

PROFESSIONAL SERVICES AGREEMENT

DATE: June 30, 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 91502

THE "CONSULTANT"

TMG Utility Advisory Services, Inc.
DBA TMG Consulting, Inc.

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

Mailing Address: 388 Feathergrass Dr.
Buda, TX 78610

TERM: Commencement date: August 1, 2017
Completion date: June 30, 2018

COST OF SERVICE: \$750,000.00

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 City Council; 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

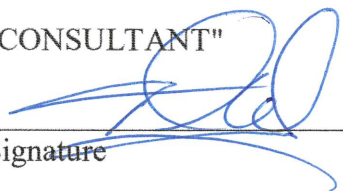
illegal, unenforceable, or in conflict with any law of a federal, state, or local governmental having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected by such holding.

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 Almond
Name (please print)

Executive Vice President
Title

ATTEST:
Office of the City Clerk

By: 
Signature

Zizette Mullins, MMC
Name (please print)

City Clerk
Title

"CLIENT"


Signature

Jorge Somoano
Name (please print)

General Manager, BWP
Title

Approved as to Form
Office of the City Attorney

By: 
Signature

Lisa Kurihara
Name (please print)

Deputy City Attorney
Title

EXHIBIT A

SCOPE OF SERVICES

SECTION 1. APPROACH

This Scope of Services/Work (“SOW”) describe the Consultant’s (“TMG”) approach to delivering the services required by the Professional Service Agreement between TMG and the City of Burbank (“City” or “COB”). In summary:

- Phase 1:** Deliver reliable services, every day; measure and monitor our performance; work with City’s Burbank Water and Power Department (“BWP”) to plan the future.
- Phase 2:** After our contract ends, transfer all responsibilities back to BWP in a structured manner.

SECTION 1.01 PHASE 1: PROVIDE APPLICATION SUPPORT

Daily Tasks

On a daily basis, TMG will perform the following activities:

Checking batch success

All batch processing will be monitored and configured with real-time monitoring and automated alerts to notify appropriate parties of significant failure. In addition, the results of the previous night’s batch run will be checked, by inspecting control reports and error logs, to ensure the expected business results were produced. For example, “expected business results” shall include checking that Bill Print outsourcer has received an extract for processing of appropriate content, that processing of head-end files was successfully completed by MDM. All identified exceptions will be recorded by a Service Request (“SR”) and follow the Parties’ agreed upon resolution path.

Monitoring system performance

To ensure all systems will sustain over time and maintain the ability to support the necessary users, the system will be monitored against a benchmark defined and agreed upon during Phase 1. By managing system performance to the preset benchmarks, a proactive approach will be in place to ensure that the user experience does not change over time. Although many Operating Systems (“OS”) provide native utilities to monitor various aspects of the systems, a commercial monitoring package provides better functionality and flexibility to accompany the entire “environment”.

Triage of incidents

Any incidents that are logged by BWP will be diagnosed and assigned by BWP Support staff. Incidents assigned to TMG will be managed and resolved according to the SR process. Reported SRs will be classified as follows:

SR Level 1: Means that a component of the CIS Application, either in testing or in production, has experienced a critical failure. This failure causes severe limitation to the CIS Application functionality, loss of revenue, significant damage to CIS Application (or dependent application’s) data and no practical work-around is available to BWP.

SR Level 2: Means that a component of the CIS Application, either in testing or in production, has experienced a failure. This failure causes BWP limitation to the CIS Application functionality, limited damage to CIS Application (or dependent application’s) data and a practical work-around is available to BWP.

SR Level 3: Means that a component of the CIS Application, either in testing or in production, has experienced a non-critical failure. No business functions, data or revenue is materially impacted by this failure and a practical work-around is available to BWP.

Configuration Management

TMG will be responsible for maintaining all configurations in all environments, for all applications covered within this SOW. In this context, configuration includes all custom code (such as extensions, plug-ins, algorithms, scripts, jobs, reports, etc.), application configuration (such as user security profiles, rate structures, GL distribution codes) and technical configuration (such as application parameters, server settings). A “living” Configuration Management (“CM”) plan will exist that defines the methodology used to maintain configuration.

Conduct operational meeting

At a frequency of BWP’s choosing, meetings will be conducted to discuss any open SR’s, including application technical, functional or performance issues. Short term plans will describe the anticipated resolution process, including solution delivery, testing and deployment plans.

Operational meetings may also be a forum for the discussion of improvements or the optimization of the current operational procedures or business processes.

Periodic Tasks

Managing Third Party SRs

TMG will also manage the SR process with the BWP-identified 3rd party billing system and AMI system vendors per their contractual obligation with BWP (e.g. if there is a defect in EIP, TMG will manage the resolution of this defects with Siemens directly). Although TMG will actively manage this process, BWP will always have access to the information to ensure total transparency in the support process of the various applications.

Conduct monthly management summary meeting

Every month, management stakeholders will meet to discuss the activities of the previous month and address potential issues as necessary.

Configuration Management (“CM”) Audit

A CM Audit will be conducted twice annually for each baseline to verify correctness and completeness of the baseline library contents as well as compliance to CM standards and procedures. Baseline audits will include both Functional Configuration Auditing and Physical Configuration Auditing.

Exceptional Tasks

Managing Emergencies

Emergencies, should they arise, will take precedence over all other work until the emergency has been successfully addressed. These events are identified as having the highest level severity within the SR process; ultimately meaning a complete loss of use of the system.

The SLA’s defined by this SOW cover these situations.

Managing Changes

BWP may request changes to the application that may necessitate changes to product configuration, extensions, new reports, etc. These changes will be initiated by BWP and documented and managed through the BWP change control process.

Reporting

TMG will provide verbal or written reports (at BWP's option) that will be used to report the "health" of the system as a whole. Reports will be provided semi-annually. Reports will be delivered in form and substance reasonably acceptable to BWP, and report content may include all or some of the following information, at BWP's request:

- Detailed information regarding SR statuses
- Operational statistics from the week (i.e. number of successful batch jobs versus failed, configuration changes required, etc.)
- Snapshot of the health of the system
- Documentation of risks and issues with associated recommendations for mitigation
- Opportunities for improvement
- Areas of concern for the organization
- Synopsis of all activities since last reporting period
- Statistical reporting of mutually agreed upon Metrics and KPIs.

SECTION 1.02 PHASE 2: PROVIDE KNOWLEDGE TRANSFER AND HAND-OVER

Unless terminated early by either party pursuant to Section 7.0 of the Agreement, given a period of six months' notice prior to contract expiration, TMG shall provide knowledge transfer and hand-over to either BWP or another third party. Knowledge transfer services will occur over a four-month window and will include:

- Documentation and agreement with BWP of a knowledge transfer and hand-over plan;
- Direct one-on-one training of replacement staff whereby all services documented in this SOW will be demonstrated to the appropriate replacement staff by the appropriate TMG staff;
- Hand-over of documented support processes and procedures;
- Written assessment of replacement staff capability (skills and knowledge) to take on the responsibilities;
- Assistance provided to new staff for a period of two months following hand-over.

In the event of early termination pursuant to Section 7.0 of the Agreement, knowledge transfer service shall be provided by TMG and shall continue until the above-listed items have been completed.

SECTION 2. RESPONSIBILITIES

In order to effectively manage the mission critical applications that support Customer Service, the responsibilities of each party must be well defined. In Summary:

- TMG:** Management, support, maintenance, and future planning for the applications and their integration with other apps, including: Tier 2 Functional Support; DBA support; application customization and issue resolution; configuration support; 3rd party vendor management; strategic consulting.
- Burbank:** Tier 1 Functional Support; Infrastructure provisioning and support (hardware, OS, network, security, and desktop); backup DBA; primary support of application configuration, operation, and reporting.
- 3rd Parties:** Oracle, Siemens, Tibco, etc. to honor existing contracts with BWP; accept direction from TMG on behalf of BWP.

Respective responsibilities of TMG and BWP (which includes City of Burbank IT Department (“COB IT”), BWP OT and their third party vendors) are documented in the sections below.

SECTION 2.01 TMG RESPONSIBILITIES

Strategic Consulting

TMG’s Engagement Manager will assign a Senior Consultant to work with BWP to update TMG’s previously delivered Application Plan, in form and substance reasonably acceptable to BWP. Applications outside of the scope of this agreement may be included in this Application Plan but will be limited to those that are considered “Customer Service” related (e.g. IVR, Customer Portal, Trilliant and SaveSource Head-ends). The Application Plan will describe and examine, for each application in the portfolio:

- The strategy for the application’s continued support with focus on replacement / upgrade options;
- O&M and capital budgets necessary to support the strategy;
- Business and technical objectives, challenges and risks;
- Resource requirements (internal and external).

At the end of each year, TMG’s Engagement Manager will review the plan with BWP stakeholders and will work with BWP to operationalize the planned activities for the following year: business and technical objectives will be confirmed; budgets, schedules, resource plans, will be detailed; projects will be established; adjustments will be made to support structures.

Ad-hoc Consulting

If requested by BWP, TMG will provide up to 500 hours consulting services on request during the term of this agreement. Consulting services shall be requested by BWP with a minimum of 28 days’ notice, although TMG will make every effort to provide services “on-demand”. Our response time will be based on the type of consulting services requested and the availability of our consultants.

Management

TMG will provide day-to-day management of assigned resources. TMG's Support Manager will be the primary point of contact for BWP for day-to-day activities. The Support Manager will be on-site either: at BWP's request; at a minimum of 25%; as workload demands (whichever is highest). They shall have the following responsibilities:

- Be responsible for the day-to-day management of the delivery of TMG's services;
- Monitor, assess, and report according to the agreed to Communication Plan;
- Have authority and responsibility to act on behalf of TMG for all matters pertaining to the delivery of Services;
- Manage communications for and between BWP and its vendors (Siemens, Oracle and others as required);
- Act as a single point of contact for BWP for all communications, issues, reporting and problem resolution;
- Participate in management meetings/conference calls for review, status, issue management, and coordination as required by BWP in addition to those regularly scheduled;
- Manage Change Requests from BWP, based on the Change Order Procedures agreed to by the Parties;
- Be responsible for monitoring and meeting SLAs and KPIs;
- Be responsible for adhering to agreed-to policies and procedures.

Application Support

TMG will provide off-site functional support from a seasoned CC&B consultant. Support shall be provided at BWP's request, at a maximum of 10%. This consultant shall be responsible for:

- Tier 2 support: they will provide expert level support to BWP staff where all other courses of action have been exhausted;
- Assist BWP with improvements to business process, procedures, policies;
- Assist BWP to understand new business requirements: design, document, handover to TMG technical staff for solution construction.

TMG shall provide off-site Technical Consultant staff that has responsibility for the health of the production and test environments for all applications. On-site support shall be provided either: at BWP's request; at a minimum of 1 week per quarter; as workload demands (whichever is highest). They shall have the following responsibilities:

- Assist BWP in the resolution of issues / addressing new requirements:
 - Design, construction and deliver technical solutions (data correction scripts, customizations, etc.);
 - Research, obtain and install hot fixes, patches and service packs if available;
- Monitor and manage application software performance (batch and online) and tuning (according to agreed-upon policies, procedures and benchmarks);
- Collaborate with/ recommend to DBA changes to application technical configuration;
- Monitor batch execution logs and collaborate with BWP and TMG Functional Architect as issues arise;
- Make recommendations to BWP regarding the application of new software versions;
- Pursuant to prior written direction from BWP Customer Service staff, work with COB IT and BWP OT where responsibilities intersect or overlap. For example:
 - OT will provide back-up database administration services;
 - IT will provide server OS administration and hardware support (such as back-up and recovery).

- Provide the following application integration and support functions:
 - Monitor, install, and troubleshoot application servers such as Java Application (Tomcat), WebLogic, and Oracle Fusion Middleware Servers
 - Configure and manage application server farms
 - Tune all application instances to ensure performance baselines are maintained
 - Support internal staff development for applications that “interact” with the Billing System
 - Support all JEE application deployments and integrations
 - Configure and monitor highly available message infrastructure as needed (including EMS and Rendezvous)
 - Monitor NFS Shares

SECTION 2.02 BURBANK RESPONSIBILITIES

Infrastructure Administration

BWP, in conjunction with COB IT, are responsible for the following aspects of support for the applications:

- Operational application specialists (responsible for managing and maintaining the application’s business configuration);
- Providing reporting capabilities through the BI Publisher toolset;
- Back-up DBA services to support vendor supplied production DBA services;
- Network management;
- Hardware management (including OS Support);
- Desktop Management;
- Remote access to appropriate applications;
- Desk space for on-site work.

Third party vendors (Oracle, Siemens, Tibco, etc.) still have responsibility to support their baseline products under their existing support contracts with BWP. TMG will work with BWP to determine the most efficient and effective way for TMG to communicate with these vendors.

Functional Support

BWP will provide functional support for the applications:

- Tier 1 support: they will be the go-to person for all application related issues for BWP and the conduit through which information will flow from BWP to the TMG staff;
- Manage the Issue Resolution Process: logging of SRs, initial triage of issues, assigning and escalating issues, providing workarounds/temporary fixes, assist BWP with testing and implementing solutions;
- Advise BWP on improvements to business process, procedures, policies;
- Assist with training material updates as required;
- Assist TMG and BWP Management in strategic initiatives that may include the introduction of new functionality released by vendors;
- Work with BWP to understand new business requirements: design, document, handover to TMG technical staff for solution construction; work with BWP to test and deploy;
- Facilitate tactical level communication between all parties.

Database Support and Administration

BWP will provide a, qualified Oracle DBA, preferably with CC&B and/or EIP experience. This resource shall report into BWP OT, pursuant to BWP OT staff written direction. The responsibilities of the DBA include:

- Maintain a current record of valid software licenses, asset warranties and service agreements for software included in the Production Environment;
- Maintain the Environment Management Plan;
- Build and maintain a repository of custom objects (configuration management);
- Maintain or develop and test, database backup and recovery procedures;

- Maintain or develop and test, database disaster recovery procedures;
- Maintain, install and upgrade all database instances and database release revisions as required to support the implementation of new requirements;
- Monitor production database performance, and tune as necessary to ensure performance baselines are maintained;
- Support database sizing and capacity planning analysis to determine storage requirements;
- Review database security requirements, define roles and classes, assign first-level user permissions, and document security policy and procedures; and
- Provide database support for such tasks as cloning databases, moving data between instances and clearing out test data;
- Liaise with TMG and BWP OT and COB IT staff, on both a tactical and strategic level to resolve issues relating to the relational database;
- Assist in the installation of Baseline Component Systems and the maintenance of respective libraries, data files, and other technical environment requirements.

SECTION 3. SERVICE LEVELS

The following baseline Service Levels will be maintained, monitored and reported. BWP and TMG shall agree upon additional SLAs during the mobilization phase:

SLA 1: Overnight batch runtimes shall not exceed the benchmarked batch window identified during mobilization for all applications ($\pm 5\%$ tolerance);

SLA 2: SR's assigned to TMG by BWP shall have the following response times¹:

Severity	Definition	Response	Workaround	Fix
LEVEL 1	Critical Incident / Change	30 minutes, anytime	24 hours	1 Week
LEVEL 2	High Impact Incident / Change	1 business hour	3 business days	2 Weeks
LEVEL 3	Low/no impact incident / Change	1 business week	N/A	Mutual Decision

¹ Baseline product issues will be managed according to the support and maintenance contract with the appropriate vendor. In these cases, TMG will be responsible for providing temporary fixes or acceptable workarounds until the vendor provides a permanent fix.

EXHIBIT B

SCHEDULE OF COMPENSATION

City shall pay Consultant \$50,000/month, which fee shall cover all agreed upon services listed in the Scope of Services, except for providing integration work to support external systems.

Upon any violation of the agreed-upon SLA's outlined in the Scope of Services or mutually agreed upon by the Parties during the Mobilization Phase, a penalty will be applied to TMG. Each penalty will be equal to \$3,000 of the monthly contract value. A maximum of 4 penalties can be applied for any given calendar month. Notwithstanding the foregoing, issues arising from events outside the control of TMG and issue resolutions that require the intervention of non-TMG resources are exempt from SLA penalties.

For all other services not covered by the flat monthly fee, TMG shall submit invoices to City in accordance with Section 3.0 of the Agreement, and shall be paid for those services on a time-and-material basis according to the following rate: \$205/hour all inclusive rate for all additional programming integration work to support external systems, not to exceed \$200,000 for the term of this agreement.