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necessary funds for such payment by the City in each fiscal year during the term of this Agreement. For the purposes of this Section, a fiscal year commences on October 1 of the year and continues through September 30 of the following year. In the event that the City Council of the City fails to appropriate the necessary funds for any fiscal year, then, and in that event, the Agreement will terminate at no additional cost or obligation to the City.

C. DLBA may select the time and place of performance for these services; provided, however, that access to City documents, records and the like, if needed by DLBA, shall be available only during City's normal business hours and provided that milestones for performance, if any, are met.

D. DLBA has requested to receive regular payments. City shall pay DLBA in due course of payments following receipt from DLBA and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the Project. DLBA shall certify on the invoices that DLBA has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by DLBA during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for DLBA's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

E. DLBA represents that DLBA has obtained all necessary information on conditions and circumstances that may affect its performance and has conducted site visits, if necessary.

F. By executing this Agreement, DLBA warrants that DLBA (a) has thoroughly investigated and considered the scope of services to be performed,

1 (b) has carefully considered how the services should be performed, and (c) fully  
2 understands the facilities, difficulties and restrictions attending performance of the  
3 services under this Agreement. If the services involve work upon any site, DLBA  
4 warrants that DLBA has or will investigate the site and is or will be fully acquainted  
5 with the conditions there existing, prior to commencement of services set forth in  
6 this Agreement. Should DLBA discover any latent or unknown conditions that will  
7 materially affect the performance of the services set forth in this Agreement, DLBA  
8 must immediately inform the City of that fact and may not proceed except at DLBA's  
9 risk until written instructions are received from the City.

10 G. DLBA must adopt reasonable methods during the life of the  
11 Agreement to furnish continuous protection to the work, and the equipment,  
12 materials, papers, documents, plans, studies and other components to prevent  
13 losses or damages, and will be responsible for all damages, to persons or property,  
14 until acceptance of the work by the City, except those losses or damages as may  
15 be caused by the City's own negligence.

16 H. CAUTION: DLBA shall not begin work until this Agreement has  
17 been signed by both parties and until DLBA's evidence of insurance has been  
18 delivered to and approved by City.

19 2. TERM. The term of this Agreement shall commence at midnight on  
20 January 1, 2023, and shall terminate at 11:59 p.m. on December 31, 2024, unless sooner  
21 terminated as provided in this Agreement, or unless the services or the Project is  
22 completed sooner. The term may be extended for three (3) additional one-year periods, at  
23 the discretion of City Manager.

24 3. COORDINATION AND ORGANIZATION.

25 A. DLBA shall coordinate its performance with City's  
26 representative, if any, named in Exhibit "B", attached to this Agreement and  
27 incorporated by this reference. DLBA shall advise and inform City's representative  
28 of the work in progress on the Project in sufficient detail so as to assist City's

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Long Beach, CA 90802-4664

1 representative in making presentations and in holding meetings on the Project.

2 B. The parties acknowledge that a substantial inducement to City  
3 for entering this Agreement was and is the reputation and skill of DLBA's key  
4 employee, named in Exhibit "C" attached to this Agreement and incorporated by this  
5 reference. City shall have the right to approve any person proposed by DLBA to  
6 replace that key employee.

7 4. INDEPENDENT CONTRACTOR. In performing its services, DLBA is  
8 and shall act as an independent contractor and not an employee, representative or agent  
9 of City. DLBA shall have control of DLBA's work and the manner in which it is performed.  
10 DLBA shall be free to contract for similar services to be performed for others during this  
11 Agreement; provided, however, that DLBA acts in accordance with Section 9 and Section  
12 11 of this Agreement. DLBA acknowledges and agrees that (a) City will not withhold taxes  
13 of any kind from DLBA's compensation; (b) City will not secure workers' compensation or  
14 pay unemployment insurance to, for or on DLBA's behalf; and (c) City will not provide and  
15 DLBA is not entitled to any of the usual and customary rights, benefits or privileges of City  
16 employees. DLBA expressly warrants that neither DLBA nor any of DLBA's employees or  
17 agents shall represent themselves to be employees or agents of City.

18 5. INSURANCE.

19 A. As a condition precedent to the effectiveness of this  
20 Agreement, DLBA shall procure and maintain, at DLBA's expense for the duration  
21 of this Agreement, from insurance companies that are admitted to write insurance  
22 in California and have ratings of or equivalent to A:V by A.M. Best Company or from  
23 authorized non-admitted insurance companies subject to Section 1763 of the  
24 California Insurance Code and that have ratings of or equivalent to A:VIII by A.M.  
25 Best Company, the following insurance:

26 i. Commercial general liability insurance (equivalent in  
27 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less  
28 than One Million Dollars (\$1,000,000.00) per each occurrence and Two

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Million Dollars (\$2,000,000.00) general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by endorsement (on City's endorsement form or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain no special limitations on the scope of protection given to City, its boards and commissions, and their officials, employees and agents. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

ii. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000.00). This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

iii. Professional liability or errors and omissions insurance in an amount not less than One Million Dollars (\$1,000,000.00) per claim.

iv. Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit per accident.

B. Any self-insurance program, self-insured retention, or deductible must be separately approved in writing by City's Risk Manager or designee and shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

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C. Each insurance policy shall be endorsed to state that coverage shall not be reduced, non-renewed or canceled except after thirty (30) days prior written notice to City, shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by DLBA. DLBA shall notify City in writing within five (5) days after any insurance has been voided by the insurer or cancelled by the insured.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless DLBA guarantees that DLBA will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. DLBA shall require that all subconsultants or contractors that DLBA uses in the performance of these services maintain insurance in compliance with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

F. Prior to the start of performance, DLBA shall deliver to City certificates of insurance and the endorsements for approval as to sufficiency and form. In addition, DLBA shall, within thirty (30) days prior to expiration of the insurance, furnish to City certificates of insurance and endorsements evidencing renewal of the insurance. City reserves the right to require complete certified copies of all policies of DLBA and DLBA's subconsultants and contractors, at any time. DLBA shall make available to City's Risk Manager or designee all books, records and other information relating to this insurance, during normal business hours.

G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may require that

1 DLBA, DLBA's subconsultants and contractors change the amount, scope or types  
2 of coverages required in this Section if, in his or her sole opinion, the amount, scope  
3 or types of coverages are not adequate.

4 H. The procuring or existence of insurance shall not be construed  
5 or deemed as a limitation on liability relating to DLBA's performance or as full  
6 performance of or compliance with the indemnification provisions of this Agreement.

7 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
8 contemplates the personal services of DLBA and DLBA's employees, and the parties  
9 acknowledge that a substantial inducement to City for entering this Agreement was and is  
10 the professional reputation and competence of DLBA and DLBA's employees. DLBA shall  
11 not assign its rights or delegate its duties under this Agreement, or any interest in this  
12 Agreement, or any portion of it, without the prior approval of City, except that DLBA may  
13 with the prior approval of the City Manager of City, assign any moneys due or to become  
14 due DLBA under this Agreement. Any attempted assignment or delegation shall be void,  
15 and any assignee or delegate shall acquire no right or interest by reason of an attempted  
16 assignment or delegation. Furthermore, DLBA shall not subcontract any portion of its  
17 performance without the prior approval of the City Manager or designee, or substitute an  
18 approved subconsultant or contractor without approval prior to the substitution. Nothing  
19 stated in this Section shall prevent DLBA from employing as many employees as DLBA  
20 deems necessary for performance of this Agreement.

21 7. CONFLICT OF INTEREST. DLBA, by executing this Agreement,  
22 certifies that, at the time DLBA executes this Agreement and for its duration, DLBA does  
23 not and will not perform services for any other client which would create a conflict, whether  
24 monetary or otherwise, as between the interests of City and the interests of that other client.  
25 DLBA further certifies that DLBA does not now have and shall not acquire any interest,  
26 direct or indirect, in the area covered by this Agreement or any other source of income,  
27 interest in real property or investment which would be affected in any manner or degree by  
28 the performance of DLBA's services hereunder. And, DLBA shall obtain similar

1 certifications from DLBA's employees, subconsultants and contractors.

2 8. MATERIALS. DLBA shall furnish all labor and supervision, supplies,  
3 materials, tools, machinery, equipment, appliances, transportation and services necessary  
4 to or used in the performance of DLBA's obligations under this Agreement.

5 9. OWNERSHIP OF DATA. All materials, information and data  
6 prepared, developed or assembled by DLBA or furnished to DLBA in connection with this  
7 Agreement, including but not limited to documents, estimates, calculations, studies, maps,  
8 graphs, charts, computer disks, computer source documentation, samples, models,  
9 reports, summaries, drawings, designs, notes, plans, information, material and  
10 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
11 in a format identified by City, and City shall have the unrestricted right to use and disclose  
12 the Data in any manner and for any purpose without payment of further compensation to  
13 DLBA. Copies of Data may be retained by DLBA but DLBA warrants that Data shall not  
14 be made available to any person or entity for use without the prior approval of City. This  
15 warranty shall survive termination of this Agreement for five (5) years.

16 10. TERMINATION. Either party shall have the right to terminate this  
17 Agreement for any reason or no reason at any time by giving thirty (30) calendar days prior  
18 written notice to the other party. In the event of termination under this Section, City shall  
19 pay DLBA for services satisfactorily performed and costs incurred up to the effective date  
20 of termination for which DLBA has not been previously paid. The procedures for payment  
21 in Section 1.B. with regard to invoices shall apply. On the effective date of termination,  
22 DLBA shall deliver to City all Data developed or accumulated in the performance of this  
23 Agreement, whether in draft or final form, or in process. And, DLBA acknowledges and  
24 agrees that City's obligation to make final payment is conditioned on DLBA's delivery of  
25 the Data to City.

26 11. CONFIDENTIALITY. DLBA shall keep all Data confidential and shall  
27 not disclose the Data or use the Data directly or indirectly, other than in the course of  
28 performing its services, during the term of this Agreement and for five (5) years following



1 expiration or termination of this Agreement. In addition, DLBA shall keep confidential all  
2 information, whether written, oral or visual, obtained by any means whatsoever in the  
3 course of performing its services for the same period of time. DLBA shall not disclose any  
4 or all of the Data to any third party, or use it for DLBA's own benefit or the benefit of others  
5 except for the purpose of this Agreement.

6 12. BREACH OF CONFIDENTIALITY. DLBA shall not be liable for a  
7 breach of confidentiality with respect to Data that: (a) DLBA demonstrates DLBA knew prior  
8 to the time City disclosed it; or (b) is or becomes publicly available without breach of this  
9 Agreement by DLBA; or (c) a third party who has a right to disclose does so to DLBA  
10 without restrictions on further disclosure; or (d) must be disclosed pursuant to subpoena or  
11 court order.

12 13. ADDITIONAL SERVICES.

13 A. Any costs incurred by City due to DLBA's failure to meet the  
14 standards required by the scope of work or DLBA's failure to perform fully the tasks  
15 described in the scope of work which, in either case, causes City to request that  
16 DLBA perform again all or part of the Scope of Work shall be at the sole cost of  
17 DLBA and City shall not pay any additional compensation to DLBA for its re-  
18 performance.

19 B. If the Project involves construction and the scope of work  
20 requires DLBA to prepare plans and specifications with an estimate of the cost of  
21 construction, then DLBA may be required to modify the plans and specifications,  
22 any construction documents relating to the plans and specifications, and DLBA's  
23 estimate, at no cost to City, when the lowest bid for construction received by City  
24 exceeds by more than ten percent (10%) DLBA's estimate. This modification shall  
25 be submitted in a timely fashion to allow City to receive new bids within four (4)  
26 months after the date on which the original plans and specifications were submitted  
27 by DLBA.

28 14. RETENTION OF FUNDS. DLBA authorizes the City to deduct from

1 any amount payable to DLBA (whether or not arising out of this Agreement) any amounts  
2 the payment of which may be in dispute or that are necessary to compensate the City for  
3 any losses, costs, liabilities or damages suffered by the City, and all amounts for which the  
4 City may be liable to third parties, by reason of DLBA's acts or omissions in performing or  
5 failing to perform DLBA's obligations under this Agreement. In the event that any claim is  
6 made by a third party, the amount or validity of which is disputed by DLBA, or any  
7 indebtedness exists that appears to be the basis for a claim of lien, the City may withhold  
8 from any payment due, without liability for interest because of the withholding, an amount  
9 sufficient to cover the claim. The failure of the City to exercise the right to deduct or to  
10 withhold will not, however, affect the obligations of DLBA to insure, indemnify and protect  
11 the City as elsewhere provided in this Agreement.

12 15. AMENDMENT. This Agreement, including all Exhibits, shall not be  
13 amended, nor any provision or breach waived, except in writing signed by the parties which  
14 expressly refers to this Agreement.

15 16. LAW. This Agreement shall be construed in accordance with the laws  
16 of the State of California, and the venue for any legal actions brought by any party with  
17 respect to this Agreement shall be the County of Los Angeles, State of California for state  
18 actions and the Central District of California for any federal actions. DLBA shall cause all  
19 work performed in connection with construction of the Project to be performed in  
20 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,  
21 county or municipal governments or agencies (including, without limitation, all applicable  
22 federal and state labor standards, including the prevailing wage provisions of sections 1770  
23 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any  
24 fire marshal, health officer, building inspector, or other officer of every governmental  
25 agency now having or hereafter acquiring jurisdiction.

26 17. WORK DAY. DLBA shall comply with Sections 1810 through 1815 of  
27 the California Labor Code regarding hours of work. DLBA shall forfeit, as a penalty to City,  
28 the sum of Twenty-Five Dollars (\$25) for each worker employed by DLBA or any

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1 subcontractor for each calendar day such worker is required or permitted to work more  
2 than eight (8) hours unless that worker receives compensation in accordance with Section  
3 1815.

4           18.    LABOR COMPLIANCE. DLBA agrees that all public work (as defined  
5 in California Labor Code section 1720) performed in relation to this Agreement (the "Public  
6 Work"), if any, shall comply with the requirements of California Labor Code section 1770  
7 *et seq.* If there is a difference between the general prevailing wage rates determined by  
8 the Director of the Department of Industrial Relations and the applicable minimum wage  
9 rates determined by the Secretary of Labor (federal) for similar classifications of work,  
10 DLBA and its Subconsultant of every tier shall pay their workers not less than the higher  
11 wage rate. DLBA AND consultants are required to pay at least the Californian minimum  
12 wage for the basic hourly rate in all cases where the published prevailing wage rate is  
13 below the California minimum wage. Any and all employer payments required by the  
14 prevailing wage determinations must also be paid. If the California minimum wage is  
15 increased in the future to an amount above that shown in the prevailing wage  
16 determination, the basic hourly rate in that determination automatically increases to the  
17 new minimum wage.

18           In all bid specifications, contracts and subcontracts for any Public Work,  
19 DLBA shall obtain the general prevailing rate of per diem wages and the general prevailing  
20 rate for holiday an overtime work in this locality for each craft, classification of type of  
21 worker needed to perform the Public Work, and shall include such rates in the bid  
22 specifications, contract or subcontract, and post them at each job site. Such bid  
23 specifications, contract or subcontract must contain the following provision: "It shall be  
24 mandatory for the Contractor to pay not less than the said prevailing rate of wages to all  
25 workers employed by the Contractor in the execution of this contract. DLBA expressly  
26 agrees to comply with the penalty provisions of California Labor Code section 1775 and  
27 the payroll record keeping requirements of California Labor Code section 1776." Copies  
28 of the prevailing rate of per diem wages are on file at the Labor Compliance Office of City

1 Hall, which shall be made available to any interested party on request.

2 19. ENTIRE AGREEMENT. This Agreement, including all Exhibits,  
3 constitutes the entire understanding between the parties and supersedes all other  
4 agreements, oral or written, with respect to the subject matter in this Agreement.

5 20. INDEMNITY.

6 A. DLBA shall indemnify, protect and hold harmless City, its  
7 Boards, Commissions, and their officials, employees and agents ("Indemnified  
8 Parties"), from and against any and all liability, claims, demands, damage, loss,  
9 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
10 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or  
11 in connection with (1) DLBA's breach or failure to comply with any of its obligations  
12 contained in this Agreement, including any obligations arising from the Project's  
13 compliance with or failure to comply with applicable laws, including all applicable  
14 federal and state labor requirements including, without limitation, the requirements  
15 of California Labor Code section 1770 *et seq.* or (2) negligent or willful acts, errors,  
16 omissions or misrepresentations committed by DLBA, its officers, employees,  
17 agents, subcontractors, or anyone under DLBA's control, in the performance of work  
18 or services under this Agreement (collectively "Claims" or individually "Claim").

19 B. In addition to DLBA's duty to indemnify, DLBA shall have a  
20 separate and wholly independent duty to defend Indemnified Parties at DLBA's  
21 expense by legal counsel approved by City, from and against all Claims, and shall  
22 continue this defense until the Claims are resolved, whether by settlement, judgment  
23 or otherwise. No finding or judgment of negligence, fault, breach, or the like on the  
24 part of DLBA shall be required for the duty to defend to arise. City shall notify DLBA  
25 of any Claim, shall tender the defense of the Claim to DLBA, and shall assist DLBA,  
26 as may be reasonably requested, in the defense.

27 C. If a court of competent jurisdiction determines that a Claim was  
28 caused by the sole negligence or willful misconduct of Indemnified Parties, DLBA's

1 costs of defense and indemnity shall be (1) reimbursed in full if the court determines  
2 sole negligence by the Indemnified Parties, or (2) reduced by the percentage of  
3 willful misconduct attributed by the court to the Indemnified Parties.

4 D. The provisions of this Section shall survive the expiration or  
5 termination of this Agreement.

6 21. AMBIGUITY. In the event of any conflict or ambiguity between this  
7 Agreement and any Exhibit, the provisions of this Agreement shall govern.

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

16 23. NONDISCRIMINATION.

17 A. In connection with performance of this Agreement and subject  
18 to applicable rules and regulations, DLBA shall not discriminate against any  
19 employee or applicant for employment because of race, religion, national origin,  
20 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or  
21 disability. DLBA shall ensure that applicants are employed, and that employees are  
22 treated during their employment, without regard to these bases. These actions shall  
23 include, but not be limited to, the following: employment, upgrading, demotion or  
24 transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or  
25 other forms of compensation; and selection for training, including apprenticeship.

26 B. It is the policy of City to encourage the participation of  
27 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
28 procurement process, and DLBA agrees to use its best efforts to carry out this policy

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1 In its use of subconsultants and contractors to the fullest extent consistent with the  
2 efficient performance of this Agreement. DLBA may rely on written representations  
3 by subconsultants and contractors regarding their status. DLBA shall report to City  
4 in May and in December or, in the case of short-term agreements, prior to invoicing  
5 for final payment, the names of all subconsultants and contractors hired by DLBA  
6 for this Project and information on whether or not they are a Disadvantaged, Minority  
7 or Women-Owned Business Enterprise, as defined in Section 8 of the Small  
8 Business Act (15 U.S.C. Sec. 637).

9 24. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
10 accordance with the provisions of the Ordinance, this Agreement is subject to the  
11 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
12 Long Beach Municipal Code, as amended from time to time.

13 A. During the performance of this Agreement, DLBA certifies and  
14 represents that DLBA will comply with the EBO. DLBA agrees to post the following  
15 statement in conspicuous places at its place of business available to employees and  
16 applicants for employment:

17 "During the performance of a contract with the City of Long Beach,  
18 DLBA will provide equal benefits to employees with spouses and its  
19 employees with domestic partners. Additional information about the City of  
20 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
21 Long Beach Business Services Division at 562-570-6200."

22 B. The failure of DLBA to comply with the EBO will be deemed to  
23 be a material breach of the Agreement by the City.

24 C. If DLBA fails to comply with the EBO, the City may cancel,  
25 terminate or suspend the Agreement, in whole or in part, and monies due or to  
26 become due under the Agreement may be retained by the City. The City may also  
27 pursue any and all other remedies at law or in equity for any breach.

28 D. Failure to comply with the EBO may be used as evidence

1 against DLBA in actions taken pursuant to the provisions of Long Beach Municipal  
2 Code 2.93 et seq., Contractor Responsibility.

3 E. If the City determines that DLBA has set up or used its  
4 contracting entity for the purpose of evading the intent of the EBO, the City may  
5 terminate the Agreement on behalf of the City. Violation of this provision may be  
6 used as evidence against DLBA in actions taken pursuant to the provisions of Long  
7 Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

8 25. NOTICES. Any notice or approval required by this Agreement shall  
9 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
10 postage prepaid, addressed to DLBA at the address first stated above, and to City at 411  
11 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy to  
12 the City Engineer at the same address. Notice of change of address shall be given in the  
13 same manner as stated for other notices. Notice shall be deemed given on the date  
14 deposited in the mail or on the date personal delivery is made, whichever occurs first.

15 26. COPYRIGHTS AND PATENT RIGHTS.

16 A. DLBA shall place the following copyright protection on all Data:  
17 © City of Long Beach, California \_\_\_\_, inserting the appropriate year.

18 B. City reserves the exclusive right to seek and obtain a patent or  
19 copyright registration on any Data or other result arising from DLBA's performance  
20 of this Agreement. By executing this Agreement, DLBA assigns any ownership  
21 interest DLBA may have in the Data to City.

22 C. DLBA warrants that the Data does not violate or infringe any  
23 patent, copyright, trade secret or other proprietary right of any other party. DLBA  
24 agrees to and shall protect, defend, indemnify and hold City, its officials and  
25 employees harmless from any and all claims, demands, damages, loss, liability,  
26 causes of action, costs or expenses (including reasonable attorney's fees) whether  
27 or not reduced to judgment, arising from any breach or alleged breach of this  
28 warranty.

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27. COVENANT AGAINST CONTINGENT FEES. DLBA warrants that DLBA has not employed or retained any entity or person to solicit or obtain this Agreement and that DLBA has not paid or agreed to pay any entity or person any fee, commission or other monies based on or from the award of this Agreement. If DLBA breaches this warranty, City shall have the right to terminate this Agreement immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments due under this Agreement or otherwise recover the full amount of the fee, commission or other monies.

28. WAIVER. The acceptance of any services or the payment of any money by City shall not operate as a waiver of any provision of this Agreement or of any right to damages or indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach of this Agreement.

29. CONTINUATION. Termination or expiration of this Agreement shall not affect rights or liabilities of the parties which accrued pursuant to the Sections titled "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", "Certified Payroll Records", "Indemnity", and "Audit" prior to termination or expiration of this Agreement.

30. TAX REPORTING. As required by federal and state law, City is obligated to and will report the payment of compensation to DLBA on Form 1099-Misc. DLBA shall be solely responsible for payment of all federal and state taxes resulting from payments under this Agreement. DLBA shall submit DLBA's Employer Identification Number (EIN), or DLBA's Social Security Number if DLBA does not have an EIN, in writing to City's Accounts Payable, Department of Financial Management. DLBA acknowledges and agrees that City has no obligation to pay DLBA until DLBA provides one of these numbers.

31. ADVERTISING. DLBA shall not use the name of City, its officials or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City Manager or designee.



OFFICE OF THE CITY ATTORNEY  
DAWN MCINTOSH, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802-4664

1 32. AUDIT. City shall have the right at all reasonable times during the  
2 term of this Agreement and for a period of five (5) years after termination or expiration of  
3 this Agreement to examine, audit, inspect, review, extract information from and copy all  
4 books, records, accounts and other documents of DLBA relating to this Agreement.

5 33. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
6 designed to or entered for the purpose of creating any benefit or right for any person or  
7 entity of any kind that is not a party to this Agreement.

8 IN WITNESS WHEREOF, the parties have caused this document to be duly  
9 executed with all formalities required by law as of the date first stated above.

10  
11  
12 March 10, 2023

DOWNTOWN LONG BEACH ALLIANCE, a  
California nonprofit corporation  
By [Signature]  
Name Debra L. Green  
Title Exec. Dir. DLBA Board Dir.

13  
14 March 13, 2023

By [Signature]  
Name Austin McTayer  
Title President & CEO

"DLBA"

15  
16  
17  
18  
19 April 21, 2023

CITY OF LONG BEACH, a municipal  
corporation  
By [Signature]  
City Manager

"City"

This Agreement is approved as to form on April 13, 2023.

20  
21  
22  
23  
24 **EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.**

DAWN MCINTOSH, City Attorney  
By [Signature]  
Deputy

# EXHIBIT "A"

## SCOPE OF WORK WITH RATES

## **EXHIBIT A**

### **DOWNTOWN LONG BEACH ALLIANCE AND DEPARTMENT OF PUBLIC WORKS MEMORANDUM OF UNDERSTANDING**

**JANUARY 1, 2023 – DECEMBER 31, 2024**

#### **Downtown Transit Corridor Maintenance First Street between Pacific Avenue and Long Beach Boulevard**

##### **I. Background**

In Fiscal Year 2013, the Department of Public Works and Downtown Long Beach Alliance (DLBA) entered into a Memorandum of Understanding for DLBA to provide ongoing maintenance in specific transit related areas. Based on the success during last agreement term, both parties agree to continue these services.

##### **II. Services**

Based on discussions between the DLBA and Public Works, Attachment A was developed to outline services to be provided by the DLBA.

##### **III. Budget**

The DLBA will fully fund their downtown maintenance operations. Public Works will provide \$291,000 annually to the DLBA with Proposition A funds as well as Refuse funds to offset the scope of work (Attachment A). Prior written approval by the Director of Public Works must be obtained before additional funds can be made available.

# EXHIBIT A

## DOWNTOWN LONG BEACH ALLIANCE (DLBA) AND DEPARTMENT OF PUBLIC WORKS MEMORANDUM OF UNDERSTANDING

### Attachment A

**JANUARY 1, 2023 – DECEMBER 31, 2023**

Project Name: Downtown Long Beach Maintenance

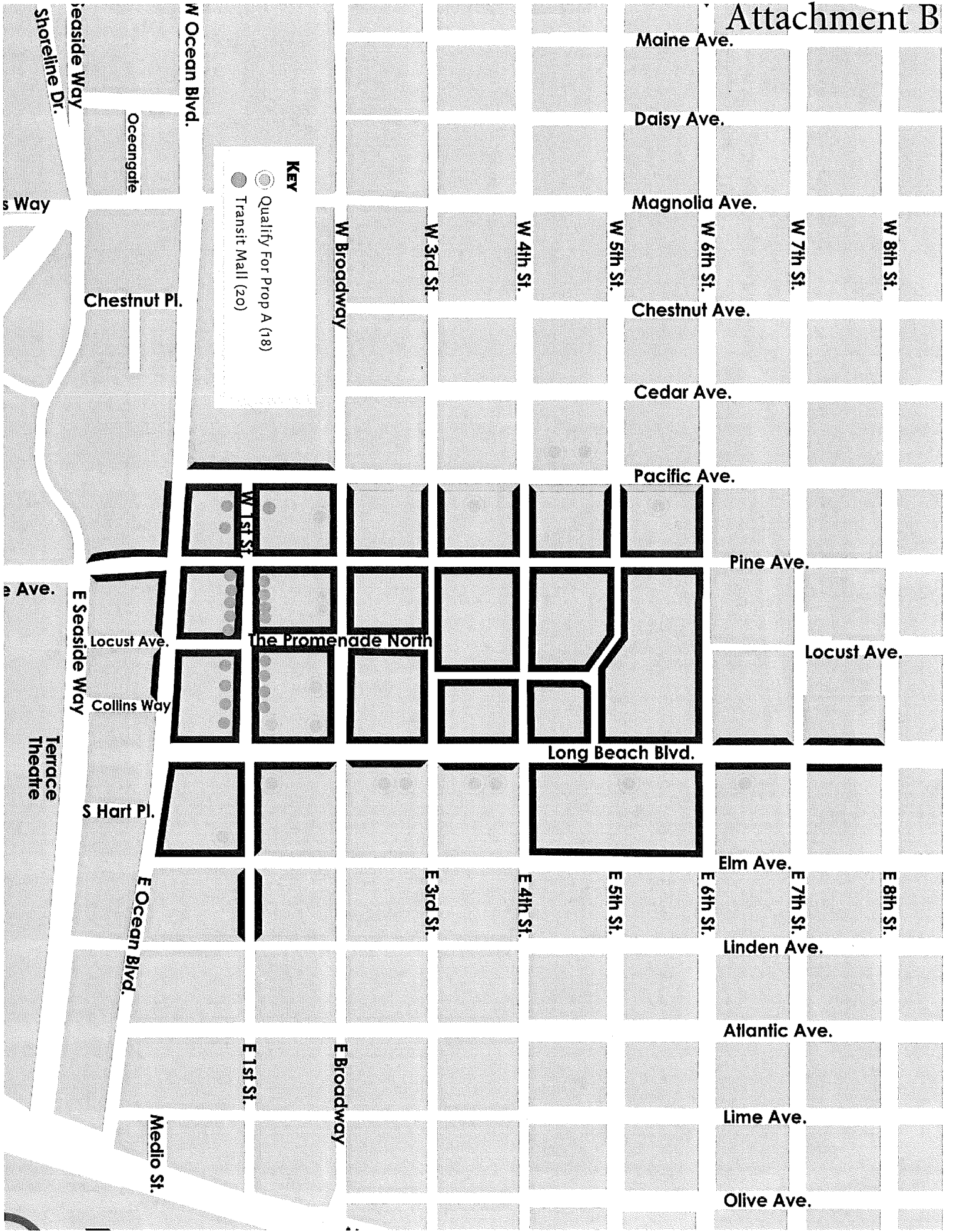
Project Location: First Street between Pacific Avenue and Long Beach Boulevard and trash receptacles throughout the Downtown Area (See Attachment B & C for maps)

**Project Annual Cost: \$291,000**

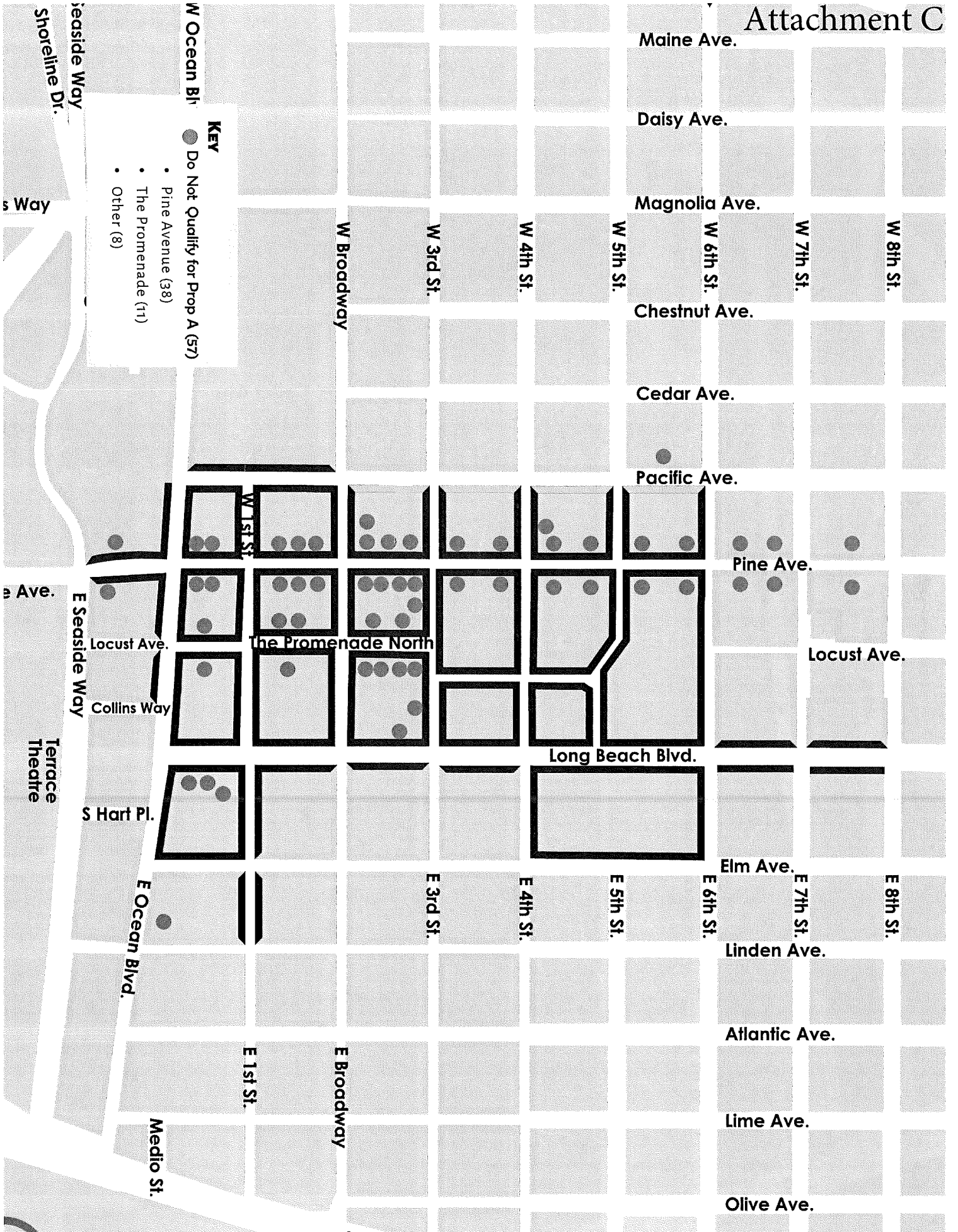
Project Scope: The following scope of work will be performed by DLBA

<b>Proposition A Eligible Expenses:</b>	<b>\$225,000</b>
I. Trash Receptacles – Daily:	\$130,000
• Includes 20 trash receptacles within the transit mall as well as 34 Prop A eligible trash receptacles located in the Downtown Area (see Attachment B for map)	
• Empty all trash receptacles daily	
• Emptying of receptacles 7 days per week between 7:00 am – 3:30 pm	
II. Pressure Washing – Weekly:	\$55,000
• Clean bus stops and adjacent sidewalks	
• Tuesdays & Thursdays at 6:00am	
III. Landscape Maintenance in Transit Mall– Weekly:	\$17,000
• Remove weeds and apply pre-emergent weed control	
• Remove declining or dead plants	
• Prune and shape shrubs	
• Haul away debris	
• Install organic mulch	
• Replace annual plants (up to 150, 1-gallon plants and 12 flats of sedum)	
• Twice per week – Monday & Friday mornings	
IV. Litter Removal – Daily:	\$23,000
• Remove litter from sidewalks between 7:00pm – 12:00 am	
• Thursday/Friday/Saturday sweeping night pass	
<b>Refuse Fund Reimbursement:</b>	<b>\$66,000</b>
V. Trash Receptacles – Daily:	\$66,000
• Empty 57 trash receptacles daily throughout the downtown area (see Attachment C for map) in non-Prop A eligible locations.	
• Emptying of receptacles 7 days per week between 7:00 am – 3:30 pm	

# Attachment B



# Attachment C



# EXHIBIT "B"

City's Contact

Jonathon Bolin, Budget Services Officer  
[Jonathon.Bolin@LongBeach.Gov](mailto:Jonathon.Bolin@LongBeach.Gov)

562/570-6350

# EXHIBIT "C"

Contractor's Key Employee

Juan Torres, DLBA Operations Manager

[juant@dlba.org](mailto:juant@dlba.org)

(562) 485-3129