

OFFICE OF THE CITY ATTORNEY
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AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of July 7, 2021 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on July 6, 2021, by and between SWAIN CONSULTANTS, a sole proprietorship ("Consultant"), with a place of business at 388 E. Ocean Blvd., Suite 1110, Long Beach, California 90802, 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 as-needed professional engineering services ("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, in an amount not to exceed One Million Dollars (\$1,000,000), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the

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

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

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

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

28 F. CAUTION: Consultant shall not begin work until this

1 Agreement has been signed by both parties and until Consultant's evidence of
2 insurance has been delivered to and approved by the City.

3 2. TERM. The term of this Agreement shall commence at midnight on
4 August 1, 2021, and shall terminate at 11:59 p.m. on July 31, 2023, unless sooner
5 terminated as provided in this Agreement, or unless the services or the Project is
6 completed sooner. The term may be extended for three (3) additional one-year periods, at
7 the discretion of the City Manager.

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, Contractor shall procure and maintain at Contractor's expense for the
9 duration of this Agreement from an insurance company that is admitted to write
10 insurance in the State of California or that has a rating of or equivalent to an A:VIII
11 by A.M. Best and Company the following insurance:

12 i. Commercial general liability insurance equivalent in
13 coverage scope to ISO CG 00 01 10 93 naming the City of Long Beach and
14 its officials, employees, and agents as additional insureds on a form
15 equivalent in coverage scope to ISO CG 20 26 11 85 from and against claims,
16 demands, causes of action, expenses, costs, or liability for injury to or death
17 of persons, or damage to or loss of property arising out activities performed
18 by or on behalf of the Contractor in an amount not less than One Million
19 Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US
20 \$2,000,000) in general aggregate. Coverage must not exclude the perils of
21 explosion, collapse, and underground (XCU). If boats greater in length than
22 26 feet are used, marine liability or protection and indemnity insurance must
23 be included with additional insured coverage.

24 ii. Workers' compensation coverage as required by the
25 Labor Code of the State of California and Employer's liability insurance with
26 minimum limits of One Million Dollars (US \$1,000,000) per accident or
27 occupational illness. The policy shall be endorsed with a waiver of the
28 insurer's right of subrogation against the City of Long Beach and its officials,

1 employees, and agents. If there's work on, in, or under the water, this must
2 include Jones' Act and Longshore and Harbor Workers' Act coverage, as
3 appropriate.

4 iii. Only if use of a vehicle is part of the scope of services,
5 commercial automobile liability insurance equivalent in coverage scope to
6 ISO CA 00 01 06 92 in an amount not less than Five Hundred Thousand
7 Dollars (US \$500,000) combined single limit (CSL) covering Symbol 1 ("any
8 auto").

9 iv. Professional liability or errors and omissions liability
10 insurance in an amount not less than Two Million Dollars (\$2,000,000) per
11 claim and in aggregate covering the engineering, traffic engineering,
12 planning, or other professional services provided pursuant to this Agreement.

13 v. Umbrella liability (in excess of all coverages from above
14 except (b)) in an amount not less than Four Million Dollars (\$4,000,000) per
15 claim covering the services provided pursuant to this Agreement.

16 vi. If Contract involves the removal, transportation and/or
17 disposal of hazardous materials, Pollution/Environmental Impairment Liability
18 Coverage shall be required as follows: Limits of Insurance: \$2,000,000 Per
19 Occurrence/Per Claim and \$4,000,000 Per Occurrence/Per Claim – Policy
20 Aggregate; Claims Made coverage must be maintained for a period of at least
21 three (3) years after final payment under the Contract; and The City of Long
22 Beach and its officials, employees, and agent shall be added as an additional
23 insured, and the policy shall contain no insured vs. insured exclusion. The
24 pollution/environmental impairment liability insurance shall include coverage
25 for, without limitation:

- 26 (a) Bodily injury and property damage to third parties;
- 27 (b) Natural resource damages;
- 28 (c) Pollution clean-up costs, including restoration or

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replacement costs;

(d) Defense costs;

(e) Fines, penalties, and punitive damages;

(f) Transportation of waste material by or on behalf of the Covered Party;

(g) Disposal liability for pollution conditions on, at, under, or emanating from any disposal site, location or facility used by or on behalf of the Contractor for disposal of waste;

(h) Contractual Liability Coverage;

(i) Lead, Silica, Asbestos and Mold Coverages;

(j) Underground Storage Tank Coverage.

B. Any self-insurance program or self-insurance retention must be approved separately in writing by City and shall protect the City of Long Beach and 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 provisions. Such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, or canceled by either party except after twenty (20) days prior written notice to City, and shall be primary and not contributing to any other insurance or self-insurance maintained by City.

C. Any subcontractors which Contractor may use in the performance of this Agreement shall be required to indemnify the City to the same extent as the Contractor and to maintain insurance in compliance with the provisions of this section.

D. Contractor shall deliver to City certificates of insurance and original endorsements for approval as to sufficiency and form prior to the start of performance hereunder. The certificates and endorsements for each insurance policy shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. "Claims-made" policies are not acceptable unless City

1 Risk Manager determines that "Occurrence" policies are not available in the market
2 for the risk being insured. In a "Claims-made" policy is accepted, it must provide for
3 an extended reporting period of not less than three (3) years. Such insurance as
4 required herein shall not be deemed to limit Contractor's liability relating to
5 performance under this Agreement. City reserves the right to require complete
6 certified copies of all said policies at any time. Any modification or waiver of the
7 insurance requirements herein shall be made only with the approval of City Risk
8 Manager. The procuring of insurance shall not be construed as a limitation on
9 liability or as full performance of the indemnification provisions of this Agreement.

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

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

24 8. OWNERSHIP OF DATA. All materials, information and data
25 prepared, developed, or assembled by Consultant or furnished to Consultant in connection
26 with this Agreement, including but not limited to documents, estimates, calculations,
27 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
28 models, reports, summaries, drawings, designs, notes, plans, information, material, and

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

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

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

25 11. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
26 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
27 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
28 without breach of this Agreement by Consultant; or (c) a third party who has a right to

1 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
2 disclosed pursuant to subpoena or court order.

3 12. ADDITIONAL COSTS AND REDESIGN.

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

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

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

22 14. LAW. This Agreement shall be construed in accordance with the laws
23 of the State of California, and the venue for any legal actions brought by any party with
24 respect to this Agreement shall be the County of Los Angeles, State of California for state
25 actions and the Central District of California for any federal actions. Consultant shall cause
26 all work performed in connection with construction of the Project to be performed in
27 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
28 county or municipal governments or agencies (including, without limitation, all applicable

1 federal and state labor standards, including the prevailing wage provisions of sections 1770
2 et seq. of the California Labor Code); and (2) all directions, rules and regulations of any
3 fire marshal, health officer, building inspector, or other officer of every governmental
4 agency now having or hereafter acquiring jurisdiction.

5 15. WORK DAY. Contractor shall comply with Sections 1810 through
6 1815 of the California Labor Code regarding hours of work. Contractor shall forfeit, as a
7 penalty to City, the sum of Twenty-Five Dollars (\$25) for each worker employed by
8 Contractor or any subcontractor for each calendar day such worker is required or permitted
9 to work more than eight (8) hours unless that worker receives compensation in accordance
10 with Section 1815.

11 16. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE.
12 Contractor is advised that this work constitutes a public work of improvement subject to
13 California Labor Code Division 2, Part 7, Chapter 1, Articles 1-5, §§1720-1861. Pursuant
14 to Labor Code Section 1771.1. Contractor or subcontractors shall not be qualified to bid
15 on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public
16 contract Code, or engage in the performance of any contract for public work, as defined in
17 the California Labor Code, unless currently registered and qualified to perform public work
18 pursuant to Section 1725.5. Contract (or associated subcontracts) shall not be entered into
19 without proof of the Contractor's (or subcontractor's) current registration to perform public
20 work pursuant to Section 1725.5. All work conducted in support of this public work of
21 improvement is subject to compliance monitoring and enforcement by the Department of
22 Industrial Relations. Contractor will abide by all applicable apprenticeship requirements in
23 the California Labor Code Section 1777.5 and will be responsible for subcontractor
24 apprenticeship compliance to the same.

25 17. PREVAILING WAGE RATES. Contractor is directed to pay the
26 general rate of per diem wages for each craft, classification, or type of worker needed to
27 execute the contract (prevailing wage rates). Copies of the current prevailing rate of per
28 diem wages are on file at is principle office (Labor Compliance Division, 411 W. Ocean

1 Boulevard, 6th Floor, Long Beach, California, 90802), and shall be made available to any
2 interested party upon request. Contractor is required to post a copy of the determination of
3 the director of the prevailing rate of per diem wages at each job site. Pursuant to Section
4 1775, Contractor shall forfeit, as a penalty to the City, up to Two Hundred Dollars (\$200)
5 for each laborer, worker or mechanic employed for each calendar day, or portion thereof,
6 that such laborer, worker or mechanic is paid less than the prevailing wage rates for any
7 work done by Contractor, or any subcontractor, under this Contract. The difference
8 between the prevailing wage rates and the amount paid to each worker for each calendar
9 day or portion thereof for which each worker was paid less than the prevailing wage rate
10 shall be paid to each worker by the Contractor or subcontractor.

11 18. CERTIFIED PAYROLL RECORDS.

12 A. Pursuant to the provisions of Labor Code Section 1776,
13 Contractor shall keep and shall cause each subcontractor performing any portion of
14 the work under this Contract to keep an accurate payroll record, showing the name,
15 address, social security number, work classification, straight time and overtime
16 hours worked each day and week, and the actual per diem wages paid to each
17 journeyman, apprentice, worker, or other employee employed by Contractor or
18 subcontractor in connection with the work. Such payroll records for Contractor and
19 all subcontractors shall be certified and shall be available for inspection at all
20 reasonable hours at the principal office of Contractor pursuant to the provisions of
21 Section 1776 of the Labor Code. Contractor's failure to furnish such records to City
22 or City's authorized Labor Compliance representative in the manner provided herein
23 for notices shall entitle City to withhold the penalty prescribed by law from progress
24 payments due to Contractor.

25 B. Contractor shall submit to the City certified payroll records for
26 Contractor and all subcontractors performing any portion of the work under this
27 Contract on a monthly basis. Certified payroll records for Contractor and all
28 subcontractors shall be maintained during the course of the work and shall be kept

1 by Contractor for up to three (3) years after completion of the work.

2 C. The foregoing is in addition to, and not in lieu of, any other
3 requirements or obligations established and imposed by any department of the City
4 with regard to submission and retention of certified payroll records for Contractor
5 and subcontractors

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

9 20. INDEMNITY.

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

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

1 in the defense.

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

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

14 E. The provisions of this Section shall survive the expiration or
15 termination of this Agreement.

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

18 22. NONDISCRIMINATION.

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

28 B. It is the policy of City to encourage the participation of

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

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

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

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

27 "During the performance of a contract with the City of Long Beach, the
28 Consultant will provide equal benefits to employees with spouses and its

1 employees with domestic partners. Additional information about the City of
2 Long Beach's Equal Benefits Ordinance may be obtained from the City of
3 Long Beach Business Services Division at 562-570-6200."

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

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

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

13 E. If the City determines that the Consultant has set up or used its
14 contracting entity for the purpose of evading the intent of the EBO, the City may
15 terminate the Agreement on behalf of the City. Violation of this provision may be
16 used as evidence against the Consultant in actions taken pursuant to the provisions
17 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

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

25 26. COPYRIGHTS AND PATENT RIGHTS.

26 A. Consultant shall place the following copyright protection on all
27 Data: © City of Long Beach, California _____, inserting the appropriate year.

28 B. City reserves the exclusive right to seek and obtain a patent or

1 copyright registration on any Data or other result arising from Consultant's
2 performance of this Agreement. By executing this Agreement, Consultant assigns
3 any ownership interest Consultant may have in the Data to the City.

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

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

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

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

28 30. TAX REPORTING. As required by federal and state law, City is

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

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

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

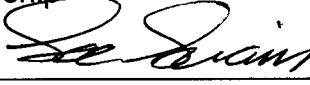
15 33. THIRD PARTY BENEFICIARY. This Agreement is not intended or
16 designed to or entered for the purpose of creating any benefit or right for any person or
17 entity of any kind that is not a party to this Agreement.

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

3 SWAIN CONSULTANTS, a sole
4 proprietorship

5 August 11, 2021

6 By 
7 Name Leon (Lee) Swain
8 Title Principal / Owner

9 "Consultant"

10 CITY OF LONG BEACH, a municipal
11 corporation

12 September 20, 2021

13 By 
14 City Manager

15 EXECUTED PURSUANT
16 TO SECTION 301 OF
17 THE CITY CHARTER

18 "City"

19 This Agreement is approved as to form on September 7, 2021.

20 CHARLES PARKIN, City Attorney

21 By 
22 Deputy

23 OFFICE OF THE CITY ATTORNEY
24 CHARLES PARKIN, City Attorney
25 411 West Ocean Boulevard, 9th Floor
26 Long Beach, CA 90802-4664

Exhibit A
Scope of Work

SCOPE OF SERVICES: RFP PW20-059 As Needed Engineering Services

3.1 Administrative Duties

- 3.1.1 When directed, the contractor shall prepare written reports and attend meetings and present information to the City Council or its appointed Commissions.
- 3.1.2 When directed, the contractor shall analyze the City's needs, and prepare and administer long-and short-range capital improvement programs consistent with the economic capabilities of the City.
- 3.1.3 The contractor shall attend staff level meetings with City staff, public officials, community leaders, developers, contractors and the general public.
- 3.1.4 When directed, the contractor shall review and provide written comments on planning programs and land development matters.
- 3.1.5 When directed, the contractor shall recommend regulations and ordinances pertaining to landscape architectural matters.
- 3.1.6 When directed, the contractor shall provide technical advice to City personnel assigned to public works activities.
- 3.1.7 Establish working relationships and coordination with other public agencies, the public and utility companies involving public works, municipal engineering, and landscape matters.

3.2 Capital Projects

- 3.2.1 The contractor shall prepare plans and specifications for City projects.
- 3.2.2 The contractor shall provide design, construction administration, and observation services, as well as public outreach for City projects.
- 3.2.3 The contractor shall provide special reports regarding such matters as capital improvements, construction materials, and maintenance.
- 3.2.4 The contractor shall provide special landscape architecture reports regarding such matters as landscape image, aesthetics, materials and maintenance.
- 3.2.5 The contractor shall process the plans and specifications through other agencies for review and approval in connection with special funding programs and permit requirements.

3.3 Topical Services Area Descriptions

3.3.1 Stormwater and Drainage Facilities: Awarded Consultant shall provide engineering and project management services to support the City in maintaining and operating water quality devices, stormwater collection system, stormwater drainage system, pump stations, and flood mitigation efforts to meet the public demand and rules and regulations of the State and Federal mandates. Consultants shall provide all services and work required to complete assessments, studies, recommendations, designs, plans, specifications, and estimates, and construction management for City stormwater and drainage projects.

3.3.2 Bridges and Structures: Awarded Consultant shall provide engineering, project management, and construction management services for bridges and structures throughout the City including, but not limited to, assessment of existing infrastructures, engineering feasibility studies, preparation of material and equipment procurement specifications, performing inspection, evaluation, and/or survey for any structures, providing technical support and recommendations to city personnel, preparing plans, specifications, and estimates for repair and replacement, and providing construction management

3.3.3 Development Review / Plan Check Services: Awarded Consultant shall provide services required to review development plans/permit applications and associated studies including, but not limited to, major building permit site plans and subdivision improvements. The type of improvements to be checked include, but are not limited to, street improvements, ADA services improvements, drainage, grading, erosion and sediment control, sanitary sewer and joint utility plans.

3.3.4 Peer Review of PS&E: Awarded Consultant shall provide engineering services that include, but are not limited to, peer review of plans, specifications, and estimates prepared for capital improvement projects.

3.3.5 Water Quality and Compliance: Awarded Consultant shall provide engineering and project management services to support the City's water quality and compliance commitments that are regulated through the City's Municipal Separate Stormwater Sewer System (MS4) permit regulated by the California State Water Board; provide all services and work required to complete assessments, studies, recommendations, designs, plans, specifications and estimates for City projects.

3.3.6 Ocean / Coastal Engineering: Awarded Consultant shall provide engineering and project management services for coastal habitats and wetlands restoration or remediation throughout the City including, but not limited to, providing detailed design services, value engineering studies, restoring open tidal connections, maintaining or preserving recreation, roadway improvements, permitting for open channel projects, and relocation of utilities.

3.3.7 Computer Mapping and GIS: Awarded Consultant shall provide GIS administration and maintenance support in general, and digitizing services for public works GIS layers. These layers will be transmitted in a GIS geodatabase format in the NAD 83 Zone V California coordinate system, and each feature will be attributed according to the City's standard GIS schema.

3.3.8 Soil / Geotechnical Engineering: Awarded Consultant shall provide professional geotechnical engineering services as needed throughout the life of the project(s) they are selected to perform duties on. Potential services include, but are not limited to, geohazards investigation, geotechnical/seismic investigation, soils testing (e.g. corrosivity, acidity, compression, percolation, boron), recommendation for foundation design, site preparation and other design requirements relevant to the site conditions, geotechnical construction observation and testing during construction and/or renovation for various facility sites. Such services may also include reviewing background information, conducting field exploration studies, laboratory testing and analysis, coordination with engineers, and attendance of various project meetings. All work performed shall comply with applicable codes and regulations.

3.3.9 Airport: Awarded Consultant shall provide engineering and project management services that will include, but are not limited to, design of taxiways and runways, airport system and mater planning, cost estimates, financial planning, involvement in public hearings and meetings, airspace analysis, GIS data collection or any mapping/graphical efforts, and specialized professional consultant services for various development projects at the Long Beach Airport (Airport) which include, but are not limited to, those contained in the Airport's Capital Improvement Plan (ACIP). The work will include periodic or full-time, on-site observation during construction and should comply with applicable rules and regulations.

3.3.10 Miscellaneous Engineering Support Services: Awarded Consultant shall provide miscellaneous engineering services to support the operations of the Department of Public Works, including but not limited to, preparation and monitoring of grant applications and programs, standardization of operation process, procedures, and template documents, and preparation of miscellaneous engineering studies to support capital improvement projects.

Exhibit B
Rate Sheet



Rates for PW20-059 On-Call Professional Engineering Services

September 1, 2021 to August 30, 2023

Classification	Hourly Rates
Principal in Charge	\$250
QA / QC Manager	\$180
Geotechnical Engineer	\$180
Senior Structural Engineer	\$210
Structural Engineer	\$200
Senior Project Manager	\$220
Project Manager	\$180
Senior Project Engineer	\$180
Project Engineer	\$160
Design Engineer	\$140
Associate Design Engineer	\$130
Staff Engineer	\$140
GIS Technician	\$90
Senior CAD Technician	\$90
CAD Technician	\$90
Project Administration	\$90
Senior Plan Checker	\$125
Plan Checker	\$90

- Mileage rate cannot exceed current IRS rate.
- Consultants and Sub Consultants must adhere to this fee schedule. Any classifications not listed in above fee schedule shall be at cost.
- Rates may only be changed by mutual consent with contract amendment.
- Rate includes insurance and overhead costs.
- Reimbursable items at cost.

Exhibit C

City's Representative

Carl Hickman, Interim City Engineer
Carl.Hickman@LongBeach.gov
562/570-6665

Exhibit D

City Provided Services

The City will furnish to Consultant all the available records, master plan studies, and reports, and any other available information that may be helpful to the Consultant in the performance of its assigned projects or assignments.

Additionally, the City will provide:

1. Project Management through an assigned Project Manager (PM) as designated by the City Engineer. The City's PM will act as the project focal point.
2. Or otherwise make available upon request, reports, drawings, documents, GIS land base maps, records and other data deemed useful for project development.

Exhibit E

Consultant Representative

Lee Swain, P.E., MPA
lee@swainconsultants.com
310/569-6885