

**PROFESSIONAL SERVICES AGREEMENT**

**DATE:** June 15, 2017

**PARTIES:** "CLIENT"

THE CITY OF BURBANK, a municipal corporation

Designated Official: Name: Jorge Somoano  
Title: General Manager, Burbank Water and Power  
Telephone: (818) 238-3550

Mailing Address: 164 W. Magnolia Blvd.  
P. O. Box 631  
Burbank, CA 91503-0631

THE "CONSULTANT"

TMG Utility Advisory Services, Inc. dba TMG Consulting

Representative: Name: Tim Almond  
Title: Executive Vice President  
Telephone: 512-757-1156

Mailing Address: 388 Feathergrass Dr.  
Buda, TX 78610

**TERM:** Commencement date: June 15, 2017  
Completion date: June 14, 2018

**COST OF SERVICE:** \$50,000

THIS AGREEMENT MUST BE FIRST EXECUTED BY THE CONSULTANT OR ITS DULY AUTHORIZED REPRESENTATIVE AND APPROVED AS TO FORM BY THE CITY ATTORNEY BEFORE THE AGREEMENT MAY BE EXECUTED ON BEHALF OF THE CITY OF BURBANK.

REQUESTS FOR A WAIVER OF TERMS MUST BE IN WRITING AND PRESENTED TO THE CITY ATTORNEY'S OFFICE AT THE TIME THIS AGREEMENT IS DELIVERED TO THE CITY ATTORNEY'S OFFICE FOR REVIEW AND APPROVAL AS TO FORM.

**1.0**            **Services.** Consultant, as an independent contractor, agrees to perform during the term of this Agreement, each and every service set forth on the "Scope of Services" attached to this Agreement as Exhibit "A." The initiation of service by the Consultant will commence upon receipt of a written notice from the Designated Official authorizing Consultant to proceed, and only to the extent of such authorization. The services of the Consultant shall include the making of all investigations, studies, and analysis required by the conditions involved in each request of the Designated Official.

**2.0**            **Compensation.** The Client shall pay for the services of Consultant either on a time-and-material basis or on a fixed-price basis, depending upon the agreed cost of the applicable service as indicated on the "Schedule of Compensation" which is set forth in Exhibit "B." No payment for expenses or labor shall be paid by Client unless it is related to a service, which is referred to in the Scope of Services. The Cost of Service may be increased, on a one time basis, by 10% of the original Cost of Services or \$10,000, whichever is less with the prior written approval of the Designated Official; provided, that such increase may not exceed the monies that have been previously approved for in the budget for the Scope of Services. Any additional increase in the cost of service designated on the first page of this Agreement must have the prior written approval and authorization of the Designated Official; provided, further, that any increase that exceeds the budgeted amount originally approved by the City Council must be approved by the City Council.

**3.0**            **Payment.** If the service specified in the Scope of Services is to be paid for on a fixed-price basis, then Client shall pay for services of Consultant the total fixed price according to the progress payment schedule established in the Schedule of Compensation. If, however, payment is to be made on a time-and-material basis, then Consultant shall, at the end of each calendar month in which services are performed or expenses are incurred under this Agreement, and prior to the tenth day of the following month, submit to the Client a verified invoice prepared in the manner prescribed by the Client and the Designated Official. Client's payment to Consultant shall be made within thirty (30) days of either the date of completion of each phase as set forth in the progress schedule if Consultant's Compensation is a fixed price, or the date of Consultant's invoice if compensation is calculated on a time-and-material basis, whichever is applicable.

**4.0**            **Standard of Skill.** Consultant, and Consultant's staff, if any, is skilled in the professional calling necessary to perform the work agreed to be done pursuant to this Agreement. Client relies upon the skill of the Consultant, and Consultant's staff, if any, to do and perform such work in a skillful manner, and Consultant agrees to thus perform Consultant's work. The acceptance of Consultant's work by the Client shall not operate as a release of the Consultant from such standard of care and workmanship.

**5.0**            **Independent Contractor.** Consultant is retained and employed by Client only to the extent set forth in this Agreement, and the Consultant's relationship to the Client is that of an independent contractor. Consultant shall be free to dispose of all portions of Consultant's time and activities which Consultant is not obligated to devote to the Client in such a manner and to such persons, firms, or corporations as the Consultant sees fit except as expressly provided in this Agreement. Consultant shall not be considered to have the status of an employee under this Agreement or be entitled to participate in any insurance, medical care, vacation, sick leave, or other benefits provided for Client's officers or employees.

**6.0**            **Indemnification.** To the fullest extent provided by law, Consultant shall defend, indemnify and hold harmless the Client and its officers, agents, and employees, against all claims for personal injury, property damage, or wrongful death that pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, its officers, agents, and employees.

The Consultant's obligations under this Section of the Agreement shall survive the termination of the Agreement and the completion of the performance of the work required by the Agreement.

**7.0**            **Termination of Agreement.** Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party thirty (30) days' notice in writing. This Agreement may be extended beyond the term only by the written agreement of both parties prior to the expiration of the term of the Agreement.

**8.0**            **Safety Requirement.** All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL-OSHA. The Client reserves the right to issue restraint or cease and desist orders to the Consultant when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement. The Consultant shall maintain the work sites free of hazards to persons and property resulting from its operations. Any hazardous condition noted by the Consultant, which is not the result of his operations, shall immediately be reported to the Client.

**9.0**            **Insurance.** Consultant shall maintain the following insurance coverage throughout the term of this Agreement, and upon request Consultant shall show Client evidence of such coverage:

**9.1**            **Automobile Insurance.** If Consultant uses, or intends to use, a personal automobile in the performance of this Agreement, automobile liability insurance with limits of not less than \$100,000.00 per person and \$300,000.00 per accident for bodily injury and not less than \$25,000.00 per accident for property damage.

Waiver Approved: \_\_\_\_\_  
City Attorney or designee

\_\_\_\_\_  
Management Services Director or designee

**9.2**            **Workers' Compensation Insurance.** Workers' Compensation Insurance and Employer's Liability Insurance on any employees of Consultant performing services under this Agreement. **This insurance cannot be waived, but does not apply if Consultant is a sole proprietor and provides a written statement to that effect.**

**9.3**            **General Liability and Property Damage Insurance.** Unless expressly waived and such waiver is evidenced by the signature of the requisite officers of the client designated in this paragraph, Consultant shall maintain general liability insurance and property damage insurance in the amount equal to the greater of \$1,000,000.00 combined single limit or the maximum limits of

Consultant's insurance as of the date of this Agreement, in each case, together with any excess coverage maintained by Consultant as of the date of this Agreement. When this coverage is required, the Client shall be named as an additional insured on a separate endorsement to the insurance policy. The endorsement shall require the insurance company to provide Client a minimum of ten (10) days' notice of the cancellation of the policy.

Waiver Approved:

\_\_\_\_\_  
City Attorney or designee

\_\_\_\_\_  
Management Services Director or designee

**9.4 Errors and Omissions Insurance.** Errors and Omissions Insurance which includes coverage for professional malpractice, in the amount of \$1,000,000.00. The policy shall provide for coverage of all claims occurring during the term of the policy notwithstanding the fact that the claim may be asserted subsequent to the expiration of the policy for a minimum period of three (3) years.

Waiver Approved:

\_\_\_\_\_  
City Attorney or designee

\_\_\_\_\_  
Management Services Director or designee

## **10.0 Miscellaneous Insurance Requirements.**

**10.1 Recovery from Consultant's Insurance.** Consultant agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, the Consultant shall look solely to its insurance for recovery.

**10.2 Failure to Secure.** If Consultant at any time during the term of this Agreement, should fail to secure or maintain any insurance required under this Agreement, the Client shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the cost of the insurance premiums at the maximum rate permitted by law computed from the date written notice is received that the premiums have been paid. Such costs can be assessed by deducting such costs from any amounts due and payable to the Consultant as compensation under the terms of this Agreement.

**10.3 Additional Insured.** The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as an additional insured and an additional insured named under this Agreement shall not be held liable for any premium or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute toward any loss or expense covered by the insurance provided by this policy. Proceeds from any policy or policies shall be payable to the Client primarily, and to the Consultant secondarily, if necessary.

**10.4 Evidence of Insurance.** If requested by the Client, Consultant shall furnish true, correct and complete copies of the insurance policies to the Designated Official or City Attorney's Office, with such insurance policies in form and substance satisfactory to the Client.

**11.0 Work Product.**

**11.1 Deliverables.** Consultant shall deliver to the Client the studies, plans, specifications, or other documents as are identified in the Scope of Services; and Consultant shall, upon completion of all work, submit to the Client all information developed in the course of the Consultant's services. Consultant shall, in such time and in such form as the Client may require, furnish reports concerning the status of services required under this Agreement. Consultant shall, upon request by Client and upon completion or termination of this Agreement, deliver to the Client all material furnished to Consultant by the Client.

**11.2 Ownership.** Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the Consultant pursuant to or in connection with this Agreement shall be the exclusive property of the Client.

**11.3 Confidentiality..** Consultant may be granted access to information that is exempt from disclosure to the public (Government Code Section 6254 and 6254.16) and may contain "trade secrets" (see Government Code Section 6254.7) when it is necessary for Consultant to perform its obligations pursuant to this Agreement. If Consultant is granted such access to confidential information, Consultant shall not be considered to be a member of the public as that term is used in Government Code Section 6254.5.

Consultant shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects assigned to Consultant by the Client or other information to which the Consultant has had access during the term of this Agreement without the prior written approval of the Designated Official during the term of this Agreement and this obligation shall survive for a period of two (2) years after the termination of this Agreement; provided, that this confidentiality obligations imposed by this Agreement as to any information which may be deemed to be (a) a trade secret under applicable law shall survive for so long as such information constitutes a trade secret thereunder and (b) each utility customer's "data" under applicable law shall survive unless Consultant has secured such customer's express, written consent to release of such customer's information and (c) any information classified as "critical infrastructure information" or "protected critical infrastructure information" or "protected system" shall survive until Client has advised Consultant in writing that such information may be released.

**11.4 Records.** Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the Client or the Designated Official. The Consultant shall maintain adequate records on services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide access to the Designated Official or his designees at all proper

times to such books and records, and gives the Designated Official or his designees the right to examine and audit such books and records and to make transcripts as necessary, and to allow inspection of all work, data, documents, proceedings, and activities related to this Agreement.

**12.0**            **Assignment.** This Agreement is personal to the Consultant. Any attempt at assignment by the Consultant shall be void unless approved in writing by the Designated Official. Consultant's services pursuant to this Agreement shall be provided by the Representative or directly under the supervision of the Representative and Consultant shall not assign another to supervise the Consultant's performance of this Agreement without the prior written approval of the Client, by and through the Designated Official.

**13.0**            **Miscellaneous Terms.**

**13.1**            **Nuisance.** Consultant shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

**13.2**            **Permits and Licenses.** Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

**13.3**            **Conflict of Interest.** Consultant agrees to be familiar with and comply with all applicable federal, state, and local conflict of interest laws.

**13.4**            **Waiver.** A waiver by the Client of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

**13.5**            **Notices.** Any notice required by this Agreement to be given in writing to the persons, at the addresses specified on the first page of this Agreement. Either party may change the specified person or address at which it is to receive notices by so advising the other party in writing.

**13.6**            **Mediation.** The parties agree to submit all claims, disputes or other matters in question between the parties arising out of or relating to this Agreement or breach thereof to mediation prior to the institution of any litigation.

**13.7**            **Anti-Terrorism Laws; Sanctions.** The Consultant represents and warrants that:

- a. it is not a person described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control, United States Department of the Treasury (“**OFAC**”) or in Section 1 of Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism);

- b. it does not engage in any dealings or transactions with any such persons described in sub-clause (a) above; and
- c. is not otherwise blocked, subject to sanctions under or engaged in any activity in violation of other United States economic sanctions, including but not limited to, Trading with the Enemy Act, the International Emergency Economic Powers Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act or any other similar law or regulation with respect to Iran or any other country, the Sudan Accountability and Divestment Act, any OFAC Sanctions Program, or any economic sanctions regulations administered and enforced by the United States or any enabling legislation or executive order relating to any of the foregoing.

The Consultant further agrees to promptly deliver notice to the Client if the representations and warranties set forth above are no longer true and correct.

**13.8 Severability.** If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local governmental having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected by such holding.

**13.9 Governing Law.** The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of Los Angeles County.

**13.10 Integrated Contract.** This Agreement represents the entire Agreement between the Client and the Consultant. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. In the event an inconsistency arises between any exhibit and any term of this Agreement, the terms of this Agreement shall prevail. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

In recognition of the obligations stated in this Agreement, the parties have executed this Agreement on the date indicated above.

"CONSULTANT"

Signature

*Tim A. Moore*

Name (please print)

Title

Date

*COO*

*7/27/2017*

"CLIENT"

Signature

*Jorge Somoano*

Name (please print)

Title

Date

*General Manager, Burbank Water and Power*

*8/7/17*

ATTEST:  
Office of the City Clerk


Approved as to Form  
Office of the City Attorney

By:   
Signature

Zizette Mullins, MMC  
Name (please print)

City Clerk  
Title

8/8/17  
Date

By:   
Signature

Christopher Cley  
Name (please print)

San Antonio City Attorney  
Title

8/1/17  
Date



## EXHIBIT A

### SCOPE OF SERVICES

TMG Consulting Inc. (TMG) will provide BWP with solution and functional architect services for the Smart Utility Systems Smart Mobile Workforce project (SUS SMW), specifically as it relates to the integration with and enhancements to CC&B. A summary of the services delivered follows and is described in detail in the subsequent "Detail" section:

#### SUMMARY

TMG will provide consulting services to assist with CC&B enhancements, configuration and integration required with SUS SMW solution based on the scope defined and agreed to between BWP and SUS. These services include solution recommendations, business process redesigns, configuration changes, scripting and enhancements as needed and defined by BWP. TMG will attend workshops, meetings, conduct review sessions and design solutions to meet the integration requirements. Development and testing may be required.

#### DETAIL

##### **Solution Architect Support**

There are not a set of deliverable tasks required under this statement of work (SOW). Support tasks may include, but is not limited to, the items below:

- Design documents based on BWP requirements for integration with SUS applications
- Configuration updates and enhancements based on the designs and preferred CC&B and OUAF tools available and preferred by BWP
- Direct or ESB integration based on BWP's best practices and requirements
- Development and testing services as required based on designs

Under the guidance of BWP, TMG will provide solution architect support and development services as requested within the confines of the pre-defined agreement of monies defined within the [Cost Section](#).

Additionally, TMG will also provide technical integration expertise in regards to any required integrations between SUS applications and Customer Care and Billing (CC&B).

Based on the current project duration of 12-months, TMG is expected to provide roughly 295 hours of support services based on BWP's requirements.

EXHIBIT B

**SCHEDULE OF COMPENSATION**  
**Cost Detail**

The following table provides the not-to-exceed cost for the scope of services identified in this proposal. The cost indicated below is all inclusive of travel & living expenses.

<b>Phase/Activities</b>	<b>Estimated Hours</b>	<b>Hourly Rate</b>	<b>Not to exceed Total Cost</b>
<b>Solution Architect Support</b>	212	\$205.00	\$43,460
<b>Development (Java)</b>	83	\$78.80	\$6,474
<b>Total</b>	295		\$50,000