



CITY OF INGLEWOOD

OFFICE OF THE CITY MANAGER



DATE: August 20, 2013

TO: Mayor and Council Members

FROM: Finance Department

SUBJECT: Agreement for Contract Review and Analysis for Cost Reduction Recommendations

RECOMMENDATION:

It is recommended that the Mayor and Council Members approve the attached agreement for Contract Cost Reduction Services with The Berkshire Group. Compensation for these services will be twenty (20%) percent of the first twelve (12) months of realized savings or increases in revenue resulting from The Berkshire Group recommendations. (Various Funds)

BACKGROUND:

The effects of the economic recession have reached depths further than expected as well as extending longer than anticipated. Local government agencies are dependent on economic-sensitive fees and taxes to finance its operating services and have been hard hit by the downturn. The City of Inglewood's General Fund is confronted with a large operating deficit during the current and upcoming fiscal year, which required significant cutbacks in all City programs (further cuts are anticipated for the fiscal year 2013-14).

As local governments throughout the State of California continue to face difficult economic times, innovative ideas to reduce spending and improve efficiency are critical. In the Fiscal Year 2010 the City of Inglewood mailed out letters to our contractors asking them to consider reducing their contracts by ten (10%) percent with minimal results. Staff has decided to take a more aggressive approach by obtaining the services of a professional firm to review and analyze our current contracts and provide recommendations for cost reductions.

DISCUSSION:

Invitations to submit proposals were mailed ten vendors, advertised in the City's adjudicated newspaper and placed on the City of Inglewood website. Three responsive proposals were received. Although the proposals were similar in the scope of services that were to be provided, two of the firm's proposals requested payment whether or not savings were realized for the City. The Berkshire Group submitted a fee proposals that would seek compensation of twenty (20%) percent of realized savings from their recommendations.

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**Mayor and Council Members
Contract Review and Analysis
for Cost Reduction Recommendations
August 20, 2013**

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Therefore, staff is recommending that the Mayor and Council approve the attached agreement with The Berkshire Group for Contract Cost Reduction Services.

FINANCIAL / FUNDING ISSUES AND SOURCES:

Funds will be available from the savings realized as a result of the recommendations of the Contractor.

LEGAL REVIEW VERIFICATION: CPS

This report, in its entirety, has been submitted to, reviewed and approved by the Office of the City Attorney.

FINANCIAL REVIEW VERIFICATION: 

This report, in its entirety, has been submitted to, reviewed and approved by the Finance Department.

DESCRIPTION OF ATTACHMENTS:

Agreement

APPROVAL VERIFICATION SHEET

PREPARED BY:

David L. Esparza, Assistant City Manager & Chief Financial Officer 
Ed Johnson, Purchasing and Contracts Services Manager 

COUNCIL PRESENTER:

Ed Johnson, Purchasing and Contracts Services Manager

DEPARTMENT HEAD APPROVAL:



David L. Esparza, Asst. City Manager / CFO

CITY MANAGER APPROVAL:



Artie Fields, City Manager

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AGREEMENT No.: 13- _____

THIS AGREEMENT is made and entered into this _____ day of _____, 2013, by and between the City of Inglewood, a municipal corporation and charter city ("City") and The Berkshire Group, LLC ("Consultant,") with its principal place of business located at 27 Berkshire Drive, Warren, New Jersey 07059.

WHEREAS, City desires to retain an experience consultant to perform a review of certain current agreements and provide recommendations for cost reductions as required in City's Request for Proposal (RFP) No. 0073; and

WHEREAS, Consultant has submitted a proposal dated May 18, 2013 in which it holds itself out as capable, competent, qualified and able to provide City with the required contract review and to provide cost reduction recommendations; and

WHEREAS, Consultant agrees that it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Agreement is based on such independent investigation and research; and

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE 1 -- SCOPE OF CONTRACTOR'S SERVICES

1.1 Scope of Services. Consultant shall: (1) work closely with City staff in the performance of Services and shall be available to City staff, contractors and other staff at all reasonable times; and (2) provide all labor, tools, materials, equipment, supplies and transportation necessary to provide City with the required contract review and to provide cost reduction recommendations. Such services to include:

- 1.1.1 Contract, invoice and payment history review to determine cost savings;
- 1.1.2 Provide City with a preliminary list/report of cost savings/revenue enhancement opportunities within three (3) months of approval of agreement; and
- 1.1.3 Assist City with implementation strategy and prioritize opportunities within six (6) months of approval of agreement.

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1 expenses, including travel related expenses, and the performance of all services
2 exceed the sum of **one hundred thousand dollars (\$100,000.00)**.

3 3.2 Contingency Fee. Consultant's compensation shall be a contingency fee
4 of **twenty percent (20%)** of the actual net additional dollars saved and/or revenues
5 received, documented, realized and/or achieved by City from Consultant's
6 recommendations that are agreed upon and implemented by City. The contingency
7 fee shall not include previously considered City recommendations/ideas or any
8 penalties, interest, and/or late fees received by City. The contingency fee is limited to
9 the first twelve (12) months following the date Consultant's recommendations are
10 agreed upon and implemented by City. In no event shall City be liable for any agreed
11 upon recommendations that are implemented by City **AFTER** February 1, 2014.

12 3.3 Invoices. Billings for all outstanding obligations must be submitted by
13 Consultant and received by City by February 17, 2015. All invoices submitted by
14 Consultant shall contain: (1) date of invoice; (2) sequential invoice number; (3) City
15 Agreement Number; (4) total Agreement Amount; (5) total invoice amount; (6)
16 description of service or supplies provided; (7) total billed to date; and (8) total amount
17 remaining on Agreement.

18 3.4 Documentation. Consultant shall be responsible for the cost of supplying
19 all documentation necessary to verify the monthly billings to the satisfaction of City and
20 shall certify, on each invoice, that it is entitled to receive the amount invoiced.

21 **ARTICLE 4 – TERM & TERMINATION**

22 4.1 Term. This Agreement shall expire on February 28, 2015, unless
23 otherwise terminated or suspended.

24 4.2 Notice of Termination. The City reserves and has the right and privilege
25 of immediately canceling, suspending or abandoning the execution of all or any part of
26 the work contemplated by this Agreement, with or without cause, at any time, by
27 providing written notice to Consultant. The termination of this Agreement shall be
28 deemed effective upon receipt of the notice of termination. In the event of such

1 termination, Consultant shall immediately stop rendering services under this
2 Agreement unless directed otherwise, in writing, by City.

3 4.3 Compensation. In the event of termination, Consultant shall within fifteen
4 (15) days submit its final accounting report and demand for payment to City.

5 **ARTICLE 5 – NOTICES**

6 5.1 Notices. Any notices given pursuant to this Agreement shall be deemed
7 received and effective when properly addressed, postage prepaid, and deposited in
8 the United States mail to the respective parties as follows:

9 City:	Consultant:
10 City Clerk	Mr. Robert Horowitz, President
11 City of Inglewood	The Berkshire Group, LLC
12 One Manchester Boulevard	27 Berkshire Drive
Inglewood, CA 90301	Warren, GA 07059

13 **With a copy to:**
14 David L. Esparza, Asst. City Mgr.; CFO
15 c/o Finance Department
16 City of Inglewood
17 Inglewood, CA 90301

18 **ARTICLE 6 -- NO AGENCY RELATIONSHIP**

19 6.1 Independent Contractor. No agency relationship between Consultant
20 and City is intended or created by this Agreement. Consultant is not authorized and
21 shall not at any time or in any manner represent that it is an agent, servant, or
22 employee of City; it being expressly understood that Consultant is and at all times shall
23 remain a wholly independent contractor. Consultant shall have no authority to bind
24 City in any manner, to incur any obligation, debt, or liability of any kind on behalf of or
25 against City, whether by contract or otherwise, unless such authority is expressly
26 conferred in writing by an authorized representative of City.

27 6.2 No Retirement/Health Benefits. Neither Consultant, nor any of
28 Consultant's officers, employees, or agents, shall obtain rights to retirement, health
care, or any other benefits which may otherwise accrue to City's employees.

1 Consultant expressly waives any claim Consultant may have to any such rights.
2 Consultant agrees to purchase its own worker's compensation insurance for California.
3 6.3 CalPERS Eligibility Indemnification. In the event that Consultant or any
4 employee, agent, or subcontractors under this Agreement claims or is determined by a
5 court of competent jurisdiction or the California Public Employees Retirement System
6 (CalPERS) to be eligible for enrollment in CalPERS as an employee of the City,
7 Consultant shall indemnify, defend, and hold harmless City for the payment of any
8 employee and/or employer contributions for CalPERS benefits on behalf of Consultant
9 or its employees, agents, or subcontractors, as well as for the payment of any
10 penalties and interest on such contributions, which would otherwise be the
11 responsibility of City.

12 Notwithstanding any other agency, state or federal policy, rule, regulation, law
13 or ordinance to the contrary, Consultant and any of its employees, agents, and
14 subcontractors providing service under this Agreement shall not qualify for or become
15 entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any
16 incident of employment by City, including but not limited to eligibility to enroll in
17 CalPERS as an employee of City and entitlement to any contribution to be paid by City
18 for employer contributions and/or employee contributions for CalPERS benefits.

19 **ARTICLE 7 – OWNERSHIP OF DOCUMENTS**

20 7.1 Ownership of Documents. All documents prepared, developed, or
21 discovered by Consultant in the course of providing any services pursuant to this
22 Agreement including but not limited to original studies, surveys, reports, data, notes,
23 computer files, and all other documents are and shall remain the sole property of the
24 City and may not be used, reused, or otherwise disposed of without the permission of
25 the City. Upon completion, expiration, or termination of this Agreement, Consultant
26 shall give City all such documents, including but not limited to original studies, surveys,
27 reports, data, notes, computer files, files, and other documents within ten (10) days of
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1 delivery of termination notice, completion or expiration of this Agreement, at no cost to
2 City.

3 **ARTICLE 8 --**

4 **CONFIDENTIAL INFORMATION, RELEASE OF INFORMATION**

5 8.1 Confidentiality. All information gained or work product produced by
6 Consultant in performance of this Agreement shall be considered confidential, unless
7 such information is in the public domain. Consultant shall not release or disclose any
8 such information or work product to persons or entities other than City without prior
9 written authorization from the City Manager, except as may be required by law.

10 8.2 Subpoena Response. Consultant, its officers, employees, agents, or
11 subcontractors, shall not voluntarily provide declarations, letters of support, and
12 testimony at depositions, respond to a court order or subpoena, response to
13 interrogatories, or other information concerning the work performed under this
14 Agreement without City's prior written approval.

15 Consultant shall promptly notify City should Consultant, its officers, employees,
16 agents, or subcontractors are served with any summons, complaint, subpoena, notice
17 of deposition, request for documents, interrogatories, request for admissions, or other
18 discovery request, court order, or subpoena from any party regarding this Agreement
19 and the work performed thereunder. City retains the right to be present at any
20 deposition, hearing, or similar court-ordered proceeding. Consultant agrees to
21 cooperate fully with City and to provide City with the opportunity to review any
22 response to discovery requests served on Consultant and proposed responses
23 thereto. However, this right to review any response does not imply or mean the right
24 by City to control, direct, or rewrite said response.

25 8.3 Indemnification/Reimbursement. If Consultant, or any officer, employee,
26 agent, or subcontractor of Consultant, provides any information of work product in
27 violation of this Agreement, then City shall have the right to reimbursement and
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1 indemnity from Consultant for any damages, costs, and fees, including attorney fees,
2 caused by or incurred as a result of Consultant's negligence and/or wrongful conduct.

3 **ARTICLE 9 – INSURANCE, HOLD HARMLESS AND BOND**

4 9.1 Insurance Requirements:

5 9.1.1 Acceptability of Insurers. Insurance is to be placed with insurers
6 authorized to conduct business in the State of California and have a current A.M. Best
7 rating of not less than A:VII.

8 9.1.2 Insurance Verification. Consultant shall furnish the City with original
9 certificates and amendatory endorsements affecting coverage required by this clause.
10 The endorsements should be on forms provided by the City or on other than the City's
11 forms, provided those endorsements or policies conform to the requirements. All
12 certificates and endorsements are to be received and approved by the City before
13 work commences. The City reserves the right to require complete, certified copies of
14 all required insurance policies, including endorsements affecting the coverage required
15 by these specifications at any time.

16 9.1.3 Commencement of Services. Consultant, and/or sub-contractor,
17 shall not commence services under this Agreement until it has provided evidence
18 satisfactory to the City Attorney that it has secured all insurance required under this
19 section. Consultant shall procure and maintain for the duration of the Agreement
20 insurance against claims for injuries to persons or damages to property that may arise
21 from or in connection with the performance of work hereunder by the Consultant, his
22 agents, representatives, or employees. The cost of such insurance shall be borne by
23 the Consultant.

24 9.2.0 Minimum Scope and Limits of Insurance. Consultant shall obtain and
25 maintain during the life of this Agreement all of the following insurance coverage:

26 9.2.1 Comprehensive general liability, including premises-operations,
27 products/completed operations, broad form property damage, blanket contractual
28 liability, independent contractors, personal injury with a policy limit of not less than One

1 Million Five Hundred Thousand Dollars (\$1,500,000.00), combined single limits, per
2 occurrence and aggregate.

3 9.2.3 Automobile liability for any vehicle (Code 1) with a policy limit of not less
4 than One Million Five Hundred Thousand Dollars (\$1,500,000.00), combined single
5 limits, per occurrence and aggregate.

6 9.2.4 Workers' compensation insurance as required by the State of California.
7 Consultant agrees to waive, and to obtain endorsements from its workers'
8 compensation insurer waiving, subrogation rights under its workers' compensation
9 insurance policy against the City and to require each of its subcontractors, if any, to do
10 likewise under their workers' compensation insurance policies.

11 9.2.5 Professional errors and omissions ("E&O") liability insurance with policy
12 limits of not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00),
13 combined single limits, per occurrence and aggregate. Consultant shall obtain and
14 maintain, said E&O liability insurance during the life of this Agreement and for three
15 years after completion of the work hereunder.

16 9.3.0 Endorsements. The comprehensive general liability insurance and auto
17 insurance policies shall contain or be endorsed to contain the following provisions:

18 9.3.1 Additional insureds: "The City of Inglewood and its elected and
19 appointed boards, officers, agents, and employees are additional insureds with respect
20 to this subject project and contract with City."

21 9.3.2 Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the
22 coverage reduced, until thirty (30) days after written notice is given to City. City will
23 accept ten (10) days prior written notice for non-payment of premium.

24 9.3.3 Primary Insurance & Non-Contributing insurance: "This insurance is
25 primary and any other insurance maintained by the City of Inglewood shall be excess
26 and not contributing with the insurance provided by this policy."

27 9.4 Deductibles. If any of such policies provide for a deductible or self-
28 insured retention to provide such coverage, the amount of such deductible or self-

1 insured retention shall be approved in advance by City. No policy of insurance issued
2 as to which the City is an additional insured shall contain a provision which requires
3 that no insured except the named insured can satisfy any such deductible or self-
4 insured retention.

5 9.5 Hold Harmless: Consultant agrees to hold City harmless from any
6 liability for bodily or personal injury to or death of any person and for injury to or loss of
7 any property resulting from or arising out of the negligent or wrongful acts of
8 Consultant, its officers, employees, agents, or representatives, in performance or
9 failure to perform any services required by this Agreement.

10 **ARTICLE 10 -- MISCELLANEOUS**

11 10.1 Extra Work. Consultant shall not receive compensation for any services
12 provided outside the scope of services listed above unless approved in writing by the
13 City Council. It is specifically understood that oral requests and/or approvals of such
14 additional services or additional compensation shall be barred and are unenforceable.
15 Consultant shall not charge and City shall not pay any finance charges and/or late
16 fees on any overdue invoices.

17 10.2 Authority to Sign Agreement. The person executing this Agreement on
18 behalf of the Consultant warrants that: (1) the Consultant is duly organized and
19 existing; (2) he/she is duly authorized to execute this Agreement on behalf of the
20 Consultant; (3) by so executing this Agreement, the Consultant is formally bound to
21 the provisions of this Agreement; and (4) the entering into this Agreement does not
22 violate any provision of any other Agreement to which the Consultant is bound.

23 10.3 Right to Audit. City shall have access to and the right to examine,
24 audit, excerpt copy or transcribe any pertinent transaction, activity, or record relating
25 to this Agreement. City auditors, at all reasonable times, shall have access to the
26 offices of Consultant and its subcontractors, and all necessary records, and shall be
27 provided adequate working area for the City auditors to conduct audits in compliance
28 with this Agreement. Such working area shall include: a desk, chair, calculator and

1 telephone, and shall have ready access to a photocopy and facsimile machine. City
2 auditors shall be allowed to interview any employee of Consultant and its
3 subcontractors throughout the term of this Agreement and for a period of three (3)
4 year after final payment or longer if required by law.

5 All materials, including all pertinent financial records and proprietary data, shall
6 be stored and maintained by Consultant at its main facility. Originals and/or copies of
7 such documents or records shall be provided, at Consultant's expense, directly to the
8 City.

9 Where City has reason to believe that any of the documents or records required
10 to be maintained pursuant to this section may be lost or discarded due to dissolution
11 or termination of Consultant's business, City may, by written request, require that
12 custody of such documents or records be maintained by the requesting party. Access
13 to such documents and records shall be granted to City, as well as to its successors-
14 in-interest and authorized representatives.

15 10.4 Non-Assignability. Consultant shall not assign any interest in this
16 Agreement and shall not transfer any interest in the same, whether by assignment or
17 novation, without prior written approval of City.

18 10.5 Prevailing Wages. Consultant is aware of the requirements of California
19 Labor Code section 1720, et seq., and 1770, et seq., as well as California Code of
20 Regulations, Title 8, section 16000, et seq., ("Prevailing Wage Laws"), which require
21 the payment of prevailing wage rates and the performance of other requirements on
22 "public works" and "maintenance" projects. If the Services are subject to the
23 Prevailing Wage Laws, Consultant agrees to fully comply with such Prevailing Wage
24 Laws.

25 10.6 Equal Opportunity Employment. Consultant shall not engage in
26 unlawful employment discrimination. Such unlawful employment discrimination
27 includes, but is not limited to, employment discrimination based upon a person's race,
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1 religious creed, color, national origin, ancestry, physical handicap, medical condition,
2 marital status, gender, citizenship or sexual orientation.

3 10.7 Labor Certification. By its signature hereunder, Consultant certifies that
4 it is aware of the provisions of Section 3700 of the California Labor Code which
5 require every employer to be insured against liability for Worker's Compensation or to
6 undertake self-insurance in accordance with the provisions of that Code, and agrees
7 to comply with such provisions before commencing the performance of the Services.

8 10.8 No Third Party Beneficiaries. There are no intended third party
9 beneficiaries of any right or obligation assumed by the Parties.

10 10.9 Interpretation. The parties waive any benefits from the principles of
11 *contra proferentum* and interpreting ambiguities against drafters. No party shall be
12 deemed to be the drafter of this Agreement, or of any particular provision or
13 provisions, and no part of this Agreement shall be construed against any party on the
14 basis that the particular party is the drafter of any part of this Agreement.

15 10.10 Titles. Article titles, paragraph titles or captions contained herein are
16 inserted as a matter of convenience and for reference, and in no way define, limit,
17 extend, or describe the scope of this Agreement or any provision hereof.

18 10.11 Counterparts. This Agreement may be executed in counterparts, and
19 when each party hereto has signed and delivered at least one such counterpart, each
20 counterpart shall be deemed an original and, when taken together with the other
21 signed counterparts, shall constitute one Agreement, which shall be binding upon and
22 effective as to all parties hereto.

23 10.12 Severability; Invalidity. In the event that any condition or covenant
24 herein is held to be invalid or void by any court of competent jurisdiction, the same
25 shall be deemed severable from the remainder of the Agreement and shall in no way
26 affect any other covenant or condition herein contained as long as the invalid provision
27 does not render the Agreement meaningless with regard to a material term in which
28 event the entire Agreement shall be void. If such condition, covenant, or other

1 provision shall be deemed invalid due to its scope of breadth, such provision shall be
2 deemed valid to the extent of the scope of breadth permitted by law.

3 10.13 Governing Law; Venue. This Agreement shall be interpreted, construed
4 and governed according to the laws of the State of California. In the event of litigation
5 between the parties, venue in state trial courts shall lie exclusively in the County of
6 Los Angeles, Superior Court, Southwest District, located at 825 Maple Avenue,
7 Torrance, California 90503-5058. In the event of litigation in the United States District
8 Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

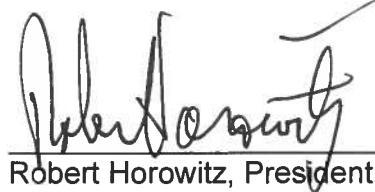
9 10.14 Entire Agreement. This Agreement is the entire, complete, final and
10 exclusive expression of the parties with respect to the matters addressed therein and
11 supersedes all other Agreements or understandings, whether oral or written, or
12 entered into between Consultant and City prior to the execution of this Agreement. No
13 statements, representations or other Agreements, whether oral or written, made by
14 any party which are not embodied herein shall be valid and binding unless in writing
15 and duly executed by the parties or their authorized representatives.

16 **IN WITNESS WHEREOF**, the City of Inglewood and Consultant, have executed
17 this Agreement as of the date first above written.

18 **CITY OF INGLEWOOD**

THE BERKSHIRE GROUP, LLC.

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Robert Horowitz, President

22 _____
James T. Butts, Jr., Mayor

23 **ATTEST:**

APPROVED AS TO FORM

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27 _____
Yvonne Horton, City Clerk

Cal Saunders, City Attorney

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