



# City of Lodi: City Hall

## Retrocommissioning, Facility Condition Assessment and Decarbonization Roadmap

March 9, 2022



[www.resource-innovations.com](http://www.resource-innovations.com)

Jennifer Sweeney  
City of Lodi  
130 S. Main Street  
Lodi, WI 53555

March 9, 2020

Dear Mr. Moyer,

Thank you for asking Resource Innovations to provide engineering consulting services for the City Hall building. This letter outlines our proposal to provide energy engineering services, including retrocommissioning and a facility condition assessment. We look forward to working with you on this project. Should you decide to engage our services, this letter, together with the Proposal and Resource Innovations Standard Terms and Conditions will set forth the terms and conditions of our engagement (collectively, the "Agreement").

This Agreement, dated as of the date set forth opposite the Client signature block below, or if no signature is entered, the date of this letter (the "Effective Date"), is entered into by and between Resource Innovations, Inc. ("Resource Innovations") a Delaware corporation, having a place of business located at 1232 Fourier Drive, Madison, Wisconsin and City of Lodi ("Client") having a place of business located at 130 South Main Street, Lodi, Wisconsin. Each of Resource Innovations and Client may from time to time be referred to individually as a "Party" and collectively as the "Parties." In consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

#### **General Scope of Engagement**

During the Term (as defined below) of this Agreement, Resource Innovations will perform those services and provide the deliverables (collectively, the "Services") as described in Appendix A - Proposal, Scope of Work and Deliverables. The deliverables will be presented to Client on or about the date specified in the Scope of Work and Deliverables section.

Kevin Coleman, Engineering Manager, will be your principal contact with Resource Innovations with respect to the performance of this Agreement and will keep you informed on a regular basis of the progress of the performance of the Services. Resource Innovations reserves the right to substitute consultants with equivalent skills to staff the project.

#### **Compensation**

In consideration for the Services to be performed by Resource Innovations, Client shall compensate Resource Innovations for such Services in the amount and in accordance with the schedule set forth in Appendix A - Proposal, Fees and Payment Schedule.

**Term**

The term of this Agreement (the "Term") shall commence on the Effective Date and, unless terminated earlier as set forth below or extended by the mutual written agreement of the Parties, shall expire upon completion of the Services.

**Complete Agreement**

This letter, together with the following incorporated attachments, shall represent the entire Agreement between the Parties:

- Appendix A: Proposal and Scope of Services; and
- Appendix B: Resource Innovations Standard Terms and Conditions

We thank you for your interest in Resource Innovations and look forward to a mutually rewarding relationship. If the foregoing reflects your understanding of the terms of our engagement, please indicate your agreement in the space indicated below and return a copy to me. If a purchase order is required, please provide an original form and indicate the purchase order number in the space below your signature. Please note that this offer is open for written acceptance for six weeks from the date of this letter and fees are subject to change after that timeframe.

Sincerely,

Lonny Peet, PE, CEM, CMVP, CP EnMS  
 Director of Engineering  
 Resource Innovations, Inc.  
 lpeet@resource-innovations.com  
 (503) 789-6391

RESOURCE INNOVATIONS, INC.

CLIENT

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

# Table of Contents

<b>Appendix A: Proposal and Scope of Services .....</b>	<b>2</b>
Project Details .....	2
Scope of Work and Deliverables .....	2
Task 1. Retrocommissioning .....	2
Task 2: HVAC Condition Assessment .....	4
Task 3: Envelope performance assessment and modeling .....	4
Task 4. Building Decarbonization Roadmap .....	5
Proposed Project Schedule .....	7
Payment Schedule .....	7
<b>Appendix B: Resource Innovations Standard Terms and Conditions .....</b>	<b>9</b>

## Appendix A: Proposal and Scope of Services

### Project Details

The City of Lodi City Hall is a two story 10,580 sf building built in the mid-1990s. The HVAC system consists of (1) gas-fired, DX-cooled RTU serving about (20) VAV boxes with hot water reheat. Hot water for reheat and perimeter radiant heat is provided by gas-fired boilers. The building has been plagued by long-standing comfort issues. The City of Lodi has requested that Resource Innovations provide a proposal to provide engineering consulting services to help diagnose the root cause of the comfort issues and provide a plan to help the City budget to address these issues and future end-of-life HVAC equipment upgrades.

### Scope of Work and Deliverables

Resource Innovations proposes the following tasks:

- Retrocommissioning
- HVAC condition assessment
- Envelope performance assessment and modeling
- Building decarbonization roadmap

Together, these tasks will provide the City of Lodi insight into their current comfort issues and a concrete plan to address these issues

#### Task 1. Retrocommissioning

Resource Innovations will conduct an in-depth assessment of low and no-cost energy efficiency opportunities through a retrocommissioning project partially funded by incentives from Wisconsin Focus on Energy.

The retrocommissioning analysis uses trend data from the Building Automation Systems (BAS) to recommend controls improvements. Retrocommissioning (RCx) typically provides 5% to 15% total building energy savings with a simple payback of less than 2-years. Resource Innovations will recommend the changes, provide implementation support to your contractor, and verify proper operation after installation. Incentives for the retrocommissioning analysis are available from Focus on Energy (FoE). The FoE RCx program will reimburse building owners who participate in RCx based on the realized energy savings from retrocommissioning. The program pays \$0.10 to \$0.20 per square foot, depending on energy savings. Assuming 5% to 10% energy savings of the provided energy use data, the city could expect an incentive check of \$1,000 to \$1,600 from Focus on Energy.

Resource Innovations will provide the following RCx services:

### RCx Planning & Investigation Phase Services

- Assist the Client with the completion and submission of the FoE RCx Enrollment application.
- Conduct Planning and Investigation Phase RCx services using a combination of on-site assessments and the trend data provided by Client to **identify and quantify energy savings** opportunities.
  - Review building drawings and equipment schedules (provided by Client)
  - Review four years of utility data (provided by Client) and benchmark the facility
  - Interview building staff about operations, operational and occupancy schedules, known issues, and occupant comfort
  - Use trend data to identify equipment or sequences that are not optimized for:
    - Comfort
    - Energy
    - Equipment longevity
  - Physically investigate systems or equipment as necessary to determine the root cause of the issues identified from the trend data
  - Physically confirm location of all temperature sensors
  - Calculate energy savings from each opportunity to the level of rigor required by the FoE RCx program.
  - Submit an *Investigation Phase RCx Report* to FoE per program requirements
  - Submit *Estimated Savings Workbook* to FoE per program requirements
  - Provide Client an Investigation Phase RCx Report that document all RCx opportunities. For each opportunity identified, the report will describe:
    - Current condition
    - Recommended action
    - Implementation details
    - Impacts on operations
    - Estimated costs
    - Calculated energy savings and cost savings

### RCx Implementation Phase Support Services

- Assist Client in **selecting the opportunities** to be pursued for implementation
  - Meet with Client to review the recommended opportunities and answer any questions the team may have about each opportunity.
  - Client will seek bids to implement selected opportunities.
  - Resource Innovations will respond to questions from bidders.

### RCx Verification Phase Services

- **Verify proper operation** of implemented opportunities, using the trend data (and on-site visits when necessary).
  - Review data and analytics relevant to each opportunity
  - Functionally test equipment or sequences as needed

- Maintain an issue log of any deficiencies identified during verification
- Communicate deficiencies to the implementation contractors as needed
- Resubmit savings workbook to FoE per program requirements
- Update the savings calculations based on verification trend data
- Provide Client a *Final Report* **documenting the implemented energy saving, cost savings, comfort improvements, and operational improvements** for the implemented measures.

### Deliverables

- (1a) Investigation RCx Report
- (1b) Final RCx Report

### Task 2: HVAC Condition Assessment

To help the City of Lodi understand the current condition and expected replacement schedule of existing HVAC equipment, Resource Innovations will conduct an HVAC condition assessment.

We will create a comprehensive list of all HVAC systems in the facility. For each piece of equipment, we will determine and record the following:

- Location
- Current age
- Expected useful life
- Condition
- Any issues that need to be corrected.
- Prioritize problems according to severity level

### Deliverable

- (2) HVAC Condition Assessment Memo containing a detailed condition assessment table and a prioritized problem list.

### Task 3: Envelope performance assessment and modeling

To identify opportunities for improving the building envelope, Resource Innovations will conduct a detailed envelope performance assessment and modeling. Improving the building envelope by increasing insulation, sealing air leaks, and installing high performance windows can increase occupant comfort, improve indoor air quality, reduce energy costs, and decrease the size requirements of the heating and cooling system. This assessment will provide the data required to for the City of Lodi to make informed decision about envelope improvements.

Resource Innovations will provide the following services:

- Conduct a blower door test with thermal imaging to identify areas of air leaks and insufficient insulation. *Please note that this step is most effective when the outside air temperature is below 30°F.*
- Create a computer simulation of the building envelope based on data collected in the field
- Model envelope upgrades using the energy model computer simulation
- Estimate heating and cooling load reductions with the upgraded envelope
- Recommend envelope upgrades based on the model results

### Deliverable

- (3) Envelope Performance Assessment and Recommendations Memo

### Task 4. Building Decarbonization Roadmap

The current energy, comfort, and equipment age issues at city hall present a unique opportunity for the City of Lodi to proactively improve the building's performance. Based on the building's age and comfort issues it appears that some of the HVAC equipment may be approaching the end of its useful life. Creating a medium-term capital plan to update the building will ensure that performance issues are addressed as equipment is replaced. Without such a plan in place, equipment is typically replaced with equivalent equipment which will cause the existing carbon footprint of the building to persist into the future.

Resource Innovations recommends that the City of Lodi use this opportunity to develop a building decarbonization roadmap. The decarbonization roadmap lays out the steps required to reduce building carbon emissions to zero over time. A well-implemented decarbonization roadmap would:

- Improve occupant comfort
- Improve indoor air quality
- Reduce long term energy costs for the building
- Demonstrate environmental leadership for the city and the utility

### Deliverable

- (4) Decarbonization Roadmap

An example outline of a roadmap may include the following:

#### Year 1

- Set a phased carbon reduction goal (e.g., 50% emissions reductions by 2030, 100% emissions reductions by 2040)
- Implement lost-cost and no-cost improvements identified during RCx

#### Years 2 – 5



- Upgrade envelope as recommended in the envelope condition assessment (including windows and air sealing). The upgraded envelope will improve comfort and reduce the total building load, and which will allow for downsizing of HVAC.
- Install renewable rooftop solar PV

### Year 5 - 15

- Upgrade HVAC equipment as equipment reaches the end of its life. New equipment will be sized smaller than existing equipment because of improved envelope.
- Decouple ventilation from heating and cooling (i.e., dedicated outside air system with heat recovery)
- Electrify all building fossil fuel loads (i.e., heat pumps, likely ground-source, with the well field under the parking behind the building; consider a combined well field for city hall and the police station to improve economics).

### Year 15 – 20

- On-site battery storage and automated demand response to reduce demand charges
- Offsite renewable generation PPA

The roadmap would provide high level cost-estimates and emissions reductions calculations for each of the steps and would list key planning considerations.

## Proposed Project Schedule

We propose the following project schedule and timeline.

Milestone	Timeline
Notice to Proceed	
Project kick off meeting and formal data request	1 week after notice to proceed
Receipt of baseline information from client (trend data, utility data, building drawings)	Varies
RCx Site visit	4 weeks after receiving info
Delivery of Investigation RCx Report	4 weeks after RCx site visit
Delivery of HVAC Condition Assessment Memo	5 weeks after RCx site visit
Envelope assessment site visit	Weather dependent
Delivery of envelop performance assessment memo	4 weeks after envelop site visit
Delivery of decarbonization roadmap	4 weeks after RCx, HVAC, and envelope deliverables are completed
RCx implementation	By client
Review RCx verification	2 weeks after implementation is complete
Delivery of deficiency log	1 week after receiving verification data
Delivery of verification RCx report	1 week after deficiencies are addressed

## Payment Schedule

### Fees

Resource Innovations' total fixed price for performance of the Services including all professional fees and expenses is \$23,558 (USD).

### Additional Services

Any further support requested by Client will be agreed in a written amendment to this Agreement setting forth scope of work, deliverables, fees and payment schedule.

**Payment Schedule**

Resource Innovations will invoice Client upon completion of each task for the amounts specified in the Payment Schedule.

**Table 1. Payment Schedule**

Task	Deliverable	Fixed Price Fee (USD)
1a	Investigation RCx Report	\$ 8,774
1b	Final RCx Report	\$ 2,124
2	HVAC Condition Assessment Memo	\$ 2,216
3	Envelope Performance Assessment and Recommendations Memo	\$ 4,072
4	Decarbonization Roadmap	\$ 6,372

**Invoicing**

Resource Innovations will invoice Client upon completion of each of the specified tasks as they are delivered unless the project term extends beyond sixty days (60 days), in which case invoicing will be monthly. Client shall make payment to Resource Innovations within thirty (30) days of date of issuance.

## Appendix B: Resource Innovations Standard Terms and Conditions

1. **SERVICES:** Resource Innovations agrees to perform for Client those services and provide those deliverables (collectively the “**Services**”) as described in Resource Innovations’ proposal (“**Proposal**” or “**Scope of Work**”). Resource Innovations’ recommendations and conclusions will be made to the best of its knowledge and belief based on information furnished to it by Client prior to or at the time the Services are performed and Resource Innovations shall be entitled to rely upon such information. These Standard Terms and Conditions shall govern all SOWs accepted under this Agreement. In the event of a conflict between the terms of this Agreement and those of an SOW, then the terms of the SOW will prevail.
2. **ACCESS TO FACILITY:** To perform the Services, Client shall provide Resource Innovations and its subcontractors:
  - a. Access to the facility and time for facility personnel to interface with Resource Innovations and its subcontractors which may include performing the study, installing monitoring equipment, installations, collection and verification of data, and other services; and
  - b. Assistance with the reporting and collection of information pertaining to the operation of the facility which may include detailed system and equipment descriptions, spot measurements, metering, data collection, interviews and data analyses.
3. **PAYMENT:** For performance of the Services, Client shall pay Resource Innovations the amounts specified in the Scope of Work within thirty (30) days of the invoice date, or as otherwise specified in applicable Scope of Work. Resource Innovations will invoice Client in accordance with the payment schedule set forth in the Proposal. If an amount on Client’s account is 14 days or more overdue, in addition to any of its other rights or remedies, Resource Innovations reserves the right to suspend services provided to Client, without prior notice to Client, until such amount is paid in full. Any payment not received from Client by the due date may accrue, at Resource Innovations’ discretion, late charges at the rate of 1.5 percent of the overdue balance per month, or at the maximum rate permitted by law, whichever is lower; from the date such payment was due until the date paid.
4. **CHANGES:** Client may from time to time request or approve changes to the Scope of Work or otherwise within the general scope of the Services, or may request or approve that Resource Innovations perform additional services or extra work. Any changes or additions to the Scope of Work shall be communicated and agreed in writing. In the event that any such change or additional services or extra work results in increased costs to Resource Innovations or in an increase in the time for completion of the Services, Resource Innovations’ compensation and the schedule shall be equitably adjusted by mutual agreement of the Parties set forth in a written change order.
5. **GENERAL WARRANTIES:** Each Party represents and warrants that (a) it has full right, power, and authority to agree to these terms and perform its obligations and duties under this Agreement; (b) the performance of such obligations and duties does not and will not conflict with or result in a breach of any other agreement of such Party or any judgment, order, or decree by which such Party is bound; (c) it will comply at all times with all applicable laws and regulations in its performance of its obligations under this Agreement; and (d) its performance under this Agreement shall be accomplished by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry.
6. **LIMITED WARRANTIES:** Resource Innovations warrants that it shall perform the Services in conformity in all material respects with the specifications set out in the Scope of Work and the terms of this Agreement. Resource Innovations’ sole and exclusive liability and Client’s sole remedy under this warranty shall be for Resource Innovations to reperform the nonconforming services, or if reperformance is not possible or conforming, to refund of amounts paid under this Agreement for such non-conforming services. Client must report any deficiencies in the work to Resource Innovations in writing within 90 days of delivery of the Services in order to receive warranty remedies. Client is solely responsible for the final design, procurement, installation, commissioning and continuing operation of the proposed project and any decision as to which of the energy efficiency services or measures implemented. Resource Innovations does not guarantee that installation and operation of the energy efficiency services or measures implemented will result

in reduced energy usage or cost savings. Resource Innovations is not responsible for any claims the Client might have against the manufacturer, the retailer or the installer with regard to the energy-saving measure implemented.] EXCEPT AS EXPRESSLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RESOURCE INNOVATIONS AND ITS EMPLOYEES AND SUBCONTRACTORS MAKE NO WARRANTIES OR REPRESENTATIONS OF ANY KIND WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. **OWNERSHIP OF WORK PRODUCT:** Upon payment of the applicable fees, and subject to Resource Innovations' rights in Resource Innovations Intellectual Property (defined below), Resource Innovations assigns to Client all right, title and interest in any deliverables originally prepared by Resource Innovations and delivered to Client pursuant to. For purposes of this section, "**Resource Innovations Intellectual Property**" means (1) Resource Innovations' name, logo, internet domains and all the names, logos, and trademarks associated with its services; (2) Resource Innovations' proprietary products, software, platforms, systems, databases, technology or tools that utilize commercial third party software and other intellectual capital that are proprietary to Resource Innovations or to third party licensors ("**Resource Innovations Technology**"); and (3) materials, methodologies, procedures, designs, algorithms, techniques, concepts, ideas, know-how, information of general applicability or related to Resource Innovations' energy efficiency consulting, management and rebate program work. Resource Innovations Intellectual Property includes property that is (1) owned, developed, licensed, or otherwise acquired by Resource Innovations prior to the date of this Agreement; or (2) developed, licensed, or otherwise acquired by Resource Innovations after the date of this Agreement, including during the course of providing Services under this Agreement, but without using Client's confidential information. All rights, title and interests, including without limitation all patents, copyrights, mask works, trade secrets, trademarks, and any other intellectual property and proprietary right, derivative works, modifications, or improvements, in or related to any Resource Innovations Intellectual Property shall at all times remain the sole and exclusive property of Resource Innovations or its licensor, and Client shall acquire no rights therein, except for the

license granted pursuant to this Section or as may be set forth in the Scope of Work. To the extent that any Resource Innovations Intellectual Property, excluding Resource Innovations Technology, is incorporated or embedded in a deliverable that is provided to Client under this Agreement and upon payment of applicable services fees, Resource Innovations grants Client a perpetual, non-exclusive, royalty-free license to use the Resource Innovations Intellectual Property as necessary for Client's use of the deliverable.

8. **CONFIDENTIALITY:**

- a. Definition of Confidential Information. As used herein, "**Confidential Information**" means all non-public information of a Party ("**Disclosing Party**") that, if disclosed in writing or other tangible form is clearly labeled as "confidential" or "proprietary" or if disclosed visually or orally, is identified as confidential when disclosed and within thirty (30) days thereafter, is summarized in writing and confirmed as "confidential" or "proprietary" ("**Receiving Party**"), including without limitation, research, product plans and development, products, prototypes, samples, data sets, services, equipment, pricing, customer and supplier lists, markets, software, inventions, processes, plans, policies, procedures, assets, designs, drawings, hardware configuration information, technology systems, networks, servers, sales, marketing, projections, and manufacturing techniques and this Agreement (which will be deemed Confidential Information of both Parties), whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually. Confidential Information also includes any notes, analyses, compilations, studies or other material or documents prepared by the Receiving Party which contain, reflect or are based, in whole or in part, on the Confidential Information. Confidential Information includes the terms of this Agreement but not its existence. Confidential Information shall not include any information or material that: (1) is or becomes generally known to the public without the Receiving Party's breach of any obligation owed to the Disclosing Party; (2) was or is independently developed by the Receiving Party without reference to Disclosing Party's Confidential Information; (3) was or is received by the Receiving Party from an independent third party who has full right of disclosure; or (4) was already known to the Receiving Party, prior to the time the Disclosing Party discloses the Confidential Information to the Receiving Party.
- b. Receiving Party, during and subsequent to the term of this Agreement: (1) shall keep strictly confidential

and shall not disclose, or cause or permit to be disclosed, either directly or indirectly, the Disclosing Party's Confidential Information to a third party without the prior written consent of Disclosing Party. Receiving Party may disclose Confidential Information to those directors, officers, and employees, subcontractors of such party ("**Representatives**") who need to know for the performance of that party's obligations under this Agreement and who are agree to be bound by written confidentiality obligations no less protective than the terms contained in this Section; (2) shall not use Disclosing Party's Confidential Information for any purpose other than to perform its obligations or exercise its rights under this Agreement; (3) shall protect Confidential Information of Disclosing Party by using the same standard of care which it uses to protect its own proprietary and confidential information of a like nature, but no less than a reasonable degree of care; and (4) shall not remove any "confidential," "proprietary" or similar marking from any of the Confidential Information of the Disclosing Party. Receiving Party shall not make any copies of the Confidential Information unless the same are previously approved in writing by Disclosing Party. The Receiving Party shall at all times remain responsible for breaches of this Agreement arising from the acts of its Representatives.

- c. Each Party: (1) shall promptly notify the other Party if it discovers any use or disclosure, actual or potential, which is not in compliance with this Section 7; and (2) upon request, shall, and shall cause its Representatives to, return or destroy, at Disclosing Party's discretion and to the extent permitted by law, all original and copies of Confidential Information which is in a physical form and delete or destroy any other records (including electronic records) containing Confidential Information, including any notes, reports or other documents prepared by the Receiving Party which contain Confidential Information of the Disclosing Party, and certify in writing to Disclosing Party that such Confidential Information has been returned or disposed of securely. Notwithstanding the foregoing, Receiving Party may retain electronic back-up or archival copies of Confidential Information made in the routine course of business which are stored in a secure, limited access location or that Receiving Party is legally prohibited from returning or destroying. The obligations of these Confidentiality Terms shall survive any termination or expiration of the Agreement for a period of three (3) years;

provided, however, that any Confidential Information retained by a Party in accordance with any permitted exception herein shall remain subject to all of duties and obligations set forth herein even if so retained after the period of time set forth in this section

- d. If Receiving Party becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Receiving Party will provide Disclosing Party prompt written notice of such disclosure and will assist Disclosing Party in seeking a protective order or another appropriate remedy, at Disclosing Party's expense. If Disclosing Party waives Receiving Party's compliance with this Agreement or fails to obtain a protective order or other appropriate remedy, Receiving Party will furnish only that portion of the Confidential Information that is legally required to be disclosed, provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.
- e. Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by such Party or its Representatives. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach in addition to all legal remedies.
- f. Confidential Information shall remain the property of Disclosing Property and no license or right, including intellectual property rights or any other right, is granted to the Receiving Party in relation to any part of the Disclosing Property's Confidential Information except the limited rights to use the Confidential Information in connection with the project in accordance with this Agreement.
9. **LIMITATION OF LIABILITY:** To the fullest extent not prohibited by applicable law, each Party's maximum liability in the aggregate, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for any damages, claims, losses, liabilities arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, shall in no case exceed the total fee paid by Client to Resource Innovations under the relevant Scope of Work. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD

PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE OR LOSS OF PROFIT. The foregoing limitations shall not apply to any Claim that is subject to indemnification as set forth in Section 10 or arising out of gross negligence, willful misconduct, intentional breach or fraud.

#### 10. INDEMNIFICATION:

- a. Each Party agrees to indemnify, defend, and hold the other Party and its affiliates and subsidiaries and each of its and their directors, managers, members, employees, subcontractors, assigns and successors in interest, harmless from and against any and all third party claims, demands, suits, causes of action, subpoena and discovery (collectively "**Claims**") and any damages, liabilities, losses, costs and expenses, including reasonable attorneys' fees incurred by the indemnified party as a result of such Claims, to the extent and proportion such Claims arise out of the indemnifying party's (including but not limited to indemnifying party's employees and subcontractors): (i) breach of its warranties, representations, covenants, or obligations under this Agreement; or (ii) negligence or intentional misconduct, except (in each instance of (i) or (ii)) to the extent of any indemnified party's negligence or intentional misconduct.
- b. The indemnification obligations set forth above in this Section 8 are contingent upon compliance with the following conditions by the indemnified party: (i) providing prompt written notice of a Claim to the indemnifying party; (ii) cooperating with the indemnifying party, including by providing all information and evidence within the indemnified party's control which is necessary for indemnifying party to conduct a defense (the indemnifying party will reimburse the indemnified party for its reasonable expenses incurred in cooperation with and providing assistance to the indemnifying party); and (iii) providing the indemnifying party with sole control of the defense and all related settlement negotiations (however, the indemnified party may participate in the defense or settlement of the claim at its own expense). The indemnifying party may not settle any Claim without the indemnified party's consent (which shall not be unreasonably withheld) if the proposed settlement would be in the indemnified party's name or impose pecuniary or other liability or an admission of fault or guilt on the indemnified party or would require the indemnified party to be bound by an injunction of any kind.

11. **INSURANCE:** During the term of the Agreement, Resource Innovations shall maintain insurance as follows: (1) Commercial General Liability with \$1,000,000 per occurrence, \$2,000,000 in the aggregate for personal injury, sickness or death or for damage to or destruction of property for any one occurrence; (2) Workers' Compensation Insurance to the extent required by applicable law; (3) Employers' Liability Insurance with limits of \$500,000 per accident and \$500,000 per illness/disease, with an aggregate of \$500,000 per illness/disease; (4) Automobile Liability Insurance insuring all owned and non-owned and hired automobiles with limits of liability of \$1,000,000 per occurrence for bodily injury and property damage; and (5) Professional Liability Insurance (Errors & Omissions) with limits of \$1,000,000 per claim/aggregate. Upon Client's request, Resource Innovations shall deliver to Client a certificate of insurance verifying such coverage.
12. **SUBCONTRACT RIGHTS:** Resource Innovations may rely upon independent contracting parties in order to satisfy its obligations under this Agreement. Resource Innovations shall have the right to subcontract any portion of the Services to such contracting parties without the prior approval of Client. Resource Innovations is liable for any act or omission by such contracting parties that, if taken by Resource Innovations, would be a breach of this Agreement.
13. **USE OF NAME AND PUBLICITY:** Each Party agrees that it will not, without the prior written consent of the other party in each instance use in advertising, publicity, or otherwise the name of the other party, or any affiliate, partner, employee or agent of the other party, or any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction, or simulation thereof owned by the other party or its affiliates. Provided, however, that either Party may disclose the existence of a contractual relationship between the Parties for promotional purposes.
14. **FORCE MAJEURE:** Neither Party shall be considered in default in the performance of its obligations hereunder to the extent that such performance is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such Party. In such event, the schedule and compensation for the performance of the Services shall be equitably adjusted. A Party experiencing a force majeure event shall promptly, within five (5) business days, notify the other Party of the onset of the force majeure event and will undertake commercially reasonable efforts to mitigate the consequences for the other Party. If the force majeure event is not resolved within thirty (30)

days or another period of time mutually agreed by the Parties, the non-affected Party may terminate this Agreement without incurring liability for early termination.

- 15. TERMINATION:** The Agreement shall expire upon completion of the Services unless terminated earlier as set forth in this Section or extended by the mutual written agreement of the Parties. To the extent the period of performance of any Scope of Work extends beyond the termination date of this Agreement, then this Agreement shall be deemed to have been extended, for such Scope of Work, until the end of such Scope of Work's period of performance. A Party may terminate this Agreement or any individual Scope of Work: (i) upon written notice of a material breach to the other Party, if the non-terminating party has materially breached any term of this Agreement (or the Scope of Work to be terminated), and failed to cure such breach within thirty (30) days of its receipt of written notice from the terminating party of such breach; or (ii) immediately, if the other Party becomes the subject of a petition in bankruptcy (e.g., USBC Chapter 11 not 13) or any similar proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors. Termination will not relieve Client of the obligation to pay any fees accrued or payable to Resource Innovations prior to the effective date of termination. No termination or expiration of this Agreement shall affect any right or obligation that accrues prior to such termination or expiration.
- 16. ASSIGNMENT:** Except as may be provided in this Agreement, neither Party shall assign, transfer or delegate any of the rights or obligations hereunder without prior written consent of the other Party, provided, however, that either Party may assign this Agreement in whole (but not in part) to any affiliate of such Party or, upon written notice to the other party in the event of a merger, acquisition or consolidation, or a sale of all or substantially all of its assets. Any assignment or transfer of this Agreement made in contravention hereof will be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns.
- 17. SURVIVAL:** Each term and provision of this Agreement that should by its sense and context survive any termination or expiration of this Agreement, shall so survive regardless of the cause and even if resulting from the material breach of either Party to this Agreement.
- 18. SEVERABILITY:** If any provision of this Agreement is illegal or unenforceable, that provision is severed from this Agreement and the other provisions remain in force.
- 19. NO WAIVER:** No waiver of any breach or default under this Agreement shall be considered valid unless in writing, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
- 20. NOTICES:** The Parties shall send all notices in writing and give all consents in writing. A notice or consent is effective when the intended recipient receives it.
- 21. NO THIRD PARTY BENEFICIARIES:** The provisions of this Agreement are solely for the benefit of the parties and not for the benefit of any third parties.
- 22. APPLICABLE LAW:** This Agreement shall be construed in accordance with the laws of the State of California without regard to choice of law principles and each party consents to personal jurisdiction in such state and voluntarily submits to the jurisdiction of the courts of such state in any action or proceeding relating to this Agreement.
- 23. COUNTERPARTS:** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement. This Agreement can be electronically signed, and the parties agree that electronic signatures have the same force and effect as handwritten signatures.
- 24. COMPLETE AGREEMENT:** The signed Agreement, its attachments and incorporated references constitutes the final, exclusive agreement between Client and Resource Innovations on the matters contained in this Agreement. All earlier and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. Any purchase order(s), vendor enrollment forms, or other similar documentation provided by Client shall be for informational purposes only and shall not alter or override the terms of this Agreement. This Agreement shall not be altered except in writing, signed by both parties.