



FoxPointe
Solutions

INFORMATION RISK MANAGEMENT

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April 12, 2022

Inna Reznik, CPA, MBA
City Comptroller
City of Long Beach
One West Chester Street
Long Beach, NY 11561

Dear Inna:

Thank you for the opportunity to submit this engagement letter for the professional consulting services of FoxPointe Solutions, LLC ("FoxPointe"), a division of The Bonadio Group ("Bonadio"). The proposed scope of services, staffing, timing, and fees associated with this engagement are included below.

FoxPointe will provide general information technology consulting services to City of Long Beach ("City of Long Beach or "the Company") by supplying a draft Request for Proposal (RFP) to be used by the City of Long Beach to support its efforts in selecting an outsourced Information Technology Director. The consulting engagement is designed to be flexible to assist Senior Management in meeting their overall information technology goals.

Albany | Batavia | Buffalo | Dallas | East Aurora | NY Metro Area | Rochester | Rutland | Syracuse | Utica

FoxPointe Solutions is a Division of The Bonadio Group

Deliverables

The draft RFP document will be the deliverable. They will be supplied to City of Long Beach Management in electronic format for internal dissemination and implementation.

Overall Scope of Services and Roles and Responsibilities

The services under this engagement letter will be performed in accordance with the *Statement on Standards for Consulting Services* issued by the American Institute of Certified Public Accountants ("AICPA"). Consulting services differ fundamentally from attestation services. In an attest service, the practitioner expresses a conclusion about the reliability of a written assertion that is the responsibility of another party, the asserter. In a consulting service, the practitioner develops the findings, conclusions, and recommendations presented based only on the level of work as determined by the client. The nature and scope of work is determined solely by the agreement between the practitioner and the client. This work is performed by the practitioner only for the use and benefit of the client. Accordingly, our services will not constitute an audit, compilation, review, or attestation service of City of Long Beach's financial statements or any part thereof, as described in the pronouncements on professional standards of the AICPA, Governmental Accounting Standards Board, or the Public Company Accounting Oversight Board, nor do they include an examination of Management's assertions concerning the effectiveness of City of Long Beach's internal control systems, its information technology systems and procedures, or an examination of compliance with laws, regulations, or other matters.

We will provide observations, recommendations, and suggestions based on our observations during the work requested by you. It will be Management's and the business owners' responsibility to provide substantive involvement as part of the project team, determine the level of work desired by the consultant and how to proceed relevant to any recommendations or advice provided, and to maintain an adequate system of internal control and information technology system controls and policies and procedures to assure compliance with laws and regulations. Any statements of compliance are the responsibility of City of Long Beach and the applicable regulatory and enforcement authority. FoxPointe has the responsibility to serve the client's interest by seeking to accomplish the objectives established in this engagement letter, while maintaining the highest degree of integrity and objectivity. This engagement will endeavor to follow and perform our engagement based on the relative and appropriate written risk/threat standards, procedures, and guidelines as they may apply to the scope of services requested.

We will issue a formal report on the results of our consulting services. Our reports will summarize the areas covered and our findings and recommendations. We will discuss significant matters that come to our attention with appropriate Management representatives in draft form before we issue any final report. This will allow Management an opportunity to review these matters in advance and determine whether they wish to engage us to perform extended procedures in response to the identified matters. The results of the consulting efforts will be reported to Management by the City of Long Beach project lead. Additionally, at the request of City of Long Beach, FoxPointe's presentation of our reports or findings to the Board or Audit Committee will be scheduled at a mutually acceptable time and may consist of either on-site or teleconference communications.

The documentation for this engagement is the property of FoxPointe and constitutes confidential information. However, we may be requested to make certain documentation available to regulators pursuant to the authority given to them by law or regulation. If requested, access to such documentation will be provided under the supervision of FoxPointe personnel. Furthermore, upon request, we may provide copies of selected documentation to the regulator. The regulator may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies. We agree to communicate with you on a timely basis any requests by any regulator for access to documentation as part of its inspection process. Any request by City of Long Beach for approval to gain

access to, have made available, reproduce, and/or be supplied with documentation referred to in this paragraph shall not be unreasonably withheld.

Although it is likely that we will have discussions of various information technology matters, it is understood that we may not have been provided all appropriate information to make informed recommendations related to those discussions. You agree that in cases where you desire us to make formal consulting recommendations, outside those in the above scope, you will make that request in writing and identify the request as a "Report". The Report will include a discussion of the scope of the area to which the recommendations relate and the assumptions on which the recommendations were based as well as the results of the work. This engagement will be performed as a point in time engagement, under a separate engagement letter, and is meant to provide reasonable but not absolute assurance and does not make a declaration of assurance for any points not reviewed. Additionally, we will not otherwise verify the data you submit for accuracy or completeness. Rather, we will rely on the accuracy and completeness of the documents and information you provide to us. If, for any reason, we are unable to complete the procedures described above, we will not issue a report as a result of this engagement. Please refer to the 'Outgoing and Out of Scope Consulting' section below for further details.

Electronic Communications

In performing services under this Agreement, FoxPointe and/or City of Long Beach may wish to communicate electronically via facsimile, electronic mail, or similar methods (collectively, "E-mail"). However, the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or otherwise be adversely affected or unsafe to use. Unless you notify us otherwise, we shall regard your acceptance of this Agreement as including your consent to use E-mail. All risks related to your business and connected with the use of E-mail are borne by you and are not our responsibility.

Both parties will carry out procedures to protect the integrity of data. In particular, it is the recipient's responsibility to carry out a virus check on any attachments before launching or otherwise using any documents, whether received by E-mail or on disk or otherwise.

FoxPointe Responsibilities

FoxPointe will perform the services approved by City of Long Beach and deliver our reports to City of Long Beach for its review, any needed remediation, and for its communications to its stakeholders and Management. We will direct, review, supervise, and conduct the day-to-day performance of the services conducted by us. However, we will not perform management functions, make management decisions, or act or give the appearance of acting in a capacity equivalent to a member of City of Long Beach Management or as a City of Long Beach employee.

We may submit electronic reports on the results of our services for each area assessed by us. Our reports may summarize the areas covered and our findings and recommendations.

The services contemplated within the context of this engagement letter include the concepts of risk-based sample testing. Accordingly, these services would not necessarily include all aspects of your internal control system, nor would they include a detailed examination of all transactions. Therefore, they cannot be relied upon to disclose all errors or fraud that may exist. These services would not ordinarily address abuses of management discretion.

~~It is our policy to keep records for seven years. However, we do not keep any of your original records, so we will return those to you upon the completion of the engagement. When records are returned to you, it is your~~

responsibility to retain and protect the records for possible future use, including potential examination by governmental or regulatory agencies.

City of Long Beach Responsibilities

City of Long Beach is responsible for designating a person to be responsible for the services provided by us. This individual would be the liaison with FoxPointe and be the coordinator for all activities and services. This person will work with needed internal management in determining the scope of our activities. The assigned person will be the primary person responsible for evaluating the findings and results arising from those activities. The assigned person will be the principal person responsible for reporting the outcomes of work contemplated, with our support, to Management.

City of Long Beach Management is responsible for establishing and maintaining an effective internal control system. An effective internal control system reduces the likelihood that errors or fraud will occur and remain undetected; however, it does not completely eliminate that possibility. Our work does not guarantee that errors or fraud will not occur and may not detect errors or fraud should they occur. City of Long Beach Management will perform periodic reviews to determine, and shall be solely responsible for determining, when, whether, and how the recommendations suggested by FoxPointe during the course of this engagement are to be implemented.

City of Long Beach will provide reasonable workspace for FoxPointe personnel at all in scope locations and ensure that City of Long Beach personnel are available, on a reasonable basis, to interact with FoxPointe personnel. You will ensure that all information provided to us is accurate and complete in all material respects, contains no material omissions, and is updated on a prompt and continuous basis. You will assume responsibility for obtaining all third-party consents required to enable us access to and use of any third party products necessary to the performance of the services requested. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation of our consulting efforts, (2) additional information that we may request for the purpose of the engagement, and (3) unrestricted access to persons within the organization from whom we determine it necessary to for us to perform our consulting services. You agree to assume all management responsibilities for these services we provide.

City of Long Beach agrees that it will advise FoxPointe in a timely manner of any specific requirements concerning the services to be provided by FoxPointe, including, without limitation, the identification of any reports and filing deadlines for such reports. City of Long Beach agrees that any written reports, schedules, other materials, or documents prepared or provided by FoxPointe are to be used only for the purpose of the above-entitled matter and will not be disclosed, published, or used, in whole or in part, by City of Long Beach for any other purpose without FoxPointe prior written permission except as may be required by law, regulation, or judicial or administrative process, or in accordance with applicable professional standards.

City of Long Beach agrees that FoxPointe shall not be requested or required to undertake any task or function that FoxPointe determines would impair its independence nor will FoxPointe personnel perform any management functions. This engagement will be performed as a point in time engagement and does not make a declaration of assurance for any points not reviewed.

City of Long Beach is solely responsible for ensuring the completeness, correctness, and accuracy of any information it provides to FoxPointe hereunder that FoxPointe may need to perform the services hereunder. City of Long Beach understands and agrees that FoxPointe will rely upon such information in producing any work product or deliverable hereunder and cannot and will not be responsible for work product or deliverables produced hereunder based on any incomplete, incorrect, or inaccurate information provided by City of Long Beach.

Confidential Information

All information provided to FoxPointe by City of Long Beach will be deemed to be "Confidential Information". With respect to all Confidential Information, FoxPointe shall: (1) not provide or make available the Confidential Information in any form to any person other than FoxPointe's or City of Long Beach employees, contractors, agents, and other personnel who have a need to know consistent with the authorized use of such Confidential Information, as may be necessary for FoxPointe to perform the services described in this agreement; (2) not reproduce the Confidential Information except as reasonably necessary for FoxPointe's performance of its obligations pursuant to this agreement; (3) not exploit or use the Confidential Information except as permitted by this agreement; and (4) return or destroy all Confidential Information that is written or in graphic form, and any copies thereof, upon the request of City of Long Beach or upon the termination of this agreement.

In the event that a subpoena or other legal process in any way concerning the Confidential Information is served on FoxPointe, we may notify City of Long Beach upon receipt thereof but if requested by City of Long Beach, shall cooperate with City of Long Beach at City of Long Beach's expense in any legal process to assert that any and all such information is exempt from disclosure. FoxPointe shall exercise reasonable care to prevent the disclosure of Confidential Information, in whole or in part, to any third party. All Confidential Information and any other materials provided by City of Long Beach to FoxPointe shall remain the sole and exclusive property of City of Long Beach. FoxPointe shall have unlimited discretion to retain, discard, or dispose of FoxPointe work files relative to this engagement but will at all times, subject to the retention schedule referenced under "FoxPointe Responsibilities" above, maintain all information and materials provided by City of Long Beach as Confidential Information.

Project Expectations

We understand that this engagement will begin on a mutually acceptable date to be determined and that our documentation is expected to be delivered in electronic format. Performance of work requested will occur onsite at FoxPointe offices. Our ability to complete the initiatives agreed upon depend on certain assumptions such as:

- City of Long Beach staff and appropriate contacts within the organization will actively participate in the project and contribute material knowledge and assistance in completing the required actions as appropriate.
- No testing of any third party asset or system will be performed.
- Use of the RFP will require the City of Long Beach Management to collect and assess responses.
- Initial documentation should be provided to FoxPointe at least one week prior to our kickoff. All interviews and walkthroughs will be completed during the fieldwork.

FoxPointe consultants' inability to access, collect, review, and compare any of the above information will affect our findings and/or our final report, fees, and efforts required.

Project Timing and Schedule

The work will begin on a mutually agreed upon schedule and will be performed at City of Long Beach and FoxPointe's offices as needed. FoxPointe consultants' inability to access, collect, review, and compare any of the above information will affect our findings and/or our final report, fees, and efforts required.

Fees

This will be a time and materials engagement not to exceed 10 hours of consultant time and the maximum fee is set at \$5250.00 unless a documented change order is agreed to in writing by both parties. The fee is based on the

information supplied by City of Long Beach in its communications to FoxPointe prior to our engagement. The fee will be billed monthly as the work progresses.

2022	
<u>Assessment Item</u>	
RFP Drafting	\$5,250.00

All invoices for FoxPointe's fees and expenses for this engagement will be issued in the name of City of Long Beach and it will be the responsibility of City of Long Beach to submit payment to FoxPointe with Net 30-day terms from the invoice date, without setoff. Past due invoices for undisputed charges will be charged compounding late fees unless otherwise stated. No work will occur or be performed by FoxPointe without an executed engagement letter and if the engagement letter is delayed, we will need to agree to a new deliverable timeline. In accordance with FoxPointe/Bonadio firm policies, work may be suspended if City of Long Beach's account becomes 30 calendar days (including weekends and holidays) or more overdue and will not be resumed until City of Long Beach account is paid in full and that suspension will require changes to the deliverable timeline. Either party may elect to cancel this agreement for any cause with 30 days' notice, at which time our engagement will be deemed completed even if deliverables have not been supplied. If FoxPointe or client elects to terminate FoxPointe services for nonpayment or other cause, the engagement will be deemed to have been completed upon written notification of termination, even if FoxPointe has not completed its report or any obligations hereunder. City of Long Beach will be obligated to compensate FoxPointe for all time expended and to reimburse FoxPointe for all out-of-pocket expenditures incurred through the date of any such termination. FoxPointe's fees and expenses are not contingent upon any final (resolution of, delivery of, communication of, etc.) of the above-entitled matter or any matters that arise from FoxPointe's performance of the consulting services.

In the event that the project to be performed by FoxPointe is delayed more than seven (7) days and the delay is reasonably attributable to City of Long Beach (i.e. evidence requests delayed outside original requests, no responses to requests for meetings, delay in responding to FoxPointe inquiries, client requests for delays, etc.) we will advise City of Long Beach of the new deliverable timeline which will require a change notice to be agreed to by both City of Long Beach and FoxPointe. That change notice will include the updated project timing and fee adjustments. If the change notice is not agreed to in writing within seven (7) business days, FoxPointe will deem the project cancelled and will issue a final invoice for our services that will include all time and expenses expended up to that point. If City of Long Beach delays are unavoidable or beyond its reasonable control, FoxPointe will issue a change notice surrounding the extended time to perform and complete the project without an adjustment in fees. If the change notice is not agreed to in writing within seven (7) business days, FoxPointe will deem the project cancelled and will issue a final invoice for our services that will include all time and expenses expended up to that point.

Ongoing and Out of Scope Consulting

Ongoing reasonable consultation with FoxPointe regarding the project such as, questions surrounding the RFP draft, follow up on comments on the draft, reasonable changes to the draft, recommendations for third-party support organizations, or general communication on next steps supporting the draft RFP, will be provided as requested as part of normal communications surrounding the engagement.

If at any time the consultation with FoxPointe requires out of scope work to be performed, such as additional items not covered in the fee (risk assessment, cyber testing, assessing vendor responses, ranking vendors, scoring, vendor selection and implementation project management, etc. would require a separate engagement letter detailing the work to be performed and the fee/costs will be supplied and shall be subject to City of Long Beach's written approval prior to any effort or fee/costs to be incurred by either party.

The engagement and work requested will occur at FoxPointe offices/locations as needed. Any additional locations must be approved by City of Long Beach and FoxPointe prior to performing requested work, and no additional work or costs/fees will be initiated/incurred without written agreement of City of Long Beach and FoxPointe.

FoxPointe offers the following fee schedule for out of scope time and material consulting. Project based pricing may likewise be supplied. All consulting projects efforts, team members to be used, and deliverables will be communicated and agreed to in writing prior to any work being performed. FoxPointe would bill you based on a time and materials basis:

- Security Consultant – \$175/hour
- Senior Security Consultant/Project Manager – \$225/hour
- Managing Consultant – \$275/hour
- Principal – \$325/hour
- EVP/Partner – \$525/hour

Change Notices

City of Long Beach or FoxPointe may request a change in scope at any time. Documented change notices will be supplied if City of Long Beach or FoxPointe identifies changes that materially impact the scope of work. The new scope of work will be communicated and agreed to by both parties prior to starting any work.

Limitation of Liability

FoxPointe makes no representation or warranty regarding either the services to be provided or any deliverables. In no event, unless it has been finally determined that FoxPointe was grossly negligent or acted willfully or fraudulently, shall FoxPointe be liable to the client or any of its officers, directors, employees, or shareholders or to any other third party, whether a claim be in tort, contract, or otherwise for any amount in excess of the total professional fee paid by you to us under this agreement for the particular service to which such claim relates. In no event shall FoxPointe be liable for any special, consequential, indirect, exemplary, punitive, lost profits, or similar damages, even if we have been apprised of the possibility thereof.

Notwithstanding any language to this agreement to the contrary, if any material work performed by FoxPointe is negligently or carelessly performed, then City of Long Beach shall, at its option, refuse to pay for any such negligent product or if payment has already been made, shall receive reimbursement of such payment. Moreover, if any material work performed by FoxPointe is negligently or carelessly performed, City of Long Beach may terminate this agreement at any time.

Indemnification

City of Long Beach agrees to indemnify and hold harmless FoxPointe and its personnel from any and all claims, liabilities, costs, and expenses, including reasonable attorney fees, arising from or relating to the services under this Agreement, except to the extent finally determined to have resulted from the gross negligence, willful misconduct, or fraudulent behavior of FoxPointe relating to such services.

Other Provisions

Neither party shall be liable to the other for any delay or failure to perform any of the services nor obligations set forth in this Agreement due to causes beyond its reasonable control. All terms and conditions of this Agreement that

are intended by their nature to survive termination of this Agreement shall survive termination and remain in full force, including but not limited to the terms and conditions concerning payments, warranties, limitations of liability, indemnities, and resolution of differences. If any provision of this Agreement, including the Limitation of Liability clause, is determined to be invalid under any applicable law, such provision will be applied to the maximum extent permitted by applicable law, and shall automatically be deemed amended in a manner consistent with its objectives to the extent necessary to conform to any limitations required under applicable law. This Agreement will be governed by the laws of the State of New York.

We may use third-party software providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers. We may also, depending on circumstances, use FoxPointe Solutions, LLC personnel or other consultants including those located outside the United States of America, in serving your account and by signing this letter you consent to our selection and use of such personnel, in our discretion.

City of Long Beach's execution of this Agreement constitutes acceptance of the terms and conditions contained herein. No additional or different terms shall become part of or alter this Agreement unless both parties have executed another written agreement that explicitly supersedes, modifies, or controls (in the event of a conflict with) the terms hereof. The terms and conditions contained herein shall supersede and control over any terms or conditions of sale in City of Long Beach's purchase order or similar documents regardless of any statement to the contrary contained therein.

FoxPointe shall, at its own cost and expense, obtain and maintain in full force and effect, with sound and reputable insurers, adequate insurance to cover its obligations under this Agreement, including, as necessary, Comprehensive General Liability, Workers Compensation, Employers Liability, Professional Liability Insurance, Excess Liability, and Umbrella Liability..

Dispute Resolution

In the event of a dispute related in any way to our services, our firm and you agree to discuss the dispute and if necessary, to promptly mediate in a good faith effort to resolve. We will agree on a mediator, but if we cannot, either of us may apply to a court having personal jurisdiction over the parties for appointment of a mediator. We will share the mediator's fees and expenses equally, but otherwise will bear our own attorneys' fees and mediation cost. Participation in such mediation shall be a condition to either of us initiating litigation. In order to allow time for the mediation, any applicable statute of limitations shall be tolled for a period not to exceed 120 days from the date either of us first requests in writing to mediate the dispute. The mediation shall be confidential in all respects, as allowed or required by law, except our final settlement positions at mediation shall be admissible in litigation solely to determine the prevailing party's identity for purposes of the award of attorneys' fees.

In the unlikely event that differences concerning this Agreement or our services provided hereunder should arise that are not resolved by mutual agreement, to facilitate judicial resolution and save time and expense of both parties, FoxPointe and City of Long Beach agree not to demand a trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement. We have the right to withdraw from this engagement if you do not provide us with any information we request in a timely manner, refuse to cooperate with our reasonable requests, or

misrepresent any facts. Our withdrawal will release us from any obligation to complete the scope of work and will constitute completion of our engagement. You agree to compensate us for our time and out-of-pocket expenses through the date of our withdrawal.

Other

All information and materials of any form or description collected by us in the course of our engagement shall constitute our work files and will at all times, during and after completion of our engagement, remain in our exclusive possession. We shall have unlimited discretion to retain, discard, or dispose of our work files but will at all times maintain all information and materials provided by City of Long Beach in strictest confidence. FoxPointe will endeavor to return any original documents; we will provide adequate assurance that documents with non-public information supplied to us by City of Long Beach have been destroyed at the end of our engagement.

You may request that we perform additional services not contemplated by this engagement letter. If this occurs, we will communicate with you regarding the scope of the additional services and the estimated fee. We also may issue a separate engagement letter covering the additional services. In the absence of any other written communication from us documenting such additional services, our services will continue to be governed by the terms of this engagement letter.

Acceptance

If you have any questions regarding the information contained in this engagement letter or on any other matter, please contact me at (585) 249-2779. If this letter correctly expresses your understanding, please sign the enclosed copy where indicated below and return it to Sarah Horton (email to shorton@foxpointesolutions.com). We appreciate the opportunity to serve you and trust that our association will be a long and pleasant one.

Very truly yours,

FOXPOINTE SOLUTIONS, LLC



By:
Carl Cadregari, CISA, CCSFP
Executive Vice President/Partner

Accepted and agreed to:

4/26/2022
Date

[Handwritten Signature]
Authorized Signature

DONNA M. GAYDEN
Printed Name of Signatory