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

# <u>AGREEMENT</u>

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THIS AGREEMENT is made and entered, in duplicate, as of February 14, 2017, for reference purposes only, pursuant to Resolution No. RES-17-0008, adopted by the City Council of the City of Long Beach at its meeting on February 7, 2017, by and between TMG UTILITY ADVISORY SERVICES, INC., DBA TMG CONSULTING, INC., a Texas corporation ("Consultant"), with a place of business at 9210 Honeycomb Drive, Austin, Texas 78737, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with the Request for Proposals development, vendor evaluation, and contract negotiation for managed and professional services support for the City's utility software systems ("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:

# 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 One Hundred Forty-Four Thousand Seven Hundred Sixty Dollars (\$144,760), at the rates or charges shown in Exhibit "B".

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В. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the necessary funds for such payment by the City in each fiscal year during the term of this Agreement. For the purposes of this Section, a fiscal year commences on October 1 of the year and continues through September 30 of the following year. In the event that the City Council of the City fails to appropriate the necessary funds for any fiscal year, then, and in that event, the Agreement will terminate at no additional cost or obligation to the City.

- 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 of payments following receipt from Consultant and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), 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. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Consultant's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.
- E. Consultant represents that Consultant has obtained necessary information on conditions and circumstances that may affect its

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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 City.
- 2. TERM. The term of this Agreement shall commence at midnight on March 1, 2017, and shall terminate at 11:59 p.m. on March 1, 2018, unless sooner terminated as provided in this Agreement, or unless the services or the Project is completed sooner.

#### 3. COORDINATION AND ORGANIZATION.

- 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, Tim Almond. 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;

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

#### 5. INSURANCE.

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

(a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. 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.

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ii. 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.

- iii. Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.
- iv. 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.
- В. self-insurance program, retention, self-insured 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 selfinsurance 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

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the date this Agreement expires or is terminated.

- E. Consultant shall require that all subconsultants or contractors that Consultant uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.
- F. Prior to the start of performance, Consultant shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, Consultant shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of Consultant and Consultant's subconsultants and contractors, at any time. Consultant shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.
- G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that Consultant, Consultant's subconsultants and contractors change the amount, scope or types of coverages required in this Section if, in his or her sole opinion, the amount, scope or types of coverages are not adequate.
- Н. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Consultant's performance or as full performance of or compliance with the indemnification provisions of this Agreement.
- 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement contemplates the personal services of Consultant and Consultant's employees, and the parties acknowledge that a substantial inducement to City for entering this Agreement was and is the professional reputation and competence of Consultant and Consultant's Consultant shall not assign its rights or delegate its duties under this employees.

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

- 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement, certifies that, at the time Consultant executes this Agreement and for its duration, Consultant does not and will not perform services for any other client which would create a conflict, whether monetary or otherwise, as between the interests of City and the interests of that other client. And, Consultant shall obtain similar certifications from Consultant's employees, subconsultants and contractors.
- 8. MATERIALS. Consultant shall furnish all labor and supervision. supplies, materials, tools, machinery, equipment, appliances, transportation and services necessary to or used in the performance of Consultant's obligations under this Agreement, except as stated in Exhibit "D".
- 9. OWNERSHIP OF DATA. All materials, information and data prepared, developed or assembled by Consultant or furnished to Consultant in connection with this Agreement, including but not limited to documents, estimates, calculations, studies, maps, graphs, charts, computer disks, computer source documentation, samples. models, reports, summaries, drawings, designs, notes, plans, information, material and memorandum ("Data") shall be the exclusive property of City. Data shall be given to City. and City shall have the unrestricted right to use and disclose the Data in any manner and for any purpose without payment of further compensation to Consultant. Copies of Data

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

- 10. TERMINATION. Either party shall have the right to terminate this Agreement for any reason or no reason at any time by giving fifteen (15) calendar days prior written notice to the other party. In the event of termination under this Section, City shall pay Consultant for services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. The procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective date of termination, Consultant shall deliver to City all Data developed or accumulated in the performance of this Agreement, whether in draft or final form, or in process. And, Consultant acknowledges and agrees that City's obligation to make final payment is conditioned on Consultant's delivery of the Data to City.
- 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and shall not disclose the Data or use the Data directly or indirectly, other than in the course of performing its services, during the term of this Agreement and for five (5) years following expiration or termination of this Agreement. In addition, Consultant shall keep confidential all information, whether written, oral or visual, obtained by any means whatsoever in the course of performing its services for the same period of time. Consultant shall not disclose any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit of others except for the purpose of this Agreement.
- 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for a breach of confidentiality with respect to Data that: (a) Consultant demonstrates Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available without breach of this Agreement by Consultant; or (c) a third party who has a right to disclose does so to Consultant without restrictions on further disclosure; or (d) must be disclosed pursuant to subpoena or court order.

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#### 13. ADDITIONAL COSTS AND REDESIGN.

- Any costs incurred by City due to Consultant's failure to meet the standards required by the scope of work or Consultant's failure to perform fully the tasks described in the scope of work which, in either case, causes City to request that Consultant perform again all or part of the Scope of Work shall be at the sole cost of Consultant and City shall not pay any additional compensation to Consultant for its re-performance.
- В. If the Project involves construction and the scope of work requires Consultant to prepare plans and specifications with an estimate of the cost of construction, then Consultant may be required to modify the plans and specifications, any construction documents relating to the plans and specifications. and Consultant's estimate, at no cost to City, when the lowest bid for construction received by City exceeds by more than ten percent (10%) Consultant's estimate. This modification shall be submitted in a timely fashion to allow City to receive new bids within four (4) months after the date on which the original plans and specifications were submitted by Consultant.
- 14. AMENDMENT. This Agreement, including all Exhibits, shall not be amended, nor any provision or breach waived, except in writing signed by the parties which expressly refers to this Agreement.
- 15. <u>LAW</u>. This Agreement shall be construed in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions. Consultant shall cause all work performed in connection with construction of the Project to be performed in compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 et seq. of the California Labor Code); and (2) all directions, rules and regulations of any

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

#### 16. PREVAILING WAGES.

- Α. Consultant agrees that all public work (as defined in California Labor Code section 1720) performed pursuant to this Agreement (the "Public Work"), if any, shall comply with the requirements of California Labor Code sections 1770 et seq. City makes no representation or statement that the Project, or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.
- В. In all bid specifications, contracts and subcontracts for any such Public Work, Consultant shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the Public Work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision: "It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code section 1775 and the payroll record keeping requirements of California Labor Code section 1771."
- 17. ENTIRE AGREEMENT. This Agreement, including all Exhibits. constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

#### 18. <u>INDEMNITY.</u>

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

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

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#### 20. NONDISCRIMINATION.

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

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

- 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in accordance with the provisions of the Ordinance, this Agreement is subject to the applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the Long Beach Municipal Code, as amended from time to time.
  - A. During the performance of this Agreement, the Consultant certifies and represents that the Consultant will comply with the EBO. The

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Consultant agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

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

- B. The failure of the Consultant to comply with the EBO will be deemed to be a material breach of the Agreement by the City.
- C. If the Consultant fails to comply with the EBO, the City may cancel, terminate or suspend the Agreement, in whole or in part, and monies due or to become due under the Agreement may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against the Consultant in actions taken pursuant to the provisions of Long Beach Municipal Code 2.93 et seq., Contractor Responsibility.
- E. If the City determines that the Consultant has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Agreement on behalf of the City. Violation of this provision may be used as evidence against the Consultant in actions taken pursuant to the provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.
- 22. NOTICES. Any notice or approval required by this Agreement shall be in writing and personally delivered or deposited in the U.S. Postal Service, first class, postage prepaid, addressed to Consultant at the address first stated above, and to City at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy to the City Engineer at the same address. Notice of change of address shall be given in the same manner as stated for other notices. Notice shall be deemed given on the date deposited in the mail or on the date personal delivery is made, whichever occurs first.

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#### 23. COPYRIGHTS AND PATENT RIGHTS.

- A. Consultant shall place the following copyright protection on all Data: © City of Long Beach, California \_\_\_\_\_, inserting the appropriate year.
- B. City reserves the exclusive right to seek and obtain a patent or copyright registration on any Data or other result arising from Consultant's performance of this Agreement. By executing this Agreement, Consultant assigns any ownership interest Consultant may have in the Data to City.
- C. Consultant warrants that the Data does not violate or infringe any patent, copyright, trade secret or other proprietary right of any other party. Consultant agrees to and shall protect, defend, indemnify and hold City, its officials and employees harmless from any and all claims, demands, damages, loss, liability, causes of action, costs or expenses (including reasonable attorney's fees) whether or not reduced to judgment, arising from any breach or alleged breach of this warranty.
- 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants that Consultant has not employed or retained any entity or person to solicit or obtain this Agreement and that Consultant has not paid or agreed to pay any entity or person any fee, commission or other monies based on or from the award of this Agreement. If Consultant breaches this warranty, City shall have the right to terminate this Agreement immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments due under this Agreement or otherwise recover the full amount of the fee, commission or other monies.
- 25. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.
  - 26. CONTINUATION. Termination or expiration of this Agreement shall

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

- 27. TAX REPORTING. As required by federal and state law, City is obligated to and will report the payment of compensation to Consultant on Form 1099-Misc. Consultant shall be solely responsible for payment of all federal and state taxes resulting from payments under this Agreement. Consultant shall submit Consultant's Employer Identification Number (EIN), or Consultant's Social Security Number if Consultant does not have an EIN, in writing to City's Accounts Payable, Department of Financial Management. Consultant acknowledges and agrees that City has no obligation to pay Consultant until Consultant provides one of these numbers.
- 28. <u>ADVERTISING</u>. Consultant shall not use the name of City, its officials or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City Manager or designee.
- 29. <u>AUDIT</u>. City shall have the right at all reasonable times during the term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement to examine, audit, inspect, review, extract information from and copy all books, records, accounts and other documents of Consultant relating to this Agreement.
- 30. <u>THIRD PARTY BENEFICIARY</u>. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

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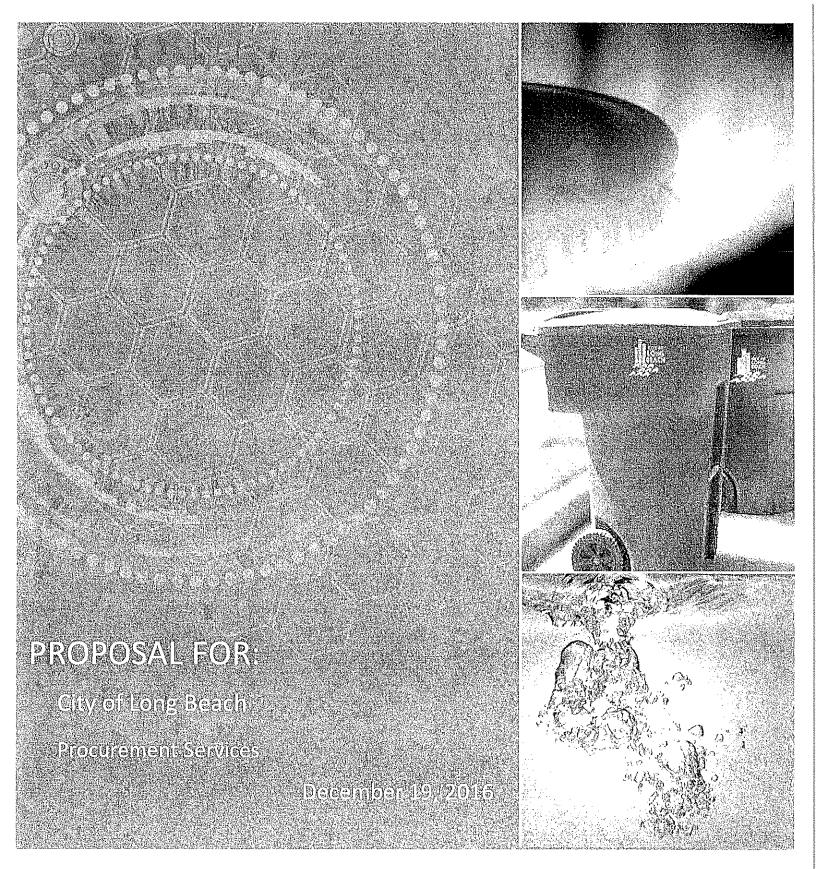
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1	IN WITNESS WHEREOF, the parties have caused this document to be duly	he parties have caused this document to be duly					
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3	TMG UTILITY ADVISORY SERVICES,						
4	INC., DBA TMG CONSULTING, INC., a Texas corporation						
5	3-3 ,2017 By						
6	Name Tim Acmoud						
ľ	Name / GARy Thorson						
[,	"Consultant"						
	CITY OF LONG BEACH, a municipal						
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l,	City Manager EXECUTED PURS IA	ANT OF					
- 1	"City" Assistant City Manager THE CITY CHARTE	EA.					
1	This Agreement is approved as to form on <u>March 7</u> , 2017.						
-	CHARLES PARKIN, City Attorney						
-	By Deputy						
	Doputy						
- []							
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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	executed with all formalities required by law as of the date first stated above.  TMG UTILITY ADVISORY SERVICES, INC., DBA TMG CONSULTING, INC., a Texas corporation  By Same Tour Autonom Title Executive vire RESTRANT					

# EXHIBIT "A"

Scope of Work





# Contents

SECTION 1.	LETTER OF TRANSMITTAL	. 3
SECTION 2.	SCOPE OF SERVICES	. /
	Summary  Detail	
SECTION 3.	COST DETAIL	. 1

# SECTION 1. LETTER OF TRANSMITTAL

Wednesday, December 21, 2016

Jeanne Takano
Business Information Systems Officer
Technology and Innovation Dept
City of Long Beach

Dear Jeanne,

TMG Utility Advisory Services, Inc. ("TMG") is pleased to provide City of Long Beach ("CLB") this proposal for Managed Services Procurement. We understand that CLB desired to acquire through a competitive procurement process managed services from a vendor similar to those currently provided to CLB by Ernst Young ("EY").

As Executive Vice-President and Co-Owner of TMG, I am authorized to serve as your primary point of contact for all communications and negotiations regarding this proposal.

Should you need further clarification or if you have any questions please feel free to call me on my cell phone, at any time. This proposal shall remain valid for 180 days from the proposal due date.

Sincerely,

Tim Almond, Vice President TMG Consulting

1943 Davina Street

Henderson, NV 89074

Tim.Almond@TMGConsulting.com

Cell (702) 278-4302

# SECTION 2. SCOPE OF SERVICES

Section 2.01

SUMMARY

### Phase 1: Acquisition Phase - RFP Development

#### Mobilization

Having already completed a comprehensive resource assessment, TMG forms a foundation for success by:

- Performing a Risk Assessment to determine steps to mitigate project and organization risk; and
- Acquisition Planning, in order to establish a common understanding of resources required to
  participate in the procurement and the schedule by which the procurement will be managed.

### RFP Development

Utilizing our project accelerators, we construct an RFP that accurately reflects your business, regulatory, organizational, technical and fiscal requirements of a managed services provider. We solicit the widest possible response from vendors leveraging our extensive network so that CLB gets the solution that best suits its requirements within the budget it wants to expend.

## Phase 2: Vendor Evaluation and Selection

#### Evaluation

Using scoring methodologies agreed to during the RFP development, based on our standard approach but adapted to CLB's requirements, CLB will facilitate the evaluation of vendor proposals, interviews, reference checks, site visits (if required) and BAFO process.

CLB and TMG will meet periodically during this step, in order that TMG stays current with status and for TMG to provide assistance to CLB on an ad-hoc basis.

#### **Contract Negotiation**

TMG will develop a negotiation strategy and can perform the negotiation of contracts with selected vendor(s) on behalf of or as a member of the CLB negotiation team. Through strong negotiations, we contractually bind the Vendor to meet the requirements stated in your RFP and responded to by the Vendor.

### Section 2.02 DETAIL

## Phase 1: Acquisition Phase - RFP Development

#### Task 1.1.1 Kick-off Meeting

TMG shall conduct a kick-off meeting with the stakeholders of the project and Evaluation Team. The meeting has the following objectives:

- TMG will present our proposed methodology, a preliminary schedule for the project and agree the management and communication approach to be used;
- Learn from CLB more about the drivers, constraints and dependencies of the project;
- Form a relationship between the consultants that will be working with you for the duration of the project.

Deliverable:

Kick-off Meeting

#### Task 1.1.2 Risk Assessment

TMG shall build a risk matrix (through interviews with stakeholders) based on the scope of the proposed services, considering options for transition to a new managed service provider. During this phase the TMG shall:

- Meet with both business and technical staff to determine any conflicts between business or IT initiatives that may fall within the period of transition from one vendor to the other;
- Examine any backlogs of work or projects in flight with the current vendor that may disrupt or interfere with the transition;
- Review our previously completed staff assessment to determine any areas of the risk.

All the above items will be considered and included in the development of the services requirements as well as the Scope of Work produced in the following tasks.

Deliverable:

Risk Assessment with mitigation plans

## Task 1.1.4 Develop Acquisition Project Schedule

Together TMG and the Evaluation Team will define the schedule for the acquisition and expected results for each of the following tasks. Roles and responsibilities will be defined with an understanding of the deliverables from each role. Once all elements of the acquisition schedule are understood, the schedule will be finalized and used by TMG as a tool to manage and track progress. Schedules are typically living documents and may change as various project factors change; TMG will update and publish the schedule monthly throughout the acquisition.

Deliverables:

Project Schedule

### Task 1.1.5 Develop Detailed Services Requirements

Using TMG accelerators, information gathered during our prior staff assessment and the current managed services contract TMG shall develop draft services requirements. These requirements shall describe:

- Services required to support "steady state" operations;
- Services required to clear current backlogs;
- Services required to address future initiatives;

• Services required from both vendors (incumbent and future) to facilitate an effective transition that will be transparent to the business operation.

TMG shall perform an impact analysis on our previously delivered staff assessment, noting any changes to roles, responsibilities, responsible parties or staffing levels.

TMG shall meet with stakeholders to present our draft services requirements along with our recommended staffing requirements from both a managed services vendor and CLB perspective. The purpose of this workshop is to:

- Identify gaps to the documented requirements that are require to support their business units at optimal levels.
- Prioritize services, in terms of criticality to each business unit and IT;
- Agree on services and staff to be provided by a managed services vendor;
- Agree on services and staff to be provided by CLB;
- Agree on the definitions and targets for Key Performance Indicators (KPIs) that will be used to measure the performance of business operations and supporting applications in production;
- Determine service level agreements that will be built into the vendor contract and monitored during the term of the contract in support of achieving specific KPI targets.

Because of the complex nature of this document, several iterations of review and rework are likely to occur demanding several workshops occur, culminating in a final sign-off of the document by CLB.

Deliverables:

Detailed Services Requirements Document

### Task 1.1.6 Develop and Assemble RFP

TMG shall deliver a recommended evaluation method (including minimum qualifications) and scoring criteria to CLB, together with draft pricing structure (with example contracting options), reference check questionnaire, draft reference check questionnaire and draft interview schedule and instructions.

At a workshop managed by TMG, the evaluation committee will provide edits and comments back to TMG having first reviewed these deliverables. The purpose of this workshop is to:

- Agree the evaluation method and scoring criteria that will be incorporated in the RFP and used for the evaluation of vendor proposals in Phase 2;
- Agree the pricing structure and type of contract that CLB wishes to receive from proposers;
- Agree on the draft content of reference check questionnaire, draft reference check questionnaire and draft interview schedule and instructions.

Following completion of the workshop, TMG will finalize and incorporate all documents into an RFP including any exhibits that would enhance the vendor's understanding of CLB's requirements. TMG will work with CLB's Purchasing and Legal departments to determine a final calendar of events, insurance requirements, legal requirements, terms and conditions.

TMG will deliver to Purchasing a list of recommended recipient vendors for the RFP. TMG recommends approximately four weeks to allow vendors to build and submit their response to the RFP following publication of the RFP by CLB's Purchasing representative.

Deliverable:

- (1) Vendor Scoring/Evaluation Methodology;
- (2) Reference Check Questionnaire;
- (3) Vendor Interview Instructions and Schedule;
- (4) RFP Exhibits (as required)
- (5) RFP ready for publication;
- (6) Recommended vendor list for RFP distribution.

## Phase 2: Acquisition Phase - Vendor Evaluation & Selection

#### Task 2.1.1 General Assistance

Throughout the period during which CLB's Evaluation Team will be evaluating and selecting a winning vendor, TMG will meet weekly with CLB in order to keep abreast of activities; in addition, TMG will field any questions CLB has regarding the work performed by TMG previously in support of their procurement activities.

Deliverable:

Ongoing assistance

## Task 2.1.2 Lead or Participate in Final Contract Negotiations

TMG shall obtain a template contract and SOW from the selected vendor for managed services. TMG shall review this agreement and provide a "redlined" version to the Evaluation Team and CLB's designated Attorney with recommended changes, a recommended Statement of Work and a list of issues. TMG shall then conduct a Contract Review & Negotiation Strategy meeting to obtain consensus on negotiation points, gain an understanding of CLB's view on each point, and develop a negotiation plan including any "deal breakers."

At CLB's option TMG can either lead or participate in contract negotiations between CLB and its selected vendor and can either own (in corroboration with CLB's attorney) or contribute to the construction of the Agreement and associated documents. TMG's negotiation strategy is to develop and preserve a long-term mutually beneficial relationship between CLB and the vendor while ensuring quality vendor performance and minimizing the risks to CLB and the customers you serve.

Deliverable:

Vendor Contract and Statement of Work

# EXHIBIT "B"

Rates or Charges

# 11Atelotzoo zanondek

The following table provides the projected cost for the scope of services identified in this proposal. The cost indicated below is all inclusive of travel & living expenses.

Phase/Activities	House	liekc	Notice contributions
Phase 1 RFP Development	336	\$235	\$78,960
<ul> <li>Kick-off Meeting</li> <li>Risk Assessment with mitigation plans</li> <li>Develop Acquisition Project Schedule</li> <li>Develop Detailed Services Requirements</li> <li>Develop and Assemble RFP</li> </ul>	40 40 16 160 80		
Phase 2 – Evaluation & Selection	280	\$235	\$65,800
Ongoing Assistance     Contract Negotiation	40 240		
Phase 1 & 2 Total	616	\$235	\$144,760

# EXHIBIT "C"

City's Representative:
Jasmine Frost, Manager
(562) 570-5552

# EXHIBIT "D"

Materials/Information Furnished: None