3 Attend Sponsor Group and Executive Steering Committee meetings
- 1.4 Interview LB COAST staff or staff associated with or impacted by LB COAST
- 1.5 Conduct related discussions with Tyler representatives as deemed appropriate and consistent with City authorization
- 1.6 Attend meetings, as requested, with the Finance Director and Financial Management Bureau Heads to discuss strategies and issues related to issues impacting the Project and other matters.

Task 2. Review materials related to the Project, including project plans, budget reports, Tyler information, etc.

- 2.1 Review actual and proposed expenditures and budget reports
- 2.2 Review project plan and status
- 2.3 Review other material as appropriate

Task 3. Communications to gather information/provide recommendations, including with FM Management, to provide assistance on issues that relate to LB COAST and/or maximize effort on LB COAST

- 3.1 Consult with FM management regarding assistance or issues that relate to LB COAST and/or maximize their effort on LB COAST

- 3.2 Consult with other stakeholder departments regarding assistance or issues that relate to LB COAST and/or maximize their effort on LB COAST
- 3.3 Expected frequent communications with the Project Leader (Sponsor Group Chair)
- 3.4 Discussions with Tyler management/staff

Task 4. Develop recommendations and prepare reports

- 4.1 Develop recommendations based on interviews, reviewed material, and other observations
- 4.2 Prepare monthly reports as described in this scope
- 4.3 Prepare optional weekly reports as described in this scope
- 4.4 Confidential reports (as requested)

Deliverables

1. A monthly QA report assessing and making recommendations
 - a. Progress and issues resolved since last report
 - b. Key Issues and decisions to be made and status
 - c. New issues/concerns
2. Optional brief weekly reports (as determined by the Consultant)
3. Confidential reports (as requested by the Project Leader)
4. Develop recommendations and advise the Project Manager and Project Leader (between formal reports) on key urgent issues that develop and appear to require attention.

Areas to be Covered within the Deliverables (not every area will be in every deliverable – at discretion of Consultant)

1. Overall Project status
2. Review of status of Tyler software, project management, consulting, support level, versioning, management of the Tyler contract, and status of Tyler partnership with the City.
3. Ongoing assessment of resource adequacy, status, and timeliness (including backfill).
4. Review of any (new) QA assessment and recommendations from other vendors, and the level of the Project Team's implementation of other vendors' recommendations.
5. Review of organizational readiness, such as communications, training, procedures and policy, change acceptance, and adequacy of operational resources.
6. Review of the Project Plan for adequacy and status.
7. Review of the effectiveness of Sponsors Group and Chair/Leader in decision-making, acquiring resources, and other designated functions associated with the Project.
8. Review of the Impact of Tyler software and support on ongoing Project progress and operational business needs
9. Review of any technology issues raised by the Project Team.
10. Review of Stream lead and PM Group views on progress, concerns and issues
11. Review of Munis Production (Phase I) issues and resolutions.
12. Addressing potential different views for the best project direction by the Project Team, Sponsors, and/or Steering Committee.
13. Review of controls over expenditures.
14. Review of Project budget status.