Council Meeting of
September 11, 2012

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the City Council:

Subject: **Finance – Approve contract to provide utility billing services for additional sewer accounts in the California Water Services Company service area**

Expenditure: $71,832 annually plus postage (approximately $5,400 per year) and $80,000 one time implementation cost

RECOMMENDATION

Recommendation of the Finance Director that City Council:

1) Approve a contract with Global Water Management, LLC (GWM) to provide utility billing services for an additional ten thousand sewer accounts in the California Water Services Company (CWSC) area for the City at $5,986 per month plus postage and $80,000 for one time implementation costs; and
2) Appropriate $59,860 for 10 months of service and a one-time implementation cost of $80,000 from the Sewer Enterprise Fund Balance.

Funding

Funding is available in the Sewer Enterprise Fund Balance.

BACKGROUND/ANALYSIS

On September 21, 2010 your Honorable Body approved a contract with Global Water Management, LLC (GWM) to provide utility billings services.

GWM has provided utility billing services since January 31, 2011 to approximately 28,000 City customers. GWM implementation enhanced services to the City of Torrance customers by providing on-line bill pay, online account management, the option of signing up for e-billing to receive paperless bills via a customer's email account, in depth consumption history and free mobile application. Customers can download on their smart phone to view their account when and where they choose. Additional services provided are the use of inbound IVR system, outbound collections calls and the option for the customer to pay their past due balance before ending the call.

On June 29, 1988, City Council passed a resolution authorizing the implementation of a sewer fee based on water consumption to be assessed to all residents of the City of Torrance. In 1988, there were three agencies providing water billing services to the City of Torrance: (1) City of Torrance, (2) Dominquez Water Corporation, and (3) California Water Company. The sewer fee was based on consumption.

In May 2000, CWSC acquired Dominquez Water Corporation and, in 2004, approached the City requesting a new agreement be made for the billing and collection services in the CWSC revised service area. On December 20, 2005 your Honorable Body authorized staff to enter into an agreement for a term of three years, with two additional two-year renewal options, with California Water Services Company (CWSC) to provide utility billing services for Torrance customers located in the California Water Services area. The current renewal option expired on June 30, 2012 but has been extended on a month to month basis.

On November 30, 2011 staff received a letter from CWSC giving notice to the City (see attached) that they did not want to continue the contract which expired on June 30, 2012. Staff met with CWSC to determine why CWSC wanted to discontinue the contract. CWSC stated that based on various rulings of the California Public Utility Commission (CPUC), third party contracts such as the one with the City of Torrance were no longer profitable for California Utilities. Currently, CWSC is charging approximately $46,000 annually inclusive of postage. CWSC agreed to work with the City to provide a seamless transition of the billing services to the new provider. A further letter dated July 2, 2012 granted a temporary month to month extension of the existing contract through September 30, 2012.

CWSC has agreed to provide GWM consumption data so GWM can bill sewer services to the City's customers in the CWSC service area. A companion item is also being brought before your Honorable Body tonight to approve a contract between CWSC and the City to supply GWM water consumption data in order to bill for sewer fees.

Currently GWM bills 8,000 City customers for rubbish services that are in the CWSC service area. An additional 2,000 commercial customers not serviced by the City's Sanitation Department will be billed for sewer fees. The total number of customers in the CWSC service area to be billed by GWM for sewer fees is 10,000. Customers in the CWSC service area are billed on a monthly basis. The City's customers are billed on a bi-monthly basis, except 600 large commercial accounts. The 10,000 sewer accounts will transition to being billed on a bi-monthly basis in the same manner current City customers are billed.

Historically, CWSC service area represents $865,000 annually in sewer fee revenues for the City. Since January 31, 2011 GWM has provided a high level of service to the Torrance community and, therefore, staff recommends that your Honorable Body approve the contract with GWM.

Respectfully submitted,

ERIC E. TSAO
FINANCE DIRECTOR

By _____
Kenneth A. Flewellyn
Assistant Finance Director

CONCUR:

_____
Eric E. Tsao
Finance Director

_____
LeRoy J. Jackson
City Manager

Attachment: A) Contract
B) California Water Service Company letter dated November 30, 2011

ATTACHMENT A

CONTRACT SERVICES AGREEMENT

This CONTRACT SERVICES AGREEMENT ("Agreement") is made and entered into as of September 1, 2012 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Global Water Management, LLC, a Delaware limited liability company ("CONTRACTOR").

RECITALS:

A. The CITY wishes to retain the services of an experienced and qualified CONTRACTOR to provide additional utility billing for approximately 10,000 sewer accounts for the City of Torrance.

B. CONTRACTOR has submitted a Proposal (the "Proposal"). In its Proposal CONTRACTOR represents that it is qualified to perform those services requested and is the current utility billing company to approximately 28,000 utility billing customers for the City of Torrance. Based upon its review of all proposals submitted, the CITY is willing to award the contract to CONTRACTOR.

AGREEMENT:

1. **SERVICES TO BE PERFORMED BY CONTRACTOR**
CONTRACTOR will provide the services and install those materials listed in CONTRACTOR's Proposal. A copy of the Proposal is attached as Exhibit A.

2. **TERM**
Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through February 1, 2015. If approved by the City Council, the City may, at its option, extend the Agreement for two additional three-year terms (a total of six additional years)

3. **COMPENSATION**
A. CONTRACTOR's Fee.

For services rendered pursuant to this Agreement, CONTRACTOR will be paid in accordance with the compensation schedule set forth in the Proposal. Commencing on September 1, 2012, the CITY will pay the CONTRACTOR the following monthly fee for Service.

Service	Monthly	Annually
Billing and Customer Service	$5,986	$71,832

Total recurring Cost	$5,986	$71,832
One Time Implementation Cost		$80,000

In addition to the monthly service fee, the CITY will pay CONTRACTOR a one-time implementation fee for start-up conversion cost of $80,000.

Commencing in the second year of the Agreement (September 1, 2013), and each subsequent year, the monthly recurring cost shall be increased by the Consumer Price Index ("CPI-W"), Urban Wage Earners and Clerical Workers for Los Angeles, Riverside, Orange County published by the U.S. Bureau of Labor Statistics, Department of Labor ("BLS"), 1982-1984 =100 for December.

In no year shall the year over year increase exceed 4%.

In the event that CONTRACTOR enters into a contract with another agency providing similar services as identified in Attachment A at a lower price per account, then this contract will be adjusted to reflect the lower rate at the start of the next complete year.

B. Postage. In addition to the monthly fee set forth in subparagraph 3.A. above, the City agrees to pay all postage cost relating to billing its Customers. The Contractor will send the City a monthly detailed billing displaying actual billing cost (calculated at the Contractor's Carrier Route Sorting Rate) for City of Torrance residents.

C. Schedule of Payment.

Provided that the CONTRACTOR is not in default under the terms of this Agreement, upon presentation of an invoice, CONTRACTOR will be paid monthly, within 30 days after the date of the monthly invoice.

4. TERMINATION OF AGREEMENT

A. Termination for Convenience.

1. Either party may, at any time, terminate the Agreement for convenience and without cause by providing 365 days written notice to the other party.

2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONTRACTOR will:

a. Cease operations as directed by CITY in the notice;

b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and

c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of such termination for CITY's convenience, CONTRACTOR will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the non-defaulting party gives the defaulting party notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY may, at the expense of the CONTRACTOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONTRACTOR under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONTRACTOR or its surety then existing, or which may thereafter accrue because

of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

1. In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contractor subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

D. Within 15 days after termination or expiration of this Agreement under any circumstances, the following events must occur:

1. CITY access to and use of the CONTRACTOR Platform (defined as CONTRACTOR'S Customer Information System ("CIS"), and CONTRACTOR's Master Data Management ("MDM") products) is terminated.
2. CITY must return to CONTRACTOR or destroy all copies of the CONTRACTOR Documentation (defined as any instruction, comment, or information whether in printed or electronic form related to the Platform, including, but not limited to any technical or user documentation relating to the installation, use, or maintenance of the Platform, including reference, user, installation, systems administrator, technical manuals, guides, and "readme" files, whether in hard copy or in on-line format, as may be supplied from time to time by CONTRACTOR to CITY. Documentation also includes any updates, upgrades, or new

versions of the foregoing released by CONTRACTOR, in its sole discretion during the term of this Agreement), and shall delete or destroy all portions or excerpts of the Platform or Documentation contained, commingled, or incorporated in any form with CITY'S information and electronic systems, including electronic data files and magnetically encoded media, so that neither CITY nor any of CITY's affiliates retain any of the Platform or Documentation in whole or in part. Upon request, CITY must certify in writing the complete return or destruction of the Platform or Documentation within 30 days of the request.

5. FORCE MAJEURE

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. DISPUTE RESOLUTION

In the event that any dispute arises between the Parties, the Parties must attempt in good faith to identify a neutral third-party acceptable to both Parties who is experienced in matters such as those provided for in this Agreement, and request that person to mediate the dispute. In the event that such mediation is not undertaken and successfully concluded within 90 days after the dispute arises, the Parties to any such dispute may pursue those rights and remedies provided for in this Agreement, including instituting legal action.

7. THE CITY'S REPRESENTATIVE

Ken Flewellyn is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by the CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONTRACTOR.

8. CONTRACTOR REPRESENTATIVE(S)

The following principal(s) of CONTRACTOR are designated as being the principal(s) and representative(s) of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and make

all decisions in connection with this Agreement:

Ed Borromeo
Cindy Liles

9. INDEPENDENT CONTRACTOR

The CONTRACTOR is, and at all times will remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents will have control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees, except as otherwise set forth in this Agreement. The CONTRACTOR may 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.

10. BUSINESS LICENSE

The CONTRACTOR must obtain a City business license prior to the start of work under this Agreement, unless CONTRACTOR is qualified for an exemption.

11. OTHER LICENSES AND PERMITS

CONTRACTOR warrants that it has all professional, contracting, and other permits and licenses required to undertake the work contemplated by this Agreement.

12. FAMILIARITY WITH WORK

By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONTRACTOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONTRACTOR must immediately inform the CITY of that fact and may not proceed except at CONTRACTOR's risk until written instructions are received from the CITY.

13. CARE OF WORK

CONTRACTOR must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all

damages, to persons or property, until acceptance of the work by the CITY, except those losses or damages as may be caused by the CITY's own negligence.

14. CONTRACTOR'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of the CONTRACTOR's time pertaining to the project, and records of accounts between the CITY and the CONTRACTOR, will be kept on a generally recognized accounting basis. CONTRACTOR will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to the CITY during normal working hours and upon written notification at least 2 days in advance. CONTRACTOR will maintain these records for three years after final payment.

15. CITY ACCESS TO THE PLATFORM

A. CITY is allowed access to the Platform solely for CITY's own internal operations, and cannot sublicense, rent, or permit anyone other than CITY's own authorized employees and agents that have received proper training by CONTRACTOR personnel, to use or have access to the Platform under any circumstances not authorized by this Agreement.

B. Unless otherwise expressly authorized in this Agreement, CITY shall not:

1. Distribute, disclose, or transfer to any third party, except for CITY's employees and agents, any portion of the Platform or use or demonstrate the Platform in any service bureau arrangement, facility management, or third party training; or
2. Use the Platform for any purpose or application other than as permitted under this Agreement.
3. Attempt to derive, or permit or help others to derive the Source Code (defined as the Software written in programming languages, including all comments and procedural code, such as job control language statements, in a form intelligible to trained programmers and capable of being translated into object code for operation on computer equipment through assembly or compiling, and accompanied by documentation, including flow charts, schematics, statements of principles of operations, and architecture standards, describing the data flows, data structures, and control logic of the Software in sufficient detail to enable a trained programmer through study of such documentation to maintain and/or modify the Software without undue experimentation) relating to the Software (defined as the program material in machine-readable or interpreted form, and may include, where appropriate, listings of either machine code or source code and related materials, including instructions and documentation provided by CONTRACTOR to CITY, including any such programs provided subsequent to this Agreement, and including any and all copies) or

attempt to otherwise convert or alter the Software into human readable code or (b) remove or obscure any product identification, copyright or other notices from any Documentation.

4. CITY agrees that it will not attempt to derive, or permit or help others to derive the Source Code relating to the Software or attempt to otherwise convert or alter the Software into human readable code. CITY further agrees that it will not attempt to duplicate, or permit or help others to duplicate, the Source Code relating to the Software.
5. CITY shall have no right to modify any of the Software supplied by CONTRACTOR for CITY's use under this Agreement without the prior written approval and direction of the CONTRACTOR.
6. CITY agrees that it will not, except as otherwise expressly provided in this Agreement or except as dictated by CITY's standard computer system's backup procedures and/or test environments, make or allow others to make copies or reproductions of the Software or other proprietary information in any form.
7. CITY may duplicate the Documentation and Documentation to effectuate the purposes of this Agreement, at no additional charge, for the CITY's use so long as all required proprietary markings are retained on all duplicated copies.

C. CONTRACTOR has the right, upon reasonable advance notice and during regular business hours, to inspect CITY's books, records, computers, and facilities with respect to the use of the Platform to verify that:

1. Such use is within the scope of this Agreement,
2. there are appropriate security procedures to protect any Confidential Information, and
3. CITY is in compliance with this section.

16. <u>PROPRIETARY AND INTELLECTUAL PROPERTY RIGHTS.</u>

A. CITY acknowledges that the Platform and Documentation is considered by CONTRACTOR to be valuable trade secrets of CONTRACTOR or third-party providers. CONTRACTOR or its third-party providers are the sole and exclusive owner of the Platform and Documentation. This Agreement does not give CITY any ownership interest in the Platform or Documentation, but only the limited right to access and use the Platform and Documentation under the terms of this Agreement.

B. CITY agrees that it will not remove, alter, or otherwise obscure any proprietary rights notices appearing in the Platform or Documentation.

C. The Platform or Documentation may include certain custom modifications made by CONTRACTOR in order to meet the CITY's expectation. CONTRACTOR will retain title to any custom modifications, and may, at is sole discretion and at any time, make changes, upgrades,

updates, enhancements, or other modifications to the Platform or Documentation.

17. CONFIDENTIALITY

A. The Platform and Documentation must be considered Confidential Information of CONTRACTOR's for purposes of this Agreement, regardless of whether or not it is so marked. Except as permitted in this Agreement, CITY must not use, make, have made, distribute, or disclose any copies of the Platform or Documentation, in whole or in part, or the information contained therein without the prior written authorization of CONTRACTOR.

B. Upon the termination or expiration of this Agreement, CONTRACTOR will comply with the provisions of Section 4(D).

C. Each party acknowledges that in the course of the performance of this Agreement, it may obtain the Confidential Information (defined as that information of either party ("*Disclosing Party*") which is disclosed to the other party ("*Receiving Party*") under this Agreement in written form and marked "Confidential," "Proprietary," or similar designation, or if orally disclosed, that information which the Receiving Party should reasonably discern, by an objective examination of the disclosure and the surrounding facts and circumstances, to be confidential in nature. Confidential Information includes, but is not limited to, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, schematics, designs, contracts, customer lists, financial information, product plans, and business information) of the other party. The Receiving Party must, at all times, both during the term of this Agreement and for 2 year period after termination keep in confidence and trust all of the Disclosing Party's Confidential Information received by it (except for any source code, which shall be kept in confidence and trust in perpetuity). The Receiving Party must not use the Confidential Information of the Disclosing Party other than as expressly permitted under the terms of this Agreement. The Receiving Party must take reasonable steps to prevent unauthorized disclosure or use of the Disclosing Party's Confidential Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. The Receiving Party must not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees, contractors, and consultants who need access to the Confidential Information in order to effect the intent of this Agreement. Those officers, employees, contractors, or consultants of the Receiving Party needing access to the Confidential Information to effect the intent of this Agreement will be bound by the same obligations as the Receiving Party. The Receiving Party must immediately give notice to the Disclosing Party of any unauthorized use or disclosure of Disclosing Party's Confidential Information. The Receiving Party agrees to assist the Disclosing Party to remedy such unauthorized use or disclosure of its Confidential Information.

D. The obligations set forth in this section do not apply to the extent that Confidential Information includes information which is:
   1. Now or afterwards, through no unauthorized act or failure to act on the Receiving Party's part, in the public domain;
   2. was in the Receiving Party's possession before receipt from the Disclosing Party and obtained from a source other than the Disclosing Party and other than through the prior relationship of the Disclosing Party and the Receiving Party;
   3. furnished to the Receiving Party by a third party as a matter of right and without restriction on disclosure;
   4. furnished to others by the Disclosing Party without restriction on disclosure;
   5. independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or
   6. required to be disclosed by the City pursuant to the California Public Records Act, or another public disclosure law of similar effect.

E. Nothing in this Agreement prevents the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental, investigative, or judicial agency in accordance with proceedings over which the agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party must:
   1. Assert the confidential nature of the Confidential Information to the agency;
   2. immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and
   3. cooperate fully with the Disclosing Party in protecting against any such disclosure.
   4. Subsection (E)(3) shall not require the Receiving Party to legally defend or be a party to any lawsuit or other legal action regarding disclosure of Confidential Information, the Parties expressly acknowledging that legal defense of any Confidential Information shall remain the duty of the Disclosing Party.

18. <u>WARRANTY</u>

A. CONTRACTOR warrants that the access to the Platform will function for its intended use. Except for the foregoing warranty, CONTRACTOR nor its third-party providers make any warranties, terms, or conditions, either express, implied or statutory, as to the Platform or the Documentation or as to any other matter whatsoever with respect to the subject matter of this Agreement, and the Platform or the Documentation and all other items furnished or made available under this Agreement are provided "as is". CONTRACTOR disclaims and excludes any and all warranties, whether statutory, express or implied, including without limitation the

implied warranties of merchantability, fitness for a particular purpose, non-infringement, course of dealing, and course of performance.

B. CONTRACTOR warrants that it has good title to the software free of any proprietary rights to any other party or any liens or encumbrances whatsoever, except to the extent that CONTRACTOR may be sub-licensing third party software, in which case CONTRACTOR warrants that it has the right to sub-license that software to CITY.

C. CONTRACTOR further warrants that the software, and the use of the software by CITY, does not infringe upon any patent, copyright, trademark, or trade secret of any third party. CONTRACTOR will indemnify and defend CITY from and against all such third party claims, demands, and suits, and, in the event use of the software is preliminarily or permanently enjoined, will, at CITY's discretion, obtain for CITY the right to use the infringing software, modify the software so that it is non-infringing, or replace it with a compatible non-infringing software of equal functionality, including reconstruction or conversion of existing data that is required to correct the infringement.

19. <u>INDEMNIFICATION</u>

A. CONTRACTOR will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages arising under this Agreement, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss, which is the result of the negligent acts, errors, or omissions or other wrongful conduct of CONTRACTOR, CONTRACTOR's officers, agents or employees. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONTRACTOR's obligations to indemnify, defend and hold harmless will apply to the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting from the negligence or willful misconduct of CITY, its officers, employees or agents. In the event of any dispute between CONTRACTOR and CITY, as to whether liability arises from the negligent of the CITY or its officers, employees, agents, subcontractors or vendors, CONTRACTOR will be obligated to pay for CITY's defense until such time as a final

judgment or binding resolution has been entered adjudicating the CITY as negligent or engaging in willful misconduct. CONTRACTOR will be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

B. CITY agrees to indemnify and defend CONTRACTOR, its affiliates, managers, directors, members, officers, agents, and employees (the "CONTRACTOR Indemnified Party") from and against all claims, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the cost of appellate proceedings) to which any such CONTRACTOR Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the gross negligence or intentional misconduct of CITY, its council members, officers, employees, or agents, in connection with CITY's use of the Software; provided that CITY's use of the Software is in accordance with the terms of this Agreement.

20. <u>NON-LIABILITY OF THE CITY'S OFFICERS AND EMPLOYEES</u>

No officer or employee of the CITY will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY or for any amount that may become due to CONTRACTOR.

21. <u>LIMITATIONS OF CONTRACTOR LIABILITY</u>

A. Neither CONTRACTOR nor its third-party providers will have any liability for incidental, consequential, indirect, special or punitive damages, or liabilities of any kind or for loss of revenue, loss of business, or other financial loss arising out of or in connection with this Agreement, regardless of the form of the action, whether in contract, tort (including negligence), strict product liability or otherwise, even if any representative of a party to this Agreement has been advised of the possibility of such damages and even if any limited remedy specified in this Agreement is considered to have failed of its essential purpose.

B. CITY acknowledges that the allocation of risk in this Agreement is consistent with software industry pattern and practice and is an integral part of the consideration for this Agreement, without which CONTRACTOR would be unable to provide the Platform and related services at the prices specified.

22. INSURANCE

A. CONTRACTOR and its subcontractors must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

(1) Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

(a) Primary Bodily Injury with limits of at least $500,000 per person, $1,000,000 per occurrence; and

(b) Primary Property Damage of at least $250,000 per occurrence; or

(c) Combined single limits of $1,000,000 per occurrence.

(2) General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least $1,000,000 per occurrence.

(3) Workers' Compensation with limits as required by the State of California and Employer's Liability with limits of at least $1,000,000.

(4) Employee Dishonesty Coverage with limits of at least $100,000 with the City of Torrance Named as a loss payee on the policy.

B. The insurance provided by CONTRACTOR will be primary and non-contributory.

C. CITY ("City of Torrance"), the Redevelopment Agency of the City of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. CONTRACTOR must provide certificates of insurance and/or endorsements indicating appropriate coverage, to the City Clerk of the City of Torrance before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

23. SUFFICIENCY OF INSURERS

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of the CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the CITY, the CONTRACTOR agrees that the minimum limits of any insurance policies and/or the performance bond required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONTRACTOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of the CITY within 10 days of receipt of notice from the Risk Manager.

24. CONFLICT OF INTEREST

A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

25. NOTICE

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

(1) Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

(2) First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

(3) Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

(4) Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

(5) Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

CONTRACTOR:	Global Water Management, LLC 21410 N. 19th Avenue, Suite 201 Phoenix, AZ 85027 Fax: 623 518-4011
WITH A COPY TO:	Andrew Abraham Burch & Cracchiolo, P.A. 702 E. Osborn Rd., Suite 200 Phoenix, AZ 85014 Fax: (602) 234-0341
CITY:	City Clerk City of Torrance 3031 Torrance Boulevard Torrance, CA 90509-2970 Fax: (310) 618-2931

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

26. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either the CITY or CONTRACTOR without the prior written consent of the other, which will not be unreasonably withheld, conditioned, or delayed.

27. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of the CITY and CONTRACTOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

28. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

29. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

30. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

31. GOVERNING LAW; JURISDICTION

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

32. COMPLIANCE WITH STATUTES AND REGULATIONS

CONTRACTOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

33. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

34. ATTORNEY'S FEES

Except as set forth in Paragraph 19, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

35. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

36. CONTRACTOR'S AUTHORITY TO EXECUTE

The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and

(iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

CITY OF TORRANCE,
a Municipal Corporation

_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Global Water Management, LLC
a Delaware limited liability company

By: _____
Cindy M. Liles, Treasurer

Attachments: Exhibit A: Proposal

Revised: 10/29/2008

EXHIBIT A

PROPOSAL

SEWER CUSTOMER SERVICE AND BILLING IMPLEMENTATION

STATEMENT OF WORK

[To be attached]

GLOBAL WATER
FATHOM

CITY OF TORRANCE, CALIFORNIA

SEWER CUSTOMER SERVICE AND BILLING IMPLEMENTATION

STATEMENT OF WORK

Project Description

Global Water Management, Inc. ("Global") currently provides utility customer and billing services ("Services") for the City of Torrance ("Torrance" or "City") to approximately 28,000 Water/Sewer/Rubbish accounts, and an additional approximate 8,000 Rubbish only accounts. Torrance has requested a proposal from Global to provide sewer Services to the existing Rubbish only accounts, and to also provide Services to an additional approximately 2,000 Sewer only customers. In total, this proposal contemplates an additional approximately 10,000 accounts for which Global will provide sewer Services to. These accounts are expected to be billed bi-monthly.

Currently, another potable water provider – Cal Water – provides Services for these 10,000 sewer accounts. As such, a complete data migration of all sewer account information from Cal Water is required in order to implement these 10,000 sewer accounts into Global's system. On an ongoing basis, accurate and timely water consumption and customer data will be required from Cal Water in order for Global to render recurring Services. Currently, Global does not depend on another third party to render services; therefore processes and schedules must be developed and agreed upon by all parties in order to proceed.

Implementation

1. Data Collection

   Global will submit a data file template required for the implementation of the new 10,000 sewer accounts into Global Water's billing system. Cal Water is to provide the data in the template format, and it must represent the most current, comprehensive, and accurate customer and billing data pulled directly from Cal Water's system. As Global receives and analyzes the data, an appointed representative from Cal Water is required for resolution to questions, issues, or anomalies. Global will require multiple updated data files during the analysis and test period (two to four), and one final data file for upload into the production system upon Go-Live.

   Global will also request any GIS data Cal Water may have associated with sewer accounts as well as Cal Water's service territory boundaries.

2. Geo-spatial Audit and Account Checks: Cal Water vs. Parcel data vs. Global existing data

Global will execute a geo-spatial audit to verify all billable entities are accounted for within service boundaries and all customer related data is correct including bill codes. The audit shall include the following activities and deliverables for the sewer accounts to be added to Global's system:

1) Obtain the most current publicly available parcel and aerial information.
2) Obtain the National Change of Address data.
3) Obtain and format the existing Cal Water sewer customer account data for the audit.
4) Obtain Cal Water's service area boundaries.
5) Geo-locate all sewer accounts; validate those against Cal Water data; validate those that match existing Rubbish only accounts; and validate completeness of additional 2,000 sewer accounts.
6) Identify variances, if any, arising between parcel data, existing customer and billing data, aerial imagery, and service boundaries.
7) Present the audit results to the City, recommended resolutions, and gain approval to enter changes.
8) Produce a final action report and update the results of the audit into the Global's system.

3. Configuration and Testing

1) Create an isolated test environment that mirrors Global's current production system for customer and billing services to Torrance.
2) Execute data collection/configuration process which includes a series of checklists for the City/Cal Water to complete; this ultimately requires review and sign-off by the City.
3) Load data associated with the approximate 10,000 sewer accounts in the form of the aforementioned data file template.
4) Apply current Torrance customer and billing system configurations to the 10,000 sewer accounts (program a minimum of two new bill codes)
5) Coordinate Accounting and GL related verifications and testing
6) Generate a billing schedule migration plan based on Cal Water schedule; transition bi-monthly to monthly billing of existing rubbish only accounts
7) Generate a testing plan for City approval, complete with mock billing run with bill print samples
8) Collect the read/consumption data from Cal Water and process through the test environment.
9) Execute testing plan: analyze the results to ensure proper function; generate test bills, exception reports, and prepare for City to review.
10) Test online account management and presentment for the 10,000 accounts.
11) Upon completion of testing and City approval, move the system to the live environment.

4. Customer Communication

Global will provide a customer communication campaign for all affected customers, and will be given to the City of Torrance for review and approval. These communications will include the explanation of the project, differences they will see in their bills, how to resolve their old bills, different ways to pay their new bill, U2You instructions, etc. The different methods of communication may include:

1) Fliers directly mailed out to each customer (account holder) as well as each legal property owner.
2) Links to information for existing websites

3) Information banner on customer's first new sewer bill.
4) Potential Outbound IVR campaigns

5. Implementation Schedule and Fee

Global is prepared to meet the goals of the City and have the implementation completed on or around September 1, 2012 assuming no substantial project delays resultant of external factors such as third party participation or reviews/approvals to proceed at critical milestones. The fee to execute this Implementation is $80,000.

Recurring Services

For the rendering of these ongoing services for the additional 10,000 sewer accounts, Global proposes a monthly fee of $5,986. This includes key daily and weekly services such as bill processing and mailing, administration of customer care, continuous coordination with the third party water provider, provision for electronic tools for consumers, IVR, etc.

ATTACHMENT B

CALIFORNIA WATER SERVICE COMPANY
2632 W. 237TH STREET • TORRANCE, CA 90505-5272
(310) 257-1400 • FAX (310) 325-4605

RANCHO DOMINGUEZ DISTRICT

November 30, 2011

City of Torrance
Finance Department
3031 Torrance Boulevard
Torrance, CA 90503
Attn: Mr. Kenneth Flewellyn, Assistant Finance Director

Re: Contract Services Agreement C2005-249

Dear Mr. Flewellyn:

As you know, California Water Service Company (Cal Water) provides utility billing services for the City of Torrance sewer customers who are located within Cal Water's service area in Torrance. This service is provided under the "Contract Services Agreement" (Agreement) between the City of Torrance and CWS Utility Services, an affiliate of Cal Water. The expiration date of the Agreement is June 30, 2012.

Please consider this letter written notice that it is not our intention to continue providing utility billing services upon the expiration of the current Agreement.

Section 4.B.1 of the Agreement, requires that 90 days advance written notice is required prior to termination; however, we wish to provide the City with as much time as possible to prepare alternate accommodations for utility billing services for its sewer customers located in Cal Water's service area in the City of Torrance.

Cal Water will work with the City in an effort to provide a seamless transition of the billing services to the new provider.

In closing, we have enjoyed working with the City on this contract and have appreciated the opportunity to serve you.

Sincerely,

Henry Wind
District Manager
Rancho Dominguez District

cc: C. Breed
C. Carrasco
K. Chakewa
L. Mann