

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of March 22, 2010, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on February 16, 2010, by and between EF RECOVERY, LLC, a Washington limited liability company, with a place of business at 476 S. Earlham Street, Orange, California 92859 ("Vendor"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with Vehicle Accident Response and Mitigation Billing and Collection Services ("Project"); and

WHEREAS, Vendor represents that it has that degree of specialized expertise contemplated within California Vehicle Code, Section 17300, and holds all necessary licenses to practice and perform the services herein contemplated; and

WHEREAS, City has selected Vendor in accordance with City's administrative procedures using a Request for Proposals ("RFP") and Vendor's response thereto, incorporated herein by reference as though fully set forth, and City has determined that Vendor and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Vendor perform these specialized services, and Vendor 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. Vendor 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

1 for these services in the manner described below, not to exceed Thirty-Five
2 Thousand Dollars (\$35,000) annually, at the rates or charges shown in Exhibit "A".

3 B. City shall pay Vendor in due course of payments following
4 receipt from Vendor and approval by City of invoices showing the services or task
5 performed and the time expended. Vendor shall certify on the invoices that
6 Vendor has performed the services in full conformance with this Agreement and is
7 entitled to receive payment.

8 C. Vendor represents that Vendor has obtained all necessary
9 information on conditions and circumstances that may affect its performance and
10 has conducted site visits, if necessary.

11 D. By executing this Agreement, Vendor warrants that Vendor (a)
12 has thoroughly investigated and considered the scope of services to be performed,
13 (b) has carefully considered how the services should be performed, and (c) fully
14 understands the facilities, difficulties and restrictions attending performance of the
15 services under this Agreement. If the services involve work upon any site, Vendor
16 warrants that Vendor has or will investigate the site and is or will be fully
17 acquainted with the conditions there existing, prior to commencement of services
18 set forth in this Agreement. Should Vendor discover any latent or unknown
19 conditions that will materially affect the performance of the services set forth in this
20 Agreement, Vendor must immediately inform the City of that fact and may not
21 proceed except at Vendor's risk until written instructions are received from the
22 City.

23 E. Vendor must adopt reasonable methods during the life of the
24 Agreement to furnish continuous protection to the work, and the equipment,
25 materials, papers, documents, plans, studies and other components to prevent
26 losses or damages, and will be responsible for all damages, to persons or
27 property, until acceptance of the work by the City, except those losses or damages
28 as may be caused by the City's own negligence.

1 F. CAUTION: Vendor shall not begin work until this Agreement
2 has been signed by both parties and until Vendor's evidence of insurance has
3 been delivered to and approved by City.

4 2. TERM. The term of this Agreement shall commence at midnight on
5 April 1, 2010, and shall terminate at 11:59 p.m. on March 31, 2011, unless sooner
6 terminated as provided in this Agreement, or unless the services or the Project is
7 completed sooner. The Parties have the option to renew for two (2) additional one (1)
8 year periods.

9 3. COORDINATION AND ORGANIZATION.

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

18 B. The parties acknowledge that a substantial inducement to City
19 for entering this Agreement was and is the reputation and skill of Vendor's key
20 employee, Jim Figueira. City shall have the right to approve any person proposed
21 by Vendor to replace that key employee.

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

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

6 5. INSURANCE.

7 A. As a condition precedent to the effectiveness of this
8 Agreement, Vendor shall procure and maintain, at Vendor'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
12 Section 1763 of the California Insurance Code and that have ratings of or
13 equivalent to A:VIII 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
19 completed operations liability. City, its boards and commissions, and their
20 officials, employees and agents shall be named as additional insureds by
21 endorsement (on City's endorsement form or on an endorsement
22 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and
23 this insurance shall contain no special limitations on the scope of
24 protection given to City, its boards and commissions, and their officials,
25 employees and agents. This policy shall be endorsed to state that the
26 insurer waives its right of subrogation against City, its boards and
27 commissions, and their officials, employees and agents.

28 (b) Workers' Compensation insurance as required by the California

1 Labor Code and employer's liability insurance in an amount not less than
2 \$1,000,000. This policy shall be endorsed to state that the insurer waives
3 its right of subrogation against City, its boards and commissions, and their
4 officials, employees and agents.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 person or entity for use without the prior approval of City. This warranty shall survive
2 termination of this Agreement for five (5) years.

3 10. PUBLIC RECORDS ACT DISCLOSURE. Vendor has been advised
4 and is aware that all reports, documents, information and data including, but not limited
5 to, computer tapes, discs or files furnished or prepared by Vendor, or any of its
6 subcontractors, and provided to City may be subject to public disclosure as required by
7 the California Public Records Act (California Government Code Section 6250 et. seq.).
8 Exceptions to public disclosure may be those documents or information that qualify as
9 trade secrets, as that term is defined in the California Government Code Section 6254.7,
10 and of which Vendor informs City of such trade secret. The City will endeavor to maintain
11 as confidential all information obtained by it that is designated as a trade secret. The City
12 shall not, in any way, be liable or responsible for the disclosure of any trade secret
13 including, without limitation, those records so marked if disclosure is deemed to be
14 required by law or by order of the Court.

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

25 12. CONFIDENTIALITY. Vendor shall keep all Data confidential and
26 shall not disclose the Data or use the Data directly or indirectly, other than in the course
27 of performing its services, during the term of this Agreement and for five (5) years
28 following expiration or termination of this Agreement. In addition, Vendor shall keep

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1 confidential all information, whether written, oral or visual, obtained by any means
2 whatsoever in the course of performing its services for the same period of time. Vendor
3 shall not disclose any or all of the Data to any third party, or use it for Vendor's own
4 benefit or the benefit of others except for the purpose of this Agreement.

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

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

25 15. RETENTION OF FUNDS. Vendor authorizes the City to deduct from
26 any amount payable to Vendor (whether or not arising out of this Agreement) any
27 amounts the payment of which may be in dispute or that are necessary to compensate
28 the City for any losses, costs, liabilities or damages suffered by the City, and all amounts

1 for which the City may be liable to third parties, by reason of Vendor's acts or omissions
2 in performing or failing to perform Vendor's obligations under this Agreement. In the
3 event that any claim is made by a third party, the amount or validity of which is disputed
4 by Vendor, or any indebtedness exists that appears to be the basis for a claim of lien, the
5 City may withhold from any payment due, without liability for interest because of the
6 withholding, an amount sufficient to cover the claim. The failure of the City to exercise
7 the right to deduct or to withhold will not, however, affect the obligations of Vendor to
8 insure, indemnify and protect the City as elsewhere provided in this Agreement.

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

12 17. LAW.

13 A. This Agreement shall be governed by and construed pursuant
14 to the laws of the State of California (except those provisions of California law
15 pertaining to conflicts of laws). Vendor shall comply with all laws, ordinances,
16 rules and regulations of and obtain all permits, licenses and certificates required
17 by all federal, state and local governmental authorities. Jurisdiction of any
18 litigation arising from the Agreement will be in Los Angeles County, California.

19 B. If any part of this Agreement is found to be in conflict with
20 applicable laws, that part will be inoperative, null and void insofar as it is in conflict
21 with any applicable laws, but the remainder of the Agreement will remain in full
22 force and effect.

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

26 19. INDEMNITY. Vendor shall, with respect to services performed in
27 connection with this Agreement, indemnify and hold harmless City, its Boards,
28 Commissions, and their officials, employees and agents (collectively in this Section,

1 "City") from and against any and all liability, claims, allegations, demands, damage, loss,
2 causes of action, proceedings, penalties, costs and expenses (including attorney's fees,
3 court costs, and expert and witness fees) (collectively "Claims" or individually "Claim")
4 arising, directly or indirectly, in whole or in part, out of any negligent act or omission of
5 Vendor, its officers, employees, agents, sub-Vendors or anyone under Vendor's control
6 (collectively "Indemnitor"), breach of this Agreement by Indemnitor, misrepresentation or
7 willful misconduct by Indemnitor, and Claims by any employee of Indemnitor relating in
8 any way to workers' compensation. Independent of the duty to indemnify and as a free-
9 standing duty on the part of Vendor, Vendor shall defend City and shall continue this
10 defense until the Claim is resolved, whether by settlement, judgment or otherwise. No
11 finding or judgment of negligence, fault, breach or the like on the part of Indemnitor shall
12 be required for the duty to defend to arise. Vendor shall notify City of any Claim within
13 ten (10) days. Likewise, City shall notify Vendor of any Claim, shall tender the defense of
14 the Claim to Vendor, and shall assist Vendor at Vendor's sole expense, as may be
15 reasonably requested, in the defense.

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

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

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

28 23. NONDISCRIMINATION.

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

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

24 24. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
25 accordance with the provisions of the Ordinance, this Contract is subject to the applicable
26 provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the Long Beach
27 Municipal Code, as amended from time to time.

28 A. During the performance of this Contract, the Vendor certifies

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

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

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

11 C. If the Vendor fails to comply with the EBO, the City may
12 cancel, terminate or suspend the Contract, in whole or in part, and monies due or
13 to become due under the Contract may be retained by the City. The City may also
14 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 Vendor in actions taken pursuant to the provisions of Long Beach
17 Municipal Code 2.93 et seq., Contractor Responsibility.

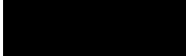
18 E. If the City determines that the Vendor has set up or used its
19 contracting entity for the purpose of evading the intent of the EBO, the City may
20 terminate the Contract on behalf of the City. Violation of this provision may be
21 used as evidence against the Vendor in actions taken pursuant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

23 25. 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 Vendor at the address first stated above, and to City at
26 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a
27 copy to the City Clerk 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 26. WAIVER. The acceptance of any services or the payment of any
3 money by City shall not operate as a waiver of any provision of this Agreement or of any
4 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
5 Agreement shall not constitute a waiver of any other or subsequent breach of this
6 Agreement.

7 27. CONTINUATION. Termination or expiration of this Agreement shall
8 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
9 18, 21 and 28 prior to termination or expiration of this Agreement.

10 28. TAX REPORTING. As required by federal and state law, City is
11 obligated to and will report the payment of compensation to Vendor on Form 1099-Misc.
12 Vendor shall be solely responsible for payment of all federal and state taxes resulting
13 from payments under this Agreement. Vendor's Employer Identification Number is
14  If Vendor has a Social Security Number rather than an Employer
15 Identification Number, then Vendor shall submit that Social Security Number in writing to
16 City's Accounts Payable, Department of Financial Management. Vendor acknowledges
17 and agrees that City has no obligation to pay Vendor until Vendor provides one of these
18 numbers.

19 29. ADVERTISING. Vendor shall not use the name of City, its officials
20 or employees in any advertising or solicitation for business or as a reference, without the
21 prior approval of the City Manager or designee.

22 30. AUDIT.

23 A. The City, at its option, may call for an audit of financial
24 information relative to the Agreement, where the City determines that an audit is
25 desirable to assure program integrity or where such an audit becomes necessary
26 because of federal requirements. Where such an audit is called for, the audit shall
27 be performed by a certified public accountant independent of the Vendor and at
28 the cost of the Vendor. The audit shall be in the form required by the City.

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B. Audit disallowances will be returned to the City.

31. REPORTS.

A. Quarterly Reports. Vendor agrees to expeditiously provide status reports no less frequently than quarterly. At a minimum, the reports will contain the following information: a summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoices, and percent schedule elapsed; a listing of change orders including amount, description of work, and change in contract amount and schedule; any problems encountered, proposed resolution, schedule for resolution, status of previous problem resolutions, and number of jobs created or preserved due to the Agreement.

B. As-Needed Reports. Vendor agrees to expeditiously provide, during the term of this Agreement, such reports, data, and information as may be reasonably required by the City, including but not limited to material necessary or appropriate for evaluation of the Agreement or to fulfill any reporting requirements of the federal government.

32. RECORDS.

A. Within limitation of the requirement to maintain Agreement accounts in accordance with generally accepted accounting principles the Vendor agrees to:

- i. Establish an official file for the Agreement which shall adequately document all significant actions relative to the Agreement;
- ii. Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Agreement, including all assistance funds received under this Agreement;
- iii. Establish separate accounts which will adequately depict all income received which is attributable to the Agreement, specifically including all income attributable to assistance funds disbursed

1 under this Agreement;

2 iv. Establish an accounting system which will accurately
3 depict final total costs of the Agreement, including both direct and indirect
4 costs;

5 v. Establish such accounts and maintain such records as
6 may be necessary for the City to fulfill federal reporting requirements,
7 including any and all reporting requirements under federal tax statutes or
8 regulations; and

9 vi. If a Force Account is used by the Vendor for any phase
10 of the Agreement, other than for planning, design and construction
11 engineering, and administration provided for by allowance, accounts will be
12 established which reasonably document all employee hours charged to the
13 Agreement and the associated tasks performance by each employee.

14 B. Vendor shall be required to maintain books, records and other
15 material relative to the Agreement in accordance with generally accepted
16 accounting principles. Vendor shall also be required to retain such books, records,
17 and other material for each subcontractor who performed work on this Agreement
18 for a minimum of six (6) years after repayment of Agreement Funds, if any, or six
19 (6) years after Agreement completion if no repayment is required. The Vendor
20 shall require that such books, records, and other material be subject at all
21 reasonable times (at a minimum during normal business hours) to inspection,
22 copying, and audit by the City, or any authorized representatives of the
23 aforementioned, and shall allow interviews during normal business hours of any
24 employees who might reasonably have information related to such records.
25 Vendor agrees to include a similar right regarding audit, interviews, and records
26 retention in any subcontract related to the performance of this Agreement.

27 C. Records Inspection. At any time during normal business
28 hours and as often as City may deem necessary, Vendor shall make available for

1 examination all of its records with respect to all matters covered by this
2 Agreement. City shall have authority to audit, examine and make excerpts or
3 transcripts from records, including all Vendor's invoices, materials, payrolls,
4 records of personnel, conditions of employment and other data relating to all
5 matters covered by this Agreement.

6 D. Records Maintenance. Records, in their original form, shall
7 be maintained in accordance with requirement prescribed by City with respect to
8 all matters covered on file for all documents specified in this Agreement. Original
9 forms are to be maintained on file for all documents specified in this Agreement.
10 Such records shall be retained for a period of five (5) years after termination of this
11 Agreement and after final disposition of all pending matters. "Pending matters"
12 include, but are not limited to, an audit, litigation or other actions involving records.
13 City may, at its discretion, take possession of, retain and audit said records.
14 Records, in their original form pertaining to matters covered by this Agreement,
15 shall at all times be retained within City unless authorization to remove them is
16 granted in writing by City.

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

20 34. INTERPRETATION. The terms of this Agreement should be
21 construed in accordance with the meaning of the language used and should not be
22 construed for or against either party by reason of the authorship of this Agreement or any
23 other rule of construction that might otherwise apply.

24 35. VENDOR'S AUTHORITY TO EXECUTE. The persons executing
25 this Agreement on behalf of the Vendor warrant that (1) the Vendor is duly organized and
26 existing; (2) they are duly authorized to execute this Agreement on behalf of the Vendor;
27 (3) by so executing this Agreement, the Vendor is formally bound to the provisions of this
28 Agreement; and (4) the entering into this Agreement does not violate any provision of any

1 other Agreement to which the Vendor is bound.

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

4
5
6 May 10th, 2010

EF RECOVERY, LLC, a Washington
limited liability company

By [Signature]
Managing Member

Robert Phipps
Type or Print Name

7
8
9
10
11
12 6-18-10, 2010

"Vendor"

CITY OF LONG BEACH; a municipal
corporation Assistant City Manager

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

"City"

This Agreement is approved as to form on 6-7, 2010.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

28

EXHIBIT “A”

Scope of Work

Scope of Services and Fees

1. The City will identify incidents which meet the criteria set forth in California Vehicle Code section 17300, and will provide EF Recovery with billing information (including insurance companies, if applicable) for the party or parties responsible for negligently or willfully depositing the contents of a vehicle upon a street or highway. "Contents" may include fluids such as antifreeze, fuel and motor oil, and debris caused by the impact of a motor vehicle accident.
2. EF Recovery will bill the negligent parties or their insurers for all labor, equipment and materials used at the scene as determined by the City, and set forth in the City's approved fee schedule and submitted to EF Recovery. EF Recovery will bill insurance companies and "soft bill" all liable parties. EF Recovery will not amend, modify, correct or adjust any amounts submitted by City without City's advance approval. EF Recovery will further pursue the collection of the bill.
3. For each claim submitted by the City to EF Recovery, EF Recovery will charge 14% of the amount of the claim as compensation. If the claim is not collected, there will be no charge to the City.
4. There will be no charge for consultations, meetings, setup, orientation, implementation, training, system maintenance or configurations.
5. EF Recovery will transmit collected claims to the City on a monthly basis.

EXHIBIT “B”

City’s Representative:

David Honey

EXHIBIT “C”

Materials/Information Furnished: