

AGREEMENT

36216

THIS AGREEMENT is made and entered, in duplicate, as of February 15, 2022, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on November 9, 2021, by and between UTILITY SOLUTIONS PARTNERS, LLC, a California limited liability company ("Contractor"), with a place of business at 10824 Olson Drive, Suite C-305, Rancho Cordova, California 95670, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with information technology project management services ("Project"); and

WHEREAS, City has selected Contractor in accordance with City's administrative procedures using a Request for Proposals ("RFP"), attached hereto as Exhibit "A-1", and incorporated by this reference, and City has determined that Contractor and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Contractor perform these specialized services, and Contractor 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. Contractor shall furnish specialized services more particularly described in Exhibit "A-2", 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 Three Million Six Hundred Twenty-Five Thousand Dollars (\$3,625,000), with a thirty percent (30%) contingency in the amount of One Million Eighty-Seven Thousand Five Hundred

1 Dollars (\$1,087,500), for a total not to exceed amount of Four Million Seven Hundred
2 Twelve Thousand Five Hundred Dollars (\$4,712,500) at the rates or charges shown
3 in Exhibit "B".

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

17 C. Contractor represents that Contractor has obtained all
18 necessary information on conditions and circumstances that may affect its
19 performance and has conducted site visits, if necessary.

20 D. By executing this Agreement, Contractor warrants that
21 Contractor (a) has thoroughly investigated and considered the scope of services to
22 be performed, (b) has carefully considered how the services should be performed,
23 and (c) fully understands the facilities, difficulties and restrictions attending
24 performance of the services under this Agreement. If the services involve work upon
25 any site, Contractor warrants that Contractor has or will investigate the site and is
26 or will be fully acquainted with the conditions there existing, prior to commencement
27 of services set forth in this Agreement. Should Contractor discover any latent or
28 unknown conditions that will materially affect the performance of the services set

1 forth in this Agreement, Contractor must immediately inform the City of that fact and
2 may not proceed except at Contractor's risk until written instructions are received
3 from the City.

4 E. Contractor must adopt reasonable methods during the life of
5 the Agreement to furnish continuous protection to the work, and the equipment,
6 materials, papers, documents, plans, studies and other components to prevent
7 losses or damages, and will be responsible for all damages, to persons or property,
8 until acceptance of the work by the City, except those losses or damages as may
9 be caused by the City's own negligence.

10 F. CAUTION: Contractor shall not begin work until this
11 Agreement has been signed by both parties and until Contractor's evidence of
12 insurance has been delivered to and approved by City.

13 2. TERM. The term of this Agreement shall commence at midnight on
14 March 15, 2022, and shall terminate at 11:59 p.m. on March 14, 2025, unless sooner
15 terminated as provided in this Agreement, or unless the services or the Project is
16 completed sooner. The Term may be extended for two (2) additional one-year periods, at
17 the discretion of the City Manager.

18 3. COORDINATION AND ORGANIZATION.

19 A. Contractor shall coordinate its performance with City's
20 representative, if any, named in Exhibit "C", attached to this Agreement and
21 incorporated by this reference. Contractor shall advise and inform City's
22 representative of the work in progress on the Project in sufficient detail so as to
23 assist City's representative in making presentations and in holding meetings on the
24 Project. City shall furnish to Contractor information or materials, if any, described in
25 Exhibit "D", attached to this Agreement and incorporated by this reference, and shall
26 perform any other tasks described in the Exhibit.

27 B. The parties acknowledge that a substantial inducement to City
28 for entering this Agreement was and is the reputation and skill of Contractor's key

1 employee, named in Exhibit "E" attached to this Agreement and incorporated by this
2 reference. City shall have the right to approve any person proposed by Contractor
3 to replace that key employee.

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

16 5. INSURANCE.

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

24 (a) Commercial general liability insurance (equivalent in scope to
25 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
26 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
27 coverage shall include but not be limited to broad form contractual liability,
28 cross liability, independent contractors liability, and products and completed

1 operations liability. City, its boards and commissions, and their officials,
2 employees and agents shall be named as additional insureds by
3 endorsement (on City's endorsement form or on an endorsement equivalent
4 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance
5 shall contain no special limitations on the scope of protection given to City,
6 its boards and commissions, and their officials, employees and agents. This
7 policy shall be endorsed to state that the insurer waives its right of
8 subrogation against City, its boards and commissions, and their officials,
9 employees and agents.

10 (b) Workers' Compensation insurance as required by the California
11 Labor Code and employer's liability insurance in an amount not less than
12 \$1,000,000. This policy shall be endorsed to state that the insurer waives
13 its right of subrogation against City, its boards and commissions, and their
14 officials, employees and agents.

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

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

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

25 C. Each insurance policy shall be endorsed to state that coverage
26 shall not be reduced, non-renewed or canceled except after thirty (30) days prior
27 written notice to City, shall be primary and not contributing to any other insurance
28 or self-insurance maintained by City, and shall be endorsed to state that coverage

1 maintained by City shall be excess to and shall not contribute to insurance or self-
2 insurance maintained by Contractor. Contractor shall notify City in writing within five
3 (5) days after any insurance has been voided by the insurer or cancelled by the
4 insured.

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

11 E. Contractor shall require that all sub-contractors or contractors
12 that Contractor uses in the performance of these services maintain insurance in
13 compliance with this Section unless otherwise agreed in writing by City's Risk
14 Manager or designee.

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

24 G. Any modification or waiver of these insurance requirements
25 shall only be made with the approval of City's Risk Manager or designee. Not more
26 frequently than once a year, City's Risk Manager or designee may require that
27 Contractor, Contractor's sub-Contractors and contractors change the amount,
28 scope or types of coverages required in this Section if, in his or her sole opinion, the

1 amount, scope or types of coverages are not adequate.

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

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

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

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

1 except as stated in Exhibit "D".

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

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

23 11. CONFIDENTIALITY. Contractor shall keep all Data confidential and
24 shall not disclose the Data or use the Data directly or indirectly, other than in the course of
25 performing its services, during the term of this Agreement and for five (5) years following
26 expiration or termination of this Agreement. In addition, Contractor shall keep confidential
27 all information, whether written, oral or visual, obtained by any means whatsoever in the
28 course of performing its services for the same period of time. Contractor shall not disclose

1 any or all of the Data to any third party, or use it for Contractor's own benefit or the benefit
2 of others except for the purpose of this Agreement.

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

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

23 14. RETENTION OF FUNDS. Contractor authorizes the City to deduct
24 from any amount payable to Contractor (whether or not arising out of this Agreement) any
25 amounts the payment of which may be in dispute or that are necessary to compensate the
26 City for any losses, costs, liabilities or damages suffered by the City, and all amounts for
27 which the City may be liable to third parties, by reason of Contractor's acts or omissions in
28 performing or failing to perform Contractor's obligations under this Agreement. In the event

1 that any claim is made by a third party, the amount or validity of which is disputed by
2 Contractor, or any indebtedness exists that appears to be the basis for a claim of lien, the
3 City may withhold from any payment due, without liability for interest because of the
4 withholding, an amount sufficient to cover the claim. The failure of the City to exercise the
5 right to deduct or to withhold will not, however, affect the obligations of Contractor to insure,
6 indemnify and protect the City as elsewhere provided in this Agreement.

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

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

24 17. PREVAILING WAGES.

25 A. Contractor agrees that all public work (as defined in California
26 Labor Code section 1720) performed pursuant to this Agreement (the "Public
27 Work"), if any, shall comply with the requirements of California Labor Code sections
28 1770 *et seq.* City makes no representation or statement that the Project, or any

1 portion thereof, is or is not a "public work" as defined in California Labor Code
2 section 1720.

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

14 18. 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 19. INDEMNITY.

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

1 agents, subcontractors, or anyone under Contractor's control, in the performance of
2 work or services under this Agreement (collectively "Claims" or individually "Claim").

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

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

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

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

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

1 22. NONDISCRIMINATION.

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

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

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

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

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

26 C. If the Contractor fails to comply with the EBO, the City may
27 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
28 to become due under the Agreement may be retained by the City. The City may

1 also pursue any and all other remedies at law or in equity for any breach.

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

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

10 24. NOTICES. Any notice or approval required by this Agreement shall
11 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
12 postage prepaid, addressed to Contractor at the address first stated above, and to City at
13 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
14 to the City Clerk at the same address. Notice of change of address shall be given in the
15 same manner as stated for other notices. Notice shall be deemed given on the date
16 deposited in the mail or on the date personal delivery is made, whichever occurs first.

17 25. COPYRIGHTS AND PATENT RIGHTS.

18 A. Contractor shall place the following copyright protection on all
19 Data: © City of Long Beach, California ____, inserting the appropriate year.

20 B. City reserves the exclusive right to seek and obtain a patent or
21 copyright registration on any Data or other result arising from Contractor's
22 performance of this Agreement. By executing this Agreement, Contractor assigns
23 any ownership interest Contractor may have in the Data to the City.

24 C. Contractor warrants that the Data does not violate or infringe
25 any patent, copyright, trade secret or other proprietary right of any other party.
26 Contractor agrees to and shall protect, defend, indemnify and hold City, its officials
27 and employees harmless from any and all claims, demands, damages, loss, liability,
28 causes of action, costs or expenses (including reasonable attorneys' fees) whether

1 or not reduced to judgment, arising from any breach or alleged breach of this
2 warranty.

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

11 27. WAIVER. The acceptance of any services or the payment of any
12 money by City shall not operate as a waiver of any provision of this Agreement or of any
13 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
14 Agreement shall not constitute a waiver of any other or subsequent breach of this
15 Agreement.

16 28. CONTINUATION. Termination or expiration of this Agreement shall
17 not affect rights or liabilities of the parties which accrued pursuant to the Sections titled
18 "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", "Indemnity", and
19 "Audit" prior to termination or expiration of this Agreement.

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

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

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

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

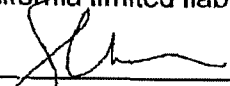
3 31. AUDIT. City shall have the right at all reasonable times during the
4 term of this Agreement and for a period of five (5) years after termination or expiration of
5 this Agreement to examine, audit, inspect, review, extract information from and copy all
6 books, records, accounts and other documents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

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

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

12
13
14 February 28, 2022

UTILITY SOLUTIONS PARTNERS, LLC, a
California limited liability company

By 
Name Steven P. Casazza
Title President

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_____, 2022

By _____
Name _____
Title _____

"Contractor"

CITY OF LONG BEACH, a municipal
corporation

March 21, 2022

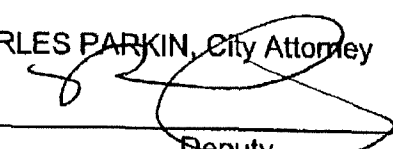
By 
City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

"City"

This Agreement is approved as to form on March 3, 2022.

CHARLES PARKIN, City Attorney

By 
Deputy