

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Lana Beach, CA 90802-4664

AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of April 2, 2018 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on March 13, 2018, by and between TOOLE DESIGN GROUP, LLC, a Maryland limited liability company ("Consultant"), with a place of business at 8484 Georgia Avenue, Suite 800, Silver Spring, Maryland 20910, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires specialized services requiring unique skills to be performed in connection with the preparation of a Systemic Safety Analysis Report Program and a Vision Zero Action Plan ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed One Hundred Ninety-Nine Thousand Eight Hundred Seventeen Dollars (\$199,817), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one

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

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

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

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

1 F. CAUTION: Consultant shall not begin work until this  
2 Agreement has been signed by both parties and until Consultant's evidence of  
3 insurance has been delivered to and approved by the City.

4 2. TERM. The term of this Agreement shall commence at midnight on  
5 April 23, 2018, and shall terminate at 11:59 p.m. on April 22, 2019, unless sooner  
6 terminated as provided in this Agreement, or unless the services or the Project is  
7 completed sooner.

8 3. COORDINATION AND ORGANIZATION.

9 A. Consultant shall coordinate its performance with City's  
10 representative, if any, named in Exhibit "C", attached to this Agreement and  
11 incorporated by this reference. Consultant shall advise and inform City's  
12 representative of the work in progress on the Project in sufficient detail so as to  
13 assist City's representative in making presentations and in holding meetings on the  
14 Project. City shall furnish to Consultant information or materials, if any, described  
15 in Exhibit "D" attached to this Agreement and incorporated by this reference, and  
16 shall perform any other tasks described in the Exhibit.

17 B. The parties acknowledge that a substantial inducement to City  
18 for entering this Agreement was and is the reputation and skill of Consultant's key  
19 employee, named in Exhibit "E" attached to this Agreement and incorporated by this  
20 reference. City shall have the right to approve any person proposed by Consultant  
21 to replace that key employee.

22 4. INDEPENDENT CONTRACTOR. In performing its services,  
23 Consultant is and shall act as an independent contractor and not an employee,  
24 representative, or agent of City. Consultant shall have control of Consultant's work and  
25 the manner in which it is performed. Consultant shall be free to contract for similar services  
26 to be performed for others during this Agreement provided, however, that Consultant acts  
27 in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges  
28 and agrees that a) City will not withhold taxes of any kind from Consultant's compensation,

1 b) City will not secure workers' compensation or pay unemployment insurance to, for or on  
2 Consultant's behalf, and c) City will not provide and Consultant is not entitled to any of the  
3 usual and customary rights, benefits or privileges of City employees. Consultant expressly  
4 warrants that neither Consultant nor any of Consultant's employees or agents shall  
5 represent themselves to be employees or agents of City.

6 5. INSURANCE.

7 A. As a condition precedent to the effectiveness of this  
8 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
9 duration of this Agreement, from insurance companies that are admitted to write  
10 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
11 Company or from authorized non-admitted insurance companies subject to Section  
12 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII  
13 by A.M. Best Company the following insurance:

14 i. Commercial general liability insurance (equivalent in  
15 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less  
16 than \$1,000,000 per each occurrence and \$2,000,000 general aggregate.  
17 This coverage shall include but not be limited to broad form contractual  
18 liability, cross liability, independent contractors liability, and products and  
19 completed operations liability. The City, its boards and commissions, and  
20 their officials, employees and agents shall be named as additional insureds  
21 by endorsement (on City's endorsement form or on an endorsement  
22 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both  
23 CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37  
24 07 04), and this insurance shall contain no special limitations on the scope of  
25 protection given to the City, its boards and commissions, and their officials,  
26 employees and agents. This policy shall be endorsed to state that the insurer  
27 waives its right of subrogation against City, its boards and commissions, and  
28 their officials, employees and agents.

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ii. Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. 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 \$1,000,000 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 \$500,000 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.

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 Consultant. Consultant shall notify the 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 Consultant guarantees that Consultant will provide to the City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years,

1 commencing on the date this Agreement expires or is terminated.

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

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

15 G. Any modification or waiver of these insurance requirements  
16 shall only be made with the approval of City's Risk Manager or designee. Not more  
17 frequently than once a year, the City's Risk Manager or designee may require that  
18 Consultant, Consultant's subconsultants and contractors change the amount, scope  
19 or types of coverages required in this Section if, in his or her sole opinion, the  
20 amount, scope, or types of coverages are not adequate.

21 H. The procuring or existence of insurance shall not be construed  
22 or deemed as a limitation on liability relating to Consultant's performance or as full  
23 performance of or compliance with the indemnification provisions of this Agreement.

24 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
25 contemplates the personal services of Consultant and Consultant's employees, and the  
26 parties acknowledge that a substantial inducement to City for entering this Agreement was  
27 and is the professional reputation and competence of Consultant and Consultant's  
28 employees. Consultant shall not assign its rights or delegate its duties under this

1 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval  
2 of City, except that Consultant may with the prior approval of the City Manager of City,  
3 assign any moneys due or to become due the Consultant under this Agreement. Any  
4 attempted assignment or delegation shall be void, and any assignee or delegate shall  
5 acquire no right or interest by reason of an attempted assignment or delegation.  
6 Furthermore, Consultant shall not subcontract any portion of its performance without the  
7 prior approval of the City Manager or designee, or substitute an approved subconsultant  
8 or contractor without approval prior to the substitution. Nothing stated in this Section shall  
9 prevent Consultant from employing as many employees as Consultant deems necessary  
10 for performance of this Agreement.

11 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,  
12 certifies that, at the time Consultant executes this Agreement and for its duration,  
13 Consultant does not and will not perform services for any other client which would create  
14 a conflict, whether monetary or otherwise, as between the interests of City and the interests  
15 of that other client. Consultant further certifies that Consultant does not now have and shall  
16 not acquire any interest, direct or indirect, in the area covered by this Agreement or any  
17 other source of income, interest in real property or investment which would be affected in  
18 any manner or degree by the performance of Consultant's services hereunder. And,  
19 Consultant shall obtain similar certifications from Consultant's employees, subconsultants  
20 and contractors.

21 8. MATERIALS. Consultant shall furnish all labor and supervision,  
22 supplies, materials, tools, machinery, equipment, appliances, transportation, and services  
23 necessary to or used in the performance of Consultant's obligations under this Agreement,  
24 except as stated in Exhibit "D".

25 9. OWNERSHIP OF DATA. All materials, information and data  
26 prepared, developed, or assembled by Consultant or furnished to Consultant in connection  
27 with this Agreement, including but not limited to documents, estimates, calculations,  
28 studies, maps, graphs, charts, computer disks, computer source documentation, samples,

1 models, reports, summaries, drawings, designs, notes, plans, information, material, and  
2 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
3 and City shall have the unrestricted right to use and disclose the Data in any manner and  
4 for any purpose without payment of further compensation to Consultant. Copies of Data  
5 may be retained by Consultant but Consultant warrants that Data shall not be made  
6 available to any person or entity for use without the prior approval of City. This warranty  
7 shall survive termination of this Agreement for five (5) years.

8           10. TERMINATION. Either party shall have the right to terminate this  
9 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days  
10 prior written notice to the other party. In the event of termination under this Section, City  
11 shall pay Consultant for services satisfactorily performed and costs incurred up to the  
12 effective date of termination for which Consultant has not been previously paid. The  
13 procedures for payment in Section 1.B. with regard to invoices shall apply. On the effective  
14 date of termination, Consultant shall deliver to City all Data developed or accumulated in  
15 the performance of this Agreement, whether in draft or final form, or in process. And,  
16 Consultant acknowledges and agrees that City's obligation to make final payment is  
17 conditioned on Consultant's delivery of the Data to the City.

18           11. CONFIDENTIALITY. Consultant shall keep the Data confidential and  
19 shall not disclose the Data or use the Data directly or indirectly other than in the course of  
20 performing its services, during the term of this Agreement and for five (5) years following  
21 expiration or termination of this Agreement. In addition, Consultant shall keep confidential  
22 all information, whether written, oral, or visual, obtained by any means whatsoever in the  
23 course of performing its services for the same period of time. Consultant shall not disclose  
24 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit  
25 of others except for the purpose of this Agreement.

26           12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
27 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
28 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available



1 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
2 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
3 disclosed pursuant to subpoena or court order.

4 13. ADDITIONAL COSTS AND REDESIGN.

5 A. Any costs incurred by the City due to Consultant's failure to  
6 meet the standards required by the scope of work or Consultant's failure to perform  
7 fully the tasks described in the scope of work which, in either case, causes the City  
8 to request that Consultant perform again all or part of the Scope of Work shall be at  
9 the sole cost of Consultant and City shall not pay any additional compensation to  
10 Consultant for its re-performance.

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

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

23 15. LAW. This Agreement shall be governed by and construed pursuant  
24 to the laws of the State of California (except those provisions of California law pertaining  
25 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and  
26 regulations of and obtain all permits, licenses, and certificates required by all federal, state  
27 and local governmental authorities.

28 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,

1 constitutes the entire understanding between the parties and supersedes all other  
2 agreements, oral or written, with respect to the subject matter in this Agreement.

3 17. INDEMNITY.

4 A. Consultant shall indemnify, protect and hold harmless City, its  
5 Boards, Commissions, and their officials, employees and agents ("Indemnified  
6 Parties"), from and against any and all liability, claims, demands, damage, loss,  
7 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
8 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or  
9 in connection with (1) Consultant's breach or failure to comply with any of its  
10 obligations contained in this Agreement, or (2) negligent or willful acts, errors,  
11 omissions or misrepresentations committed by Consultant, its officers, employees,  
12 agents, subcontractors, or anyone under Consultant's control, in the performance  
13 of work or services under this Agreement (collectively "Claims" or individually  
14 "Claim").

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

24 C. If a court of competent jurisdiction determines that a Claim was  
25 caused by the sole negligence or willful misconduct of Indemnified Parties,  
26 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the  
27 court determines sole negligence by the Indemnified Parties, or (2) reduced by the  
28 percentage of willful misconduct attributed by the court to the Indemnified Parties.

1 D. To the extent this Agreement is a professional service  
2 agreement for work or services performed by a design professional (architect,  
3 landscape architect, professional engineer or professional land surveyor), the  
4 provisions of this Section regarding Consultant's duty to defend and indemnify shall  
5 be limited as provided in California Civil Code Section 2782.8, and shall apply only  
6 to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or  
7 willful misconduct of the Consultant.

8 E. The provisions of this Section shall survive the expiration or  
9 termination of this Agreement.

10 18. AMBIGUITY. In the event of any conflict or ambiguity between this  
11 Agreement and any Exhibit, the provisions of this Agreement shall govern.

12 19. NONDISCRIMINATION.

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

22 B. It is the policy of City to encourage the participation of  
23 Disadvantaged, Minority and Women-owned Business Enterprises in City's  
24 procurement process, and Consultant agrees to use its best efforts to carry out this  
25 policy in its use of subconsultants and contractors to the fullest extent consistent  
26 with the efficient performance of this Agreement. Consultant may rely on written  
27 representations by subconsultants and contractors regarding their status.  
28 Consultant shall report to City in May and in December or, in the case of short-term

1 agreements, prior to invoicing for final payment, the names of all subconsultants  
2 and contractors hired by Consultant for this Project and information on whether or  
3 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as  
4 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

5 20. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
6 accordance with the provisions of the Ordinance, this Agreement is subject to the  
7 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the  
8 Long Beach Municipal Code, as amended from time to time.

9 A. During the performance of this Agreement, the Consultant  
10 certifies and represents that the Consultant will comply with the EBO. The  
11 Consultant agrees to post the following statement in conspicuous places at its place  
12 of business available to employees and applicants for employment:

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

18 B. The failure of the Consultant to comply with the EBO will be  
19 deemed to be a material breach of the Agreement by the City.

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

24 D. Failure to comply with the EBO may be used as evidence  
25 against the Consultant in actions taken pursuant to the provisions of Long Beach  
26 Municipal Code 2.93 et seq., Contractor Responsibility.

27 E. If the City determines that the Consultant has set up or used its  
28 contracting entity for the purpose of evading the intent of the EBO, the City may

1 terminate the Agreement on behalf of the City. Violation of this provision may be  
2 used as evidence against the Consultant in actions taken pursuant to the provisions  
3 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

4 21. NOTICES. Any notice or approval required by this Agreement shall  
5 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
6 postage prepaid, addressed to Consultant at the address first stated above, and to the City  
7 at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager with a  
8 copy to the City Engineer at the same address. Notice of change of address shall be given  
9 in the same manner as stated for other notices. Notice shall be deemed given on the date  
10 deposited in the mail or on the date personal delivery is made, whichever occurs first.

11 22. COPYRIGHTS AND PATENT RIGHTS.

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

14 B. City reserves the exclusive right to seek and obtain a patent or  
15 copyright registration on any Data or other result arising from Consultant's  
16 performance of this Agreement. By executing this Agreement, Consultant assigns  
17 any ownership interest Consultant may have in the Data to the City.

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

25 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
26 that Consultant has not employed or retained any entity or person to solicit or obtain this  
27 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,  
28 commission, or other monies based on or from the award of this Agreement. If Consultant

1 breaches this warranty, City shall have the right to terminate this Agreement immediately  
2 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments  
3 due under this Agreement or otherwise recover the full amount of the fee, commission, or  
4 other monies.

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

10 25. CONTINUATION. Termination or expiration of this Agreement shall  
11 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
12 17, 19, 22, and 28 prior to termination or expiration of this Agreement.

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

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

24 28. AUDIT. City shall have the right at all reasonable times during the  
25 term of this Agreement and for a period of five (5) years after termination or expiration of  
26 this Agreement to examine, audit, inspect, review, extract information from, and copy all  
27 books, records, accounts, and other documents of Consultant relating to this Agreement.

28 29. THIRD PARTY BENEFICIARY. This Agreement is not intended or

1 designed to or entered for the purpose of creating any benefit or right for any person or  
2 entity of any kind that is not a party to this Agreement.

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

5 TOOLE DESIGN GROUP, LLC, a Maryland  
6 limited liability company

7 April 18, 2018

By [Signature]  
8 Name Jennifer L. Toole  
9 Title President

10 \_\_\_\_\_, 2018

By \_\_\_\_\_  
11 Name \_\_\_\_\_  
12 Title \_\_\_\_\_

13 "Consultant"

14 CITY OF LONG BEACH, a municipal  
15 corporation

16 5/18/18, 2018

By [Signature]  
17 City Manager  
18 Assistant City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

19 "City"

20 This Agreement is approved as to form on May 14, 2018.

21 CHARLES PARKIN, City Attorney

22 By [Signature]  
23 Deputy

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Lona Beach, CA 90802-4664

28

# EXHIBIT “A”

## Scope of Work



# Toole Design Group SSARP and Vision Zero Action Plan Proposal

## General Project Assumptions:

1. The project duration will be up to 12 months. As part of Task 1 Toole Design Group will develop a detailed project schedule.
2. Additional services beyond this Scope of Work will be considered extra work and will need to be negotiated prior to the Toole Design Group proceeding with that work.
3. The City will be responsible for coordinating the distribution of deliverables for review and comment and collecting review comments, resolving conflicting comments, and submitting one set of consolidated non-conflicting comments to the Toole Design Group for each submittal.
4. The costs shown in Exhibit B assumes two (2) rounds of comment/revision for each deliverable. Additional rounds of comment/revision will be considered extra work, and based on project health, may need to be negotiated prior to the Toole Design Group proceeding with that work.
5. All deliverables will be provided in formats requested by the City.

## Task 1: Project Kick-off Meeting and Project Management

Task 1 includes a project kick-off meeting between the Toole Design Group and the City's Management Team. During this meeting, we will:

- Discuss project objectives, key outcomes and the sequencing between the SSARP and Vision Zero Action Plan
- Discuss the Advisory Committee role and when in the project they should be engaged, and make recommendations for key stakeholders who should be involved
- Discuss progress towards obtaining key data for the project
- Communicate our QA/QC procedures
- Discuss the overall schedule/key milestones for the project
- Communicate lessons learned related to data analysis and action plan development from our work with other Vision Zero cities
- Further the Toole Design Group's understanding of the socio-political context in which Long Beach's Vision Zero Action Plan will be developed

We propose bi-weekly check-ins and meetings throughout the project to enable communication about progress and foster close collaboration between City staff and the Toole Design Group.

Following the notice to proceed the Toole Design Group will develop a project management plan (PMP) with a more detailed schedule. The PMP will outline the process for project delivery and decision-making and ensure continuity in the event of major staff changes. An outreach plan (see Task 12) will be closely coordinated with the PMP. The PMP will consist of a list (or matrix) of key milestones, critical path items, stakeholder role/responsibility, deliverables, and associated deadlines. This information will also be visually depicted on Gantt chart.

### *Task 1 Deliverables:*

- In-Person Project kick-off meeting to be attended by Toole Design Group PM and up to three (3) other members of the project team.
- Bi-weekly (as needed) telephone check-ins with City Project Manager/Team
- Monthly written progress reports
- Project Management Plan

# Toole Design Group SSARP and Vision Zero Action Plan Proposal

## *Task 1 Assumptions:*

1. The CITY PM will convene the key staff from various City departments that will have a stake in the Action Plan outcomes, communication, and implementation, including Public Works, Development Services, Economic Development, Police, Fire, Health and Human Services, Parks and Recreation, and a representative from the Mayor's Office.

## **Task 2: Data Collection and Consolidation**

Verifying data accuracy and completeness at the outset of the project provides a strong starting point for the entire effort. The aim of this task is to improve the accuracy of the collision location information, and merge the relevant data layers into a common database to support the subsequent analyses. The Toole Design Group will conduct the systemic safety analysis in a way that also supports the data needs for the Vision Zero Action Plan. The Toole Design Group will use the most recent five (5) years of collision data from the Transportation Injury Mapping System (TIMS), and work with the City's Police Department to assess validity of the TIMS data. The Toole Design Group will also work with City of Long Beach staff to identify additional relevant GIS datasets, such as those related to roadway and network characteristics, that may be available for the analysis.

## *Task 2 Deliverables:*

- Data Request Memo from the Toole Design Group to the City
- Consolidated GIS data file(s) Brief memo describing state of available data

## **Task 3: Systemic Safety Analysis**

Once the crash dataset has been created, the Toole Design Group will perform a high-level analysis of its variables to check for data reliability and validity, as well as to give a picture of crash trends as related to factors such as age, gender, and injury severity. In addition, the Toole Design Group will:

- Compare victim demographic distributions to city demographics to assess whether any particular racial, income, or age groups who are disproportionately affected by traffic crash risks.
- Examine factors contributing to crashes, such as pre-crash maneuvers, direction of travel, and behavioral factors to identify common crash types and crash trends that need to be addressed through countermeasures.
- Analyze all crashes and severe crashes (i.e. at least one party was killed or severely injured, or KSIs) to understand how various patterns differ by severity. The analysis of KSIs will heavily inform actions to support the City's goal of eliminating KSI crashes by 2026.
- Consider pedestrian, bicycle, and motor vehicle-only crashes separately to respond to the unique characteristics of each of these types of crashes.

After classifying crash types across the City, the Toole Design Group will correlate these crash types to roadway type and intersection control to identify key risk factors for each mode, consistent with the Caltrans SSARP Guidelines and the AASHTO Highway Safety Manual's Roadway Safety Management Process. Findings regarding the major crash risk factors will be used to identify road segments and intersections with a high potential for collisions. The Toole Design Group will also work with the City to identify a "communities of concern" GIS layer such as the CalEnvironScreen that can be examined alongside the crash locations, for potential inclusion in the prioritization process.

## **Toole Design Group SSARP and Vision Zero Action Plan Proposal**

We will use the findings from this analysis to identify top “collision profiles” within the City, which can then be used to guide prioritization and investment. For example, if we find that pedestrians are disproportionately at risk along higher-speed, multi-lane arterials, we will identify those scenarios as a certain collision profile. We will further refine the profiles based on the data as possible, e.g., if the main risk along higher-speed, multi-lane arterials occurs at uncontrolled locations, we will focus the collision profile to those location types to help guide countermeasure selection.

The Toole Design Group will produce a technical memorandum based on this analysis summarizing high-level trends in the data, major causes and types of traffic crashes and KSI crashes, locations with historically high crash frequencies on maps, and how these findings relate to systemic risk. The Toole Design Group will work with the City’s graphic design firm to create diagrams and infographics intended to communicate these findings to the Vision Zero Advisory Committee members and ultimately the public.

### *Task 3 Deliverables:*

- Draft technical memo summarizing the systemic safety analysis, including collision profiles.

### **Task 4: Select Countermeasures**

Prior to initiating Task 4, the Toole Design Group will work with the City to establish a Countermeasure Task Force (CMTF) that will review proposed countermeasures for identified collision profiles and other recurring crash trends, crash patterns, and risk factors identified through the data analysis. The Toole Design Group will work with the CMTF to develop a “toolbox” of systemic low-cost countermeasures, larger capital improvement countermeasures, and programmatic countermeasures that can provide options for treating identified problems in a variety of ways, allowing for flexibility depending on context. Due to the nature of the SSARP, this effort we will focus on low-cost systemic countermeasures that can be cost-effectively applied throughout the City of Long Beach to address existing safety concerns and areas where potential risk factors suggest the need to proactively address future crashes.

However, there may be some safety concerns that would be better addressed with larger capital projects (e.g., converting intersection control types, reconfiguring intersections, implementing road diets, constructing separated bicycle facilities, and other similar-scale infrastructure investments) rather than low-cost systemic treatments. Depending on the results of the data analysis and input from the CMTF, countermeasure recommendations may include future investments in these types of projects to address specific types of crashes or combinations of crashes.

For engineering-based improvements, the Toole Design Group will identify the tradeoffs that may be associated with each countermeasure and take into account and identify any potential transportation system impacts associated with implementing a countermeasure (e.g., identify if a countermeasure is expected to notably increase travel time for transit). These potential impacts will be considered and documented as part of the countermeasure summary.

When countermeasures have been identified for the top collision profiles, we will develop cut-sheets that illustrate and evaluate potential investment strategies for their implementation. The information on the cut-sheets will be easily transferable to grant applications such as HSIP, and demonstrate how these countermeasures can work to address various safety issues in a variety of contexts, aiming for solutions that can be replicated over time.

Some crash types and trends (e.g., impairment) may need to be addressed through a combination of education and enforcement. The Toole Design Group will take into consideration community context, along with the data, when making recommendations about programmatic countermeasures or changes related to education, enforcement, and emergency

## Toole Design Group SSARP and Vision Zero Action Plan Proposal

services. The Toole Design Group will advise the City on community acceptability of various enforcement strategies, based on the Toole Design Group experience working in other Vision Zero cities,

### *Task 4 Deliverables:*

- Meeting with Countermeasure Task Force (up to 4 meetings)
- Draft Technical Memorandum Documenting Countermeasures (Projects and Programs)
- Cut sheets for top collision profiles (up to 6)

### *Task 4 Assumptions*

- The City will convene the Countermeasure Task Force, which would be a more targeted group than the Advisory Committee consisting of technical staff with knowledge and expertise in transportation planning and engineering, enforcement and education, but there could potentially be some overlap between the two groups. The City will also coordinate logistics for CMTF meetings.
- Countermeasure Task Force meetings will be conducted by teleconference unless there is opportunity to couple meetings with other project meetings.

### **Task 5: Prioritization**

Based on the crash history and risk-based analysis developed as part of Task 3 and countermeasures identified in Task 4, the Toole Design Group will work with the City of Long Beach to develop a process to prioritize a list of potential safety improvements across the City. The prioritization process will consider the risk factors present at a locations and prior crash history (based on the frequency and severity of collisions), and the estimated benefit/cost ratios for the various countermeasures at identified locations. Additionally, the Toole Design Group will work with the City to integrate considerations related to the ease of project implementation, potential funding for the countermeasure package, the ability to align safety improvements with other programmed improvements or upcoming maintenance work, and the ability to implement the improvement in a timely manner. Additional prioritization factors may also be identified in consultation with the City (e.g., geographic equity, sociodemographic equity). The goal of prioritization will be to provide a list identifying the projects most likely to be competitive in obtaining HSIP funds. This will help prioritize the City's grant application efforts for future HSIP cycles.

### *Task 5 Deliverables:*

- Draft Technical Memorandum Documenting the Prioritization Process and Outcomes (including priority project lists)

### **Task 6: Systemic Safety Analysis Report**

The Toole Design Group will prepare a draft of the City of Long Beach SSAR report for City staff review. The draft will meet the SSARP guidelines and reporting requirements, and will be signed and stamped by our licensed California civil PE. The report will integrate content from the revised technical memorandums prepared and reviewed in tasks 3 through 5 and include technical appendices to help preserve the institutional knowledge of the project, as well as to facilitate HSIP applications. In particular, these appendices will include guidance for the City regarding how to use the analytical results from Task 3. While documentation will meet SSARP Guidelines, the findings will be presented in a manner that is easily referenced and understood through the use of maps, figures, and graphics so that it can be pulled into the Vision Zero Action Plan as appropriate.

# Toole Design Group SSARP and Vision Zero Action Plan Proposal

## Task 6 Deliverables:

- Draft SSAR (incorporating feedback received on Technical Memorandums submitted in Tasks 3 - 5)
- Final SSAR

## Task 7: Develop Best Practices Analysis

Task 7 provides the opportunity to learn from the work done by other Vision Zero cities in the U.S., to understand what has worked well and how those strategies might benefit Long Beach. This task will consist mainly of reviewing other cities' plans and progress reports to understand:

- Each community's approach to Vision Zero
- What results they have achieved thus far
- Measures of effectiveness being used to measure change

The Toole Design Group will review and update information it has collected from North American cities that have published Vision Zero plans, reports and other information about their efforts. This best practice analysis will include reaching out to the Toole Design Group's colleagues, networks and former clients to learn of any new data, success stories, or failures they may be willing to share – all of which can help to inform the City of Long Beach's Vision Zero efforts. Analysis findings will be summarized in a best practices memorandum.

### *Task 7 Deliverables:*

- Draft best practices analysis memo.
- Final best practices analysis memo based on feedback from City staff.

## Task 8: Conduct Policy Gap Analysis

The Toole Design Group will conduct a review of the City's existing policies pertaining to street design, traffic operations, programming street improvements and funding as well as traffic-related laws and ordinances and how these are enforced. The Toole Design Group will also work with the City to identify practices that may or may not be based on official policies and help to determine which of these practices should be endorsed at the policy level or discontinued. Our team will also review applicable policy at the regional, state, and federal levels that inform or impact the City of Long Beach's policies.

Based on the best practices analysis of jurisdictions recommended by the City of Long Beach and successful Vision Zero efforts the Toole Design Group is aware of, the City's existing policies will be reviewed to determine any key gaps related to improving transportation safety within the City. The Toole Design Group document those key gaps in a technical memorandum to be used to inform the goals, policies, and programs for the Vision Zero Action Plan, and identify what policies and practices the City should consider adding, changing, eliminating, or pursuing further.

### *Task 8 Deliverables:*

- Draft and Final Policy Gap Analysis

### Task 8 Assumptions:

- The Toole Design Group will review the policies and practices of up to eight (8) jurisdictions.
- The CITY will provide all relevant plans, policies and program documentation to the TOOLE DESIGN GROUP.

# Toole Design Group SSARP and Vision Zero Action Plan Proposal

## Task 9: Develop Goals and Actions

Central to the Vision Zero Action Plan will be a focused framework of goals and actions that all stakeholders understand and endorse, and are measurable over time. It is also important to identify which partners will help lead and support these actions, and to engage these partners throughout the process. The Toole Design Group will draw from experience developing similar frameworks for Denver, Portland, and Boston to help the City of Long Beach establish a clear path to achieving Vision Zero and measuring progress over time. Key components of this process include the development of a vision statement that represents the City's goals and partnerships, and a set of 2-year and 5-year goals with guiding strategies, and clear actions that can be tracked over time with performance measures (to be developed in Task 10). These components will be informed by the data analysis and the identification of crash types and risk factors, as well as findings from the public outreach, input from the Advisory Committee, a scan of best practices, and the policy gap analysis.

Local communities' Vision Zero efforts, and the specific actions they identify, often hinge on enabling legislation at the state-level and policies and practices of other agencies that control roadways within the community. The Toole Design Group will apply its familiarity with the transportation-related regulatory framework of California and the policies and practices of Caltrans and policy gap analysis findings and work with the City to identify and make recommendations for a legislative agenda critical to achieving Vision Zero.

### *Task 9 Deliverables:*

- Draft goals, strategies, and actions, including recommended state legislative agenda and local ordinance changes
- Updated draft goals, strategies, and actions based on Advisory Committee feedback

## Task 10: Develop Performance Measures

Building on the goals and actions from Task 9, as well as continued conversations with key stakeholders, the Toole Design Group will work with City staff to develop a performance measure framework to evaluate short-term and long-term safety performance within the City of Long Beach. The performance measure framework will allow consistent and objective tracking of safety and safety-related actions within the City, and will strive toward a balance of accountability and flexibility. We will also create key performance indicators to track and assess progress towards the goals and objectives established in Task 9 for the Vision Zero Action Plan.

The performance measure framework will establish the data required for tracking, the current source of that data, and key partners for each measure. Long-term performance indicators will also be identified that highlight where new data collected by the City related to crash characteristics or evaluations could provide more rigorous measurement of transportation safety performance across the City's transportation system. These near-term and long-term performance measures, their methodologies, and required data inputs and sources will be documented in a technical memorandum.

### *Task 10 Deliverables:*

- Draft and Final Technical Memorandum Documenting Recommended Performance Measures

## Task 11: Draft Vision Zero Plan & Advisory Committee

### Advisory Committee

While using a data-driven approach to identify risk factors is foundational to Vision Zero, deciding how best to address the risk factors and who is ultimately accountable for identified actions is equally essential to eliminating traffic deaths and

# Toole Design Group SSARP and Vision Zero Action Plan Proposal

serious injuries. The Advisory Committee will be an important forum for coordination and discussion among City departments and external partners that have a role in implementing the Vision Zero action plan. The Toole Design Group will facilitate informed discussions with the Advisory Committee, building on lessons learned recent experiences leading and participating in such groups in Denver, Portland, Alexandria, and Eugene.

## Vision Zero Action Plan Public Review Draft

Along with the research, data, and approved goals, policies and actions, the Advisory Committee's input will shape the draft Vision Zero Action Plan. The Plan will include a clear vision statement, goal areas, policies, 2-yr and 5-yr goals and actions in Engineering, Education, Enforcement, and Encouragement. Ancillary to the goals and actions will be an evaluation plan that defines funding and communication strategies, and performance measures used to track progress. The TOOLE DESIGN GROUP will work with the City to prepare visually-captivating draft and final plans that are easy for the public to digest.

### *Task 11 Deliverables:*

- Draft Vision Zero Action Plan
- Advisory Committee Management and Facilitation (4 meetings)
- Materials for Advisory Committee meetings, including agendas, summaries of Toole Design Group Team research and analysis, and meeting notes

### *Task 11 Assumptions:*

- The Toole Design Group will advise the City on selecting Advisory Committee members.
- The Toole Design Group will discuss with the City the most critical milestones at which the Advisory Committee should be engaged as part of the Project Kick-off.
- There will be three drafts of the Vision Zero Action Plan:
  - Public review draft
  - Draft final (see Task 13)
  - Final (see Task 13)

## **Task 12: Public Outreach and Engagement**

Through our experience working on Vision Zero initiatives, we have learned how crucial to success it is to have inclusive public outreach and engagement and we're glad to see (in the RFP) and hear (during the Pre-Proposal Meeting) that the City of Long Beach recognizes this. Our team proposes a creative, multi-pronged outreach strategy that departs slightly from what is presented in the RFP, but we feel will broaden input while efficiently expending resources. We look forward to discussing these proposed strategies with the City and determining what will work best given the project budget.

Community Outreach Plan: We will initiate this task by preparing a detailed outreach plan that includes proposed schedule, stakeholder list, meeting/event outlines and topics, and assigned responsibilities.

Listening Meetings: We have found that having focused listening meetings not only provides the project team with useful input for action plan development, but also facilitates understanding among stakeholders, and ultimately creates a constituency that is more supportive and likely to advocate for Vision Zero principles. To this end our team will design and facilitate four to five listening meetings over two consecutive days. The goal of these listening meetings is to receive plan input that is topically focused and representative of the City's diverse population, and perhaps most importantly,

## Toole Design Group SSARP and Vision Zero Action Plan Proposal

hear from people whose lives have been impacted by traffic deaths and injuries about their personal experiences, the issues they feel are important, and their ideas for change. For example, one meeting may focus on safety surrounding Long Beach schools or special considerations relating to Long Beach business districts. Up to 15 or 20 participants will be identified as special invitees. Another meeting will focus on City leaders. Other meetings will aim to engage representatives of community groups who can provide a diverse perspective. We will work closely with the Advisory Committee and City staff to identify invitees and ensure that representatives from underserved communities and vulnerable user groups, as well as those from the business community and the City, are included in the appropriate groups. The City will handle invitations, arrange meeting space, and may also need to provide staff who speak other languages.

**Pop-up Interactions:** Four (4) pop-ups would occur at existing community events and contain creative elements to elicit feedback on the draft Vision Zero Action Plan from the community. Note: All four pop-ups are the same, held in different locations for geographic coverage. For example, Toole Design Group assumes one (1) pop-up in each of the four quadrants of the City. There could be “question walls” where people can post their answers to questions such as “What are the top 3 ways you think the safety of Long Beach streets can be improved?” Maps and other engaging exercises would be used to gather more specific feedback on the draft Vision Zero Action Plan. These events would also be opportunities for people to take, or be directed to, the electronic survey and crowdsourcing map. The feedback received from these interactions would be creatively summarized and incorporated into the Vision Zero Action Plan and potentially messaging developed to publicize the city’s Vision Zero efforts.

**Roving Visual Display:** Toole Design Group will create a roving public art display which moves to each of the four quadrants of the City, showcasing Vision Zero project data in an intriguing and perhaps interactive way, and shows people where to go online to give feedback. The display could be moved every one to two weeks to different locations such as key unsafe intersections, prominent locations where there are high volumes of people, etc. We will leverage community and/or the Advisory Committee to identify locations and assist with permissions, materials, etc. Large format graphics, colored markers showing crash rates at major intersections, artwork on sidewalks, are all examples of how this idea could manifest.

### **Online Engagement:**

During the initial stages of the project when the City is gathering input from stakeholders and the public, the Toole Design Group will use an online crowdsourcing map as a means for receiving city-wide input on problematic locations and issues related to traffic safety. Once a draft Vision Zero Action Plan has been developed, the Toole Design Group will develop an electronic survey that steps respondents through the various elements of the Vision Zero Action Plan and asks for specific input that would inform the refinement of the Plan. Toole Design Group will also adapt findings from previous tasks and the draft Vision Zero Action Plan to produce easy to understand, image-driven information for the City’s webpage. Lastly, the Toole Design Group will provide social media content (Twitter, Facebook) for the City to post on its accounts during key milestones.

### *Task 12 Deliverables:*

- Detailed outreach plan
- Crowdsourcing map
- Electronic survey
- Materials for webpage (up to 4 updates through duration of project)
- Social media content (for up to 4 key milestones)



## **Toole Design Group SSARP and Vision Zero Action Plan Proposal**

- Design, facilitate and summarize listening meetings
- Roving display (1 display moved to up to 4 locations)
- Pop-up events (up to 4)

### **Task 12 Assumptions:**

- The Toole Design Group will not provide translation of materials.
- The City will provide staff support at all events.

### **Task 13: Final Vision Zero Plan and Presentations**

Using feedback received from the public and Advisory Committee on the vision, goals, actions, and performance measures the Toole Design Group will compile a draft Final Vision Zero Action Plan report that is image-rich and easy to follow. We will co-present the Draft Final Vision Zero Action Plan to the City Council and Commissions, and revise the Draft Plan into a Final Plan based on their requested amendments.

### **Task 13 Deliverables:**

- Draft Final Vision Zero Action Plan
- Presentation to City Council and Commissions
- Final Vision Zero Action Plan

# EXHIBIT “B”

## Rates or Charges

*SSARP/Vision Zero Action Plan Budget*  
*Prepared by Toole Design Group*

Project Tasks	<i>Task Fee Subtotals</i>	
<b>1 Project Kick-off and Management</b>		
	Subtotal Cost	\$12,296.70
<b>2 Data Collection and Consolidation</b>		
	Subtotal Cost	\$8,608.32
<b>3 Systemic Safety Analysis</b>		
	Subtotal Cost	\$41,422.62
<b>4 Select Countermeasures</b>		
	Subtotal Cost	\$20,422.02
<b>5 Prioritization</b>		
	Subtotal Cost	\$9,893.40
<b>6 Systemic Safety Analysis Report</b>		
	Subtotal Cost	\$10,070.10
<b>7 Develop Best Practices Analysis</b>		
	Subtotal Cost	\$3,858.72
<b>8 Conduct Policy Gap Analysis</b>		
	Subtotal Cost	\$4,096.67
<b>9 Develop Goals and Actions</b>		
	Subtotal Cost	\$8,241.80
<b>10 Develop Performance Measures</b>		
	Subtotal Cost	\$6,370.60
<b>11 Draft VZ Plan &amp; Advisory Committee</b>		
	Subtotal Cost	\$15,865.08
<b>12 Public Outreach and Engagement</b>		
	Subtotal Cost	\$45,018.50
<b>13 Final VZ Plan and Presentations</b>		
	Subtotal Cost	\$9,655.78
<b>Reimbursable Expenses</b>	<b>\$</b>	<b>3,997</b>
<b>Not to Exceed Cost</b>	<b>\$</b>	<b>199,817</b>

EXHIBIT C

CITY'S REPRESENTATIVE  
ERIC WIDSTRAND,  
CITY TRAFFIC ENGINEER  
562/570-6537

# EXHIBIT “D”

Materials/Information Furnished: None

# EXHIBIT “E”

Consultant’s Key Employee:

Michael Hintze, Planning Director

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