

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

AGREEMENT

34157

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

THIS AGREEMENT is made and entered, in duplicate, as of December 30, 2015, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on October 13, 2015, by and between OSHYN, INC., a Delaware corporation ("Consultant"), with a place of business at 200 Pine Avenue, Suite 503, Long Beach, California 90802, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with as-needed web development support for the phase II migration of the City's current website to utilize the Ektron Content Management System (CMS) ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

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

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

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Two Hundred Thousand Dollars (\$200,000), at the rates or charges shown in Exhibit "B".

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

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

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

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

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

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th 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

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 City.

2. TERM. The term of this Agreement shall commence at midnight on January 1, 2016, and shall terminate at 11:59 p.m. on December 31, 2017, unless sooner terminated as provided in this Agreement, or unless the services or the Project is completed sooner. The parties have the option to extend the term for two (2) additional one-year periods.

3. COORDINATION AND ORGANIZATION.

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

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

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

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

6 5. INSURANCE.

7 A. As a condition precedent to the effectiveness of this
8 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
9 duration of this Agreement, from insurance companies that are admitted to write
10 insurance in California and have ratings of or equivalent to A:V by A.M. Best
11 Company or from authorized non-admitted insurance companies subject to Section
12 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
13 by A.M. Best Company, the following insurance:

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

CITY OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lana 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

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

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

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

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

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

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

1 the date this Agreement expires or is terminated.

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

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

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

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

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

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

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

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

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

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

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

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

1 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

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

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

1 fire marshal, health officer, building inspector, or other officer of every governmental
2 agency now having or hereafter acquiring jurisdiction.

3 16. PREVAILING WAGES.

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

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

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

24 18. INDEMNITY.

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

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

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

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

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

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

19. AMBIGUITY. In the event of any conflict or ambiguity between this

1 Agreement and any Exhibit, the provisions of this Agreement shall govern.

2 20. NONDISCRIMINATION.

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

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

24 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in

25 accordance with the provisions of the Ordinance, this Agreement is subject to the
26 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
27 Long Beach Municipal Code, as amended from time to time.

28 A. During the performance of this Agreement, the Consultant

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

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 place
3 of business available to employees and applicants for employment:

4 "During the performance of a contract with the City of Long Beach, the
5 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 or
13 to become due under the Agreement may be retained by the City. The City may
14 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 its
19 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 provisions
22 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

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

1 deposited in the mail or on the date personal delivery is made, whichever occurs first.

2 23. COPYRIGHTS AND PATENT RIGHTS.

3 A. Consultant shall place the following copyright protection on all
4 Data: © City of Long Beach, California _____, inserting the appropriate year.

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

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

16 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants

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

24 25. WAIVER. The acceptance of any services or the payment of any

25 money by City shall not operate as a waiver of any provision of this Agreement or of any
26 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
27 Agreement shall not constitute a waiver of any other or subsequent breach of this
28 Agreement.

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

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

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

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

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

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

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

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

3 OSHYN, INC., a Delaware corporation

4 Jan 20, 2016

5 By [Signature]
6 Name DIEGO F. DEBOSIO
7 Title CEO

8 Jan 20, 2016

9 By [Signature]
10 Name CHRISTIAN T. BURNE
11 Title PRESIDENT

12 "Consultant"

13 CITY OF LONG BEACH, a municipal
14 corporation Assistant City Manager

15 Jan. 26, 2016

16 By [Signature]
17 City Manager EXECUTED PURSUANT
18 TO SECTION 301 OF
19 THE CITY CHARTER.

20 "City" Assistant City Manager

21 This Agreement is approved as to form on 1-21, 2016.

22 CHARLES PARKIN, City Attorney

23 By [Signature]
24 Deputy

25 OFFICE OF THE CITY ATTORNEY
26 CHARLES PARKIN, City Attorney
27 333 West Ocean Boulevard, 11th Floor
28 Lona Beach, CA 90802-4664

EXHIBIT “A”

Scope of Work

SCOPE OF PROJECT

The City is requesting proposals from qualified Professional Services firms that have specialized experience in CMS (Content Management System) development using the Ektron platform (version 9.1). Depending on the specific needs of the City, fixed-price quotes may be requested from the pre-approved Contractors in advance to complete a specific piece of work. The City may also request that a specific resource, such as a developer or designer, provide services to the City on an hourly basis. The City currently has nine areas that are still on the old CMS (Civica) that will be migrated to the Ektron platform as part of Phase II. The templates and standards for the Ektron platform have been established; however, these nine areas are unique and may require specialized support. It is anticipated that the assistance of contractor(s) will be needed as the City conducts Phase II of the website migration project. The City would like to have the ability to utilize contractor's support to move the additional areas to Ektron, where necessary. The City seeks firms with a strong skill set working with Ektron and a proven track record in order to work with City staff to migrate the current sites to Ektron.

Examples of the sites that will be migrated over the next several months include:

- LBTv3.com
- LBPL.org
- LGB.org
- Longbeach-recycles.org
- Pacificgteway.org
- Filmlongbeach.com
- Bikelongbeach.org
- LBHDC.org
- LBDS.info
- Longbeahcrda.org

EXHIBIT “B”

Rates or Charges

HOURLY RATES

Below is the rate card used to price-out all work. It is assumed all work will be performed on an hourly consulting basis.

Role	Hourly Rate
Project Management (PM)	\$180
Project Coordination (PC)	\$91*
Business Analysis (BA)	\$180
Information Architecture (IA)	\$180
Design Direction (CD)	\$180
Production Design (PD)	\$91*
Technical Architecture (TA)	\$180
Siteport Connector Development (SBE)	\$91*
Ektron Template Development (EBE)	\$91*
Ektron Front-End Development (EFE)	\$91*
Quality Assurance (QA)	\$91*

* All \$91 rates assume that work will not need to be performed onsite and the resource is not client-facing.

EXHIBIT “C”

City’s Representative:

Scott Otta, Email/Website/Document
Management

(562) 570-6873

EXHIBIT “D”

Materials/Information Furnished: None