

SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT to Agreement No. P-16-180-C ("Second Amendment") is made and entered into this 3rd day of April, 2018, by and between the COUNTY OF FRESNO, a political subdivision of the State of California (hereinafter "COUNTY" or "Client"), and UTILITY COST MANAGEMENT LLC, whose address is 1100 W. Shaw Ave Suite 126, Fresno, CA. 93704 (hereinafter "CONTRACTOR" or "UCM").

WITNESSETH:

WHEREAS, COUNTY and CONTRACTOR entered into Purchasing Agreement No. P-16-180-C, dated April 29, 2016 ("Agreement") pursuant to which CONTRACTOR agreed to provide Utility Bill Auditing Services and Utility Cost Reduction Services over a 3 year term; and

WHEREAS, on June 17, 2017, COUNTY and CONTRACTOR entered into Amendment No. One ("First Amendment") extending the term for an additional 2 years and increasing the contract maximum by \$50,000, for a total contract maximum of \$57,500; and

WHEREAS, COUNTY now has a need for additional services; and

WHEREAS, COUNTY AND CONTRACTOR now desire to amend the Agreement to modify the payment terms and increase the maximum contract value so as to allow CONTRACTOR to provide such additional services.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, COUNTY and CONTRACTOR agree to amend the Agreement as follows:

1. The portion of Section III. UCM's Compensation, Subsection B. Project-Related Fees of the existing purchasing Agreement No. P-16-180-C, as set forth on page 3, is hereby deleted in its entirety and replaced with the following:

"B. Project –Related Fees

For any Approved Utility Cost Reduction Projects, Client will pay to UCM, 20% of Future Project Savings for a period of three years (the Three-Year Savings Period). "Future Project Savings" is the amount by which Client's charges on its Utility Accounts are reduced as a

1 result of any Approved Utility Cost Reduction Project. Future Project Savings will be
2 calculated as the difference between the amount Client was billed on its Utility Accounts
3 during the Three-Year Savings Period, and the amount that it would have been billed on its
4 Utility Accounts during the Three-Year Savings Period if the identified Utility Cost Reduction
5 Project had not been approved and implemented. The Three-Year Savings Period begins on
6 the date that Approved Utility Cost Reduction Project changes are reflected on the Client's
7 utility bill, and ends three years thereafter. UCM will submit invoices periodically to Client for
8 payment based on the Future Project Savings as such savings accrue."
9

10 2. The portion of Section III. UCM's Compensation, Subsection C. Payments of the
11 existing purchasing Agreement No. P-16-180-C, as set forth on page 4, is hereby deleted in its
12 entirety and replaced with the following:

13
14 **"C. Payments**

15 UCM will submit invoices to Client as Utility Bill Auditing Fees and Project-Related Fees are
16 due. Payment of UCM's invoices are due within 45 days of the date that UCM's invoices are
17 received by Client. The Client shall remain obligated to pay any UCM invoices for Utility Bill
18 Auditing Fees and Project-Related Fees, that are within the Three-Year Savings Period,
19 beyond the expiration of this contract for consultation services.

20
21 In no event shall the maximum compensation under this Agreement be in excess of
22 \$200,000 for the entire five (5) year term of this Agreement. It is understood that all
23 expenses incidental to UCM's performance of services under this Agreement shall be borne
24 by UCM."

25
26 3. The following new Section together with the attached "Exhibit 1" are added to and
27 made a part of the Agreement:
28

1 "DISCLOSURE OF SELF-DEALING TRANSACTIONS:

2 This provision is only applicable if the CONTRACTOR is operation as a corporation (a
3 for-profit or non-profit corporation) or if during the term of this Agreement, the CONTRACTOR
4 changes its status to operate as a corporation.

5 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing
6 transactions that they are a party to while CONTRACTOR is providing goods or performing
7 services under this agreement. A self-dealing transaction shall mean a transaction to which the
8 CONTRACTOR is a party and in which one or more of its directors has a material financial
9 interest. Members of the Board of Directors shall disclose any self-dealing transactions that they
10 are a party to by completing and signing a Self-Dealing Transaction Disclosure Form (Exhibit 1)
11 and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
12 immediately thereafter."

13 4. Purchasing's Contract Information Sheet, as amended, is updated to reflect the new
14 Total Contract Amount of \$200,000.

15
16 COUNTY and CONTRACTOR agree that this Second Amendment is sufficient to amend
17 the Agreement and that upon execution of this Second Amendment, the Agreement, First
18 Amendment, and this Second Amendment shall together be considered the Agreement.

19 The Agreement, as hereby amended, is ratified and continued. All provisions, terms,
20 covenants, conditions and promises contained in the Agreement and not amended herein shall
21 remain in full force and effect.

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EXECUTED AND EFFECTIVE as of the date first above set forth.

CONTRACTOR

COUNTY OF FRESNO



(Authorized Signature)



Michael Kerkorian, Manager

Print Name & Title


Sal Quintero,
Chairperson of the Board of Supervisors
of the County of Fresno

1100 W. Shaw Ave Suite 126

Fresno, CA. 93704

Mailing Address

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: 

Deputy

FOR ACCOUNTING USE ONLY:

ORG No.: 8905
Account No.: 7345
Requisition No.

Exhibit 1

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
 - a. The name of the agency/company with which the corporation has the transaction; and
 - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit 1

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	