

July 17, 2006

Honorable Mayor and Members of
the Hermosa Beach City Council

City Council Meeting of
July 25, 2006

**APPROVAL OF AGREEMENT FOR UTILITY AUDITING,
UTILITY COST MANAGEMENT (UCM)**

RECOMMENDATION:

It is recommended that the City Council approve the agreement with Utility Cost Management (UCM) for auditing of the City's utility bills.

BACKGROUND:

UCM analyzed utility costs for public entities in California for five years under the State of California Utility Auditing Program. The State program has ended but UCM continues to offer services to agencies throughout California. (see attached partial client list) UCM will analyze billings to identify charges that do not comply with the statutes, cases, regulations and administrative rulings that govern utility service in California.

ANALYSIS:

The services offered by UCM are cost and risk free. There will be no fee for the services offered unless they are successful in recovering funds or generating savings for the City and there will be no payment to UCM until credits or refunds are actually received.

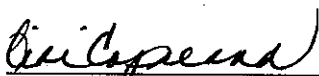
The City will be required to provide only one month's bills for electricity, gas and water; UCM will obtain any other historical records needed directly from the utility providers.

When the City receives a refund or credit that is identified in the Findings Letter generated by UCM, the City will pay UCM 38% of the amount refunded or credited for a period of three years.

Two recent examples of their audits are Newport Beach, with estimated savings of \$70,000 and estimated refunds of \$70,000, and Redondo Beach, with estimated savings of \$80,000 and estimated refunds of \$30,000. Those cities contracted for UCM's services at the rate of 50% for the first year, 40% for the second year and 30% for the third year.

While there is no guarantee that Hermosa Beach will realize similar savings or refunds, there is no cost to the City to find out if any savings or refund can be obtained. The only commitment will be to share a portion of savings or refunds realized.

Respectfully submitted,



Viki Copeland
Finance Director

Concur:



Stephen R. Burrell
City Manager

PROFESSIONAL SERVICES AGREEMENT
UTILITY COST MANAGEMENT (UCM)

THIS AGREEMENT, made and entered into this 25th day of July, 2006 at Hermosa Beach, County of Los Angeles, State of California, by and between the CITY OF HERMOSA BEACH, through its duly elected, qualified and acting MAYOR, hereinafter called the CITY, and Utility Cost Management LLC (UCM), hereinafter called the CONSULTANT.

WITNESSETH: That the CONSULTANT for and in consideration of the covenants, conditions, agreements, and stipulations of the CITY herein expressed, does hereby agree to furnish to the CITY professional services and materials, as follows:

ARTICLE I - Scope of Work

CONSULTANT shall perform all work necessary to complete in a manner satisfactory to CITY the services set forth in the plans and specifications or the scope of work attached as Exhibit A.

ARTICLE II – Compensation/Method of Payment

The CITY agrees to pay CONSULTANT for all the work or any part of the work performed under this Agreement at the rates and in the manner established herein. Any increase in contract amount or scope shall be by express written amendment approved by the CITY and CONSULTANT.

Compensation. UCM's compensation will consist of the amounts set forth below.

(a) Refunds or Credits. Only if City receives a refund or credit that was identified in the Findings Letter, will City pay UCM 38% of the amount refunded or credited. The amount of the refund or credit for this purpose will include all amounts refunded or credited (including any portion attributable to interest) for any overcharges that were incurred by City prior to the date that the overcharges no longer appeared on the City's utility bill. Payment of UCM's compensation is due within 60 days of the date City receives an invoice sent by UCM. Compensation under this paragraph will not include any refunds or credits that were not identified in the Findings Letter.

(b) Future Savings. Only if City obtains Future Savings that were identified in the Findings Letter, will City pay UCM 38% of such Future Savings that accrue during the First-year Savings Period, 38% of such Future Savings that accrue during the Second Year Savings Period, and 38% of such Future Savings that accrue during the Third-year Savings Period. "Future Savings" is the amount by which City's charges on its Utility Accounts are reduced as a result of a change in the billing rate, calculation, method or procedure. Future Savings will be calculated as the difference between the amount City was billed on its Utility Accounts during the First-Year Savings Period,

Second-Year Savings Period, and Third-Year Savings Period, and the amount that it would have been billed on its Utility Accounts during the First-Year Savings Period, the Second-Year Savings Period and the Third-Year Savings Period if there had been no change in its billing rate, calculation, method or procedure. The "First-year Savings Period" begins on the date that the change in the billing rate, calculation, method or procedure is first reflected on City's utility bill, and ends one year thereafter; the "Second-Year Savings Period" begins upon the end of the First-Year Savings Period and ends one year thereafter; and the "Third-Year Savings Period" begins upon the end of the Second-Year Savings Period and ends one year thereafter UCM will submit invoices periodically to City for payment based on the Future Savings as they accrue. The invoices will verify (a) that Future Savings have actually been realized by City, and (b) the amount of such Future Savings. Payment of UCM's invoices is due within 60 days of the date City receives an invoice sent by UCM. The compensation under this subparagraph will not include Future Savings that are: (a) the result of a reduction in the amount of utility usage by City, (b) the result of City's utilization of a different utility supplier that provides lower cost utility service or (c) savings that were not identified in UCM's Findings Letter. Except for Future Savings that accrue during the First-Year, Second-Year and Third-Year Savings Periods (as set forth above), no other compensation will be paid by the City for Future Savings.

(c) No Compensation for Pending Claim. City is not obligated to pay UCM pursuant to this paragraph for any refund, credit or Future Savings received by City for which City had submitted to the utility provider a written claim prior to the date of UCM's Findings Letter and City informed UCM of City's knowledge that a refund, credit or Future Saving was due City.

If City Is Not the Named Utility Customer. By providing a copy of any utility bill to UCM, City is thereby agreeing that the Utility Account represented by such bill will be governed by this Agreement, regardless of whether or not City is the name that appears on the utility bill with respect to such Utility Account.

Use of Attorneys. City, and not UCM, has sole discretion as to whether to seek relief from the CPUC in order to obtain any refunds, credits, or Future Savings identified in the Findings Letter. If City elects to utilize legal professionals or other persons to obtain any refund, credit or Future Savings identified by UCM in the Findings Letter, then such election shall be at City's sole expense, and City will remain obligated to pay UCM pursuant to this Agreement (without reduction of any kind) for any refund, credit, or Future Savings that is obtained by such legal professionals or other persons provided UCM has not breached this Agreement, such as not making any efforts to assist the City in collecting the refunds, credits or Future Savings.

ARTICLE III- Subcontracting

CONSULTANT shall not be permitted to subcontract any portion of this contract without the express written consent of the CITY.

ARTICLE IV - Completion Date

CONSULTANT shall commence work under this agreement upon execution of this agreement and shall complete the work within four (4) years of the Effective Date, which is the first day of the calendar month after both CITY and CONSULTANT have signed this Agreement. The CITY'S Director of Finance may extend the completion date as required by the scope of this contract. Any contract time extension shall require the express written consent of the Director of Finance.

ARTICLE V - Accounting Records

CONSULTANT must maintain accounting records and other evidence pertaining to compensation at the CONSULTANT'S California office during the contract period and thereafter for three years from the date of final payment.

ARTICLE VI - Ownership of Data

All data, maps, photographs, and other material collected or prepared under the contract shall become the property of the CITY, except for proprietary software or data that contractor has developed or had developed for CONSULTANT'S own use.

ARTICLE VII – Termination Without Default

Notwithstanding any provision herein to the contrary, the City may, in its sole and absolute discretion and without cause; terminate this Agreement at any time prior to completion by contractor of the project or services hereunder, immediately upon written notice to Contractor. Contractor may terminate this Agreement at any time in its sole and absolute discretion and without cause upon 30 days' written notice to City. In the event of termination by either party, contractor shall cease all work on behalf of City. If termination occurs after Contractor has sent its Findings Letter to City, but before the end of the term of this Agreement, Contractor shall be compensated pursuant to this Agreement for any refunds, credits or Future Savings that were identified in the Findings Letter and that are thereafter obtained by City.

ARTICLE VIII - Termination in the Event of Default

Should Contractor fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the City may immediately terminate this Agreement by giving written notice of such termination, stating the reasons for such termination. Contractor shall be compensated as provided in Article VII above, provided, however, there shall be deducted from such amount the amount of damage if any, sustained by City by virtue of Contractor's breach of this Agreement.

ARTICLE IX- Assignability

CONSULTANT shall not assign or transfer interest in this contract without the prior written consent of the CITY.

ARTICLE X - Amendment

It is mutually understood and agreed that no alteration or variation of the terms of this contract, or any subcontract requiring the approval of the CITY, shall be valid unless made in writing, signed by the parties hereto, and approved by all necessary parties.

ARTICLE XI - Non-Solicitation Clause

The CONSULTANT warrants that he or she has not employed or retained any company or persons, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the CITY shall have the right to annul this contract without liability, or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE XII - Equal Opportunity Assurance

During the performance of this contract, the CONSULTANT agrees as follows:

A. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, sex, creed, color or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, creed, color or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, sex, creed, color or national origin.

C. The CONSULTANT will permit access to their books, records and accounts by the applicant agency, the State, the Federal Highway Administration and/or

the National Highway Traffic Safety Administration for purposes of investigation to ascertain compliance with this nondiscrimination clause.

D. In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part.

ARTICLE XIII - Insurance

A. Without limiting CONSULTANT'S obligations arising under ARTICLE XIV - Indemnity, CONSULTANT shall not begin work under this Agreement until it obtains policies of insurance required under this section. The insurance shall cover CONSULTANT, its agents, representatives and employees in connection with the performance of work under this Agreement, and shall be maintained throughout the term of this Agreement. Insurance coverage shall be as follows:

i. Automobile Liability Insurance with minimum coverages of \$500,000 for property damage, \$500,000 for injury to one person/single occurrence, and \$500,000 for injury to more than one person/single occurrence.

ii. Public Liability and Property Damage Insurance, insuring CITY its elected and appointed officers, agents, and employees from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from CONSULTANT'S actions under this Agreement, whether or not done by CONSULTANT or anyone directly or indirectly employed by CONSULTANT. Such insurance shall have a combined single limit of not less than \$1,000,000.

iii. Worker's Compensation Insurance for all CONSULTANT'S employees to the extent required by the State of California.

B. Deductibility Limits for policies referred to in subparagraphs A (i) (ii) and (iii) shall not exceed \$5,000 per occurrence.

C. Additional Insured. City, its elected and appointed officers, agents, and employees shall be named as additional insureds on policies referred to in subparagraphs A (i) and (ii).

D. Primary Insurance. The insurance required in paragraphs A (i) (ii) and (iv) shall be primary and not excess coverage.

E. Evidence of Insurance. Consultant shall furnish CITY, prior to the execution of this Agreement, satisfactory evidence of the insurance required, issued by an insurer authorized to do business in California, and an endorsement to each such policy of insurance evidencing that each carrier is required to give CITY at least 30 days prior written notice of the cancellation of any policy during the effective period of the Agreement. All required insurance policies are subject to approval of the City Attorney. Failure on the part of CONSULTANT to procure or maintain said insurance in full force

and effect shall constitute a material breach of this Agreement or procure or renew such insurance, and pay any premiums therefor at CONSULTANT'S expense.

ARTICLE XIV - Enforcement of Agreement

In the event that legal action is commenced to enforce or declare the rights created under this Agreement, the prevailing party shall be entitled to an award of costs and reasonable attorney's fees in the amount to be determined by the court.

ARTICLE XV - Conflicts of Interest

No member of the governing body of the CITY and no other officer, employee, or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Agreement; and the CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

ARTICLE XVI - Independent CONSULTANT

The CONSULTANT is and shall at all times remain as to the CITY a wholly independent consultant. Neither the CITY nor any of its agents shall have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as herein set forth. The CONSULTANT shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the CITY.

ARTICLE XVII - Entire Agreement of the Parties

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of CONSULTANT by CITY and contains all the covenants and agreements between the parties with respect such employment in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement or amendment hereto shall be effective unless executed in writing and signed by both CITY and CONSULTANT.

ARTICLE XVIII- Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California, and all applicable federal statutes and regulations as amended.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF HERMOSA BEACH

CONSULTANT

MAYOR:

Mayor, City of Hermosa Beach

Name, Firm Name

ATTEST:

Elaine Doerfling, City Clerk

APPROVED AS TO FORM:

City Attorney

**EXHIBIT A
SCOPE OF SERVICES
UTILITY COST MANAGEMENT (UCM)**

1. Applicable to City's Utility Accounts. This Agreement applies to all water, gas and electricity accounts (and any related utility user taxes, other taxes, assessments, surcharges or fees) with respect to which City:

- (a) is receiving utility service as of the Effective Date (as defined below),
- (b) has received utility service within three years Prior to the Effective Date,
- (c) receives utility service within one year after the Effective Date, or
- (d) has provided UCM with a copy of the utility bill:

The water, gas and electric accounts described in this paragraph are hereinafter referred to as "Utility Accounts". The "Effective Date", as that term is used above, is the first day of the calendar month after both UCM and Client have signed this Agreement.

2. City to Provide Utility Bills. On or promptly after City's execution of this Agreement, City will provide UCM with a copy of at least one month's utility bills for all of City's Utility Accounts.

3. UCM Authorized to Obtain Information on Utility Accounts. UCM is hereby authorized to obtain and review information relating to the Utility Accounts from City.

4. UCM's Findings Letter. UCM will use its best efforts to identify the basis for any refunds, credits or Future Savings (as defined below) on City's Utility Accounts. UCM will send a "Findings Letter" to City that generally sets forth the basis for any refunds, credits or Future Savings identified by UCM. UCM will issue the Findings Letter within 90 days from the date of this Agreement. UCM may, from time to time, supplement or amend its Findings Letter, and such supplement or amendment will be deemed to have occurred on the date the original Findings Letter was sent to Client.

5. Steps to Obtain Refunds or Savings. UCM is authorized by City to assist the City in obtaining the refunds, credits or Future Savings identified in the Findings Letter. Such steps may include, but are not limited to, communicating with utility providers or, in the case of utility user taxes or other governmental charges, the appropriate government entity. UCM is not authorized to perform any legal services on behalf of City.

6. Cooperation. City and UCM will cooperate with each other, as reasonable, in connection with the City's and UCM's efforts to carry out the purposes and intent of this Agreement.