

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

AGREEMENT

**34389**

THIS AGREEMENT is made and entered, in duplicate, as of August 3, 2016, 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 5, 2016, by and between SIMPLUS MANAGEMENT CORPORATION, a California corporation ("Consultant"), with a place of business at 4431 Corporate Center Drive, Suite 111, Los Alamitos, California 90720, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with as-needed public works construction management and inspection 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, 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 City.

3 2. TERM. The term of this Agreement shall commence at midnight on  
4 August 31, 2016, and shall terminate at 11:59 p.m. on August 31, 2019, 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 two (2) 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, Paul Buckley. City shall have the right to approve any person proposed  
20 by Consultant to replace that key employee.

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

1 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of  
2 the usual and customary rights, benefits or privileges of City employees. Consultant  
3 expressly warrants that neither Consultant nor any of Consultant's employees or agents  
4 shall represent themselves to be employees or agents of City.

5 5. INSURANCE.

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

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

28 (b) Workers' Compensation insurance as required by the California

1 Labor Code and employer's liability insurance in an amount not less than  
2 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
3 its right of subrogation against City, its boards and commissions, and their  
4 officials, employees and agents.

5 (c) Professional liability or errors and omissions insurance in an  
6 amount not less than \$1,000,000 per claim.

7 (d) Commercial automobile liability insurance (equivalent in scope  
8 to ISO form CA 00 01 06.92), covering Auto Symbol 1 (Any Auto) in an  
9 amount not less than \$500,000 combined single limit per accident.

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

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

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

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

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

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

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

23 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
24 contemplates the personal services of Consultant and Consultant's employees, and the  
25 parties acknowledge that a substantial inducement to City for entering this Agreement was  
26 and is the professional reputation and competence of Consultant and Consultant's  
27 employees. Consultant shall not assign its rights or delegate its duties under this  
28 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval

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

10 7. 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. And, Consultant shall obtain similar certifications from Consultant's  
15 employees, subconsultants and contractors.

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

20 9. OWNERSHIP OF DATA. All materials, information and data  
21 prepared, developed or assembled by Consultant or furnished to Consultant in connection  
22 with this Agreement, including but not limited to documents, estimates, calculations,  
23 studies, maps, graphs, charts, computer disks, computer source documentation, samples,  
24 models, reports, summaries, drawings, designs, notes, plans, information, material and  
25 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
26 and City shall have the unrestricted right to use and disclose the Data in any manner and  
27 for any purpose without payment of further compensation to Consultant. Copies of Data  
28 may be retained by Consultant but Consultant warrants that Data shall not be made

1 available to any person or entity for use without the prior approval of City. This warranty  
2 shall survive termination of this Agreement for five (5) years.

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

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

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

27 13. ADDITIONAL COSTS AND REDESIGN.

28 A. Any costs incurred by City due to Consultant's failure to meet



1 the standards required by the scope of work or Consultant's failure to perform fully  
2 the tasks described in the scope of work which, in either case, causes City to request  
3 that Consultant perform again all or part of the Scope of Work shall be at the sole  
4 cost of Consultant and City shall not pay any additional compensation to Consultant  
5 for its re-performance.

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

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

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

1                   16.    PREVAILING WAGES.

2                   A.     Consultant agrees that all public work (as defined in California  
3 Labor Code section 1720) performed pursuant to this Agreement (the "Public  
4 Work"), if any, shall comply with the requirements of California Labor Code sections  
5 1770 *et seq.* City makes no representation or statement that the Project, or any  
6 portion thereof, is or is not a "public work" as defined in California Labor Code  
7 section 1720.

8                   B.     In all bid specifications, contracts and subcontracts for any  
9 such Public Work, Consultant shall obtain the general prevailing rate of per diem  
10 wages and the general prevailing rate for holiday and overtime work in this locality  
11 for each craft, classification or type of worker needed to perform the Public Work,  
12 and shall include such rates in the bid specifications, contract or subcontract. Such  
13 bid specifications, contract or subcontract must contain the following provision: "It  
14 shall be mandatory for the contractor to pay not less than the said prevailing rate of  
15 wages to all workers employed by the contractor in the execution of this contract.  
16 The contractor expressly agrees to comply with the penalty provisions of California  
17 Labor Code section 1775 and the payroll record keeping requirements of California  
18 Labor Code section 1771."

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

22                   18.    INDEMNITY.

23                   A.     Consultant shall indemnify, protect and hold harmless City, its  
24 Boards, Commissions, and their officials, employees and agents ("Indemnified  
25 Parties"), from and against any and all liability, claims, demands, damage, loss,  
26 obligations, causes of action, proceedings, awards, fines, judgments, penalties,  
27 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or  
28 in connection with (1) Consultant's breach or failure to comply with any of its

1 obligations contained in this Agreement, or (2) negligent or willful acts, errors,  
2 omissions or misrepresentations committed by Consultant, its officers, employees,  
3 agents, subcontractors, or anyone under Consultant's control, in the performance  
4 of work or services under this Agreement (collectively "Claims" or individually  
5 "Claim").

6 B. In addition to Consultant's duty to indemnify, Consultant shall  
7 have a separate and wholly independent duty to defend Indemnified Parties at  
8 Consultant's expense by legal counsel approved by City, from and against all  
9 Claims, and shall continue this defense until the Claims are resolved, whether by  
10 settlement, judgment or otherwise. No finding or judgment of negligence, fault,  
11 breach, or the like on the part of Consultant shall be required for the duty to defend  
12 to arise. City shall notify Consultant of any Claim, shall tender the defense of the  
13 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,  
14 in the defense.

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

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

27 E. The provisions of this Section shall survive the expiration or  
28 termination of this Agreement.

1           19. AMBIGUITY. In the event of any conflict or ambiguity between this  
2 Agreement and any Exhibit, the provisions of this Agreement shall govern.

3           20. NONDISCRIMINATION.

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

14           B. It is the policy of City to encourage the participation of  
15 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
16 procurement process, and Consultant agrees to use its best efforts to carry out this  
17 policy in its use of subconsultants and contractors to the fullest extent consistent  
18 with the efficient performance of this Agreement. Consultant may rely on written  
19 representations by subconsultants and contractors regarding their status.  
20 Consultant shall report to City in May and in December or, in the case of short-term  
21 agreements, prior to invoicing for final payment, the names of all subconsultants  
22 and contractors hired by Consultant for this Project and information on whether or  
23 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as  
24 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

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

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

5           “During the performance of a contract with the City of Long Beach, the  
6 Consultant will provide equal benefits to employees with spouses and its  
7 employees with domestic partners. Additional information about the City of  
8 Long Beach’s Equal Benefits Ordinance may be obtained from the City of  
9 Long Beach Business Services Division at 562-570-6200.”

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

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

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

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

24          22.    NOTICES. Any notice or approval required by this Agreement shall  
25 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
26 postage prepaid, addressed to Consultant at the address first stated above, and to City at  
27 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy  
28 to the City Engineer at the same address. Notice of change of address shall be given in

1 the same manner as stated for other notices. Notice shall be deemed given on the date  
2 deposited in the mail or on the date personal delivery is made, whichever occurs first.

3 23. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

17 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants

18 that Consultant has not employed or retained any entity or person to solicit or obtain this  
19 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,  
20 commission or other monies based on or from the award of this Agreement. If Consultant  
21 breaches this warranty, City shall have the right to terminate this Agreement immediately  
22 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments  
23 due under this Agreement or otherwise recover the full amount of the fee, commission or  
24 other monies.

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

1 Agreement.

2           26. CONTINUATION. Termination or expiration of this Agreement shall  
3 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
4 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

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

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

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

20           30. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
21 designed to or entered for the purpose of creating any benefit or right for any person or  
22 entity of any kind that is not a party to this Agreement.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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 SIMPLUS MANAGEMENT  
4 CORPORATION, a California corporation

5 Aug 14, 2016

By Paul T Buckley  
Name Paul Buckley  
Title PRESIDENT

7 Aug 14, 2016

By Tracy Buckley  
Name TRACY BUCKLEY  
Title Secretary

9 "Consultant"

10 CITY OF LONG BEACH, a municipal  
11 corporation

12 9-8, 2016

By T. B. M.  
City Manager  
Assistant City Manager  
EXECUTED PURSUANT  
TO SECTION 301. OF  
THE CITY CHARTER.

14 "City"

15 This Agreement is approved as to form on August 16, 2016.

17 CHARLES PARKIN, City Attorney

By Charles Parkin  
Deputy

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Lona Beach, CA 90802-4664



# EXHIBIT “A”

## Scope of Work

---

## **SCOPE OF PROJECT PW RFQ16-115**

### **3.1 PROJECT DESCRIPTION & OVERVIEW**

The City of Long Beach (the "City") is requesting proposals from qualified, professional Construction Management firms and individuals with experience in managing the construction and delivery of capital projects and providing inspection and deputy inspection service as required by code. It is preferable, but not required, that firms and individuals have experience in managing construction projects for public sector agencies.

### **3.2 BASIC SERVICES**

The Construction Management firm shall provide administration of construction, scheduling of work, and coordination of the contractors and any other persons on the site of various Capital Improvement projects and other City projects. The Construction Management firm shall serve as the primary point of contact on construction sites for City staff and project management teams. Responsibilities shall include, but are not limited to:

- 3.2.1 Organize and direct preconstruction meetings with the Contractor, Design Team, other consultants, and the City. Review project organization, lines of authority and communication, and project procedures.
- 3.2.2 Assist in development and approval of construction schedule outlining major start and finish dates for procurement and construction activities and establish milestones for each segment of the construction activity.
- 3.2.3 Assist in in development and approval of Schedule of Values.
- 3.2.4 Establish/Confirm the schedule for the purchase, fabrication, inspection, delivery and installation of equipment, materials, and fixtures.
- 3.2.5 Monitor Contractor performance as to cost, quality, and schedule.
- 3.2.6 Observe work in progress for conformance with plans, specifications, and schedules. Report defects and deficiencies to the City.
- 3.2.7 Coordinate preparation of Notice of Exemption.
- 3.2.8 Issue Notice to Proceed
- 3.2.9 Coordinate all daily site inspections performed by City staff and inspectors from other agencies to ensure that materials and their installation are in conformance with plans and specifications.

- 3.2.10 Assist in the selection of independent testing agencies and laboratories. Schedule their work, review their reports, and make recommendations regarding their findings.
- 3.2.11 Maintain a complete and current record including but not limited to project contracts, drawings and specifications, change orders, directives, project correspondence, revisions, progress photos, testing and inspection reports, and certified payroll records.
- 3.2.12 Maintain daily job site reports recording daily and weekly statements of numbers of workmen, equipment in use, general activities completed and special occurrences.
- 3.2.13 Monitor delivery and review of shop drawings and submittals and assist in expediting approval of drawings and submittals. Maintain submittal/approval logs and sets of all such documents, including but not limited to documentation of the submittal number, nature of the submittal, date the submittal was issued, date submittal was forwarded for review, individual reviewing the submittal, date the submittal was received back, and the date the submittal was returned to the Contractor.
- 3.2.14 Coordinate and facilitate weekly progress meetings among Contractor, Design Team, Inspectors, Testing and Laboratory workers, and City representatives. Discuss job progress, track and record key actions and decisions, and prepare and review meeting minutes as required.
- 3.2.15 Prepare monthly reports addressing project progress and any quality, cost, and schedule issues.
- 3.2.16 Coordinate the review of and processing of Requests for Information (RFI's), initiate and maintain a log for the RFI's including, but not limited to documentation of the RFI number, nature of the RFI, date the RFI was issued, date RFI was forwarded for review, individual reviewing the RFI, date the RFI was received back, and the date the RFI was returned to the Contractor.
- 3.2.17 Coordinate the preparation, review, and processing of construction change orders.
- 3.2.18 Coordinate the review and processing of Contractor applications for payment, based on Contractor's agreed percentage of completion for each schedule value in the Schedule of Values.
- 3.2.19 Ensure all requirements related to the use of public funding are met by Contractor, including the payment of prevailing wages, certified payrolls, any employee job site interviews, and diversity of workforce.

- 3.2.20 Ensure project accounting and reporting procedures can support informational needs as requested by the City of Long Beach Department of Financial Management, Department of Public Works, and applicable Grantors.
- 3.2.21 If needed, review the as-built Drawings provided by Contractors and verify that the as-built drawings detail the actual construction of the project.
- 3.2.22 Collaborate with stakeholders to develop detailed schedule of close-out activities, including punch lists, testing, and inspections. Establish dates of Substantial and Final Completion, coordinate final inspections and establish final acceptance of work and prepare Notice of Completion.
- 3.2.23 At completion of project, submit to the City one complete project binder containing all project related documentation, and one CD-ROM of all scanned materials.
- 3.2.24 Review all regulatory permit requirements, including but not limited to those issued by the U.S. Army Corps of Engineers, California Coastal Commission, and the Regional Water Quality Control Board, and ensure full compliance with all pre-construction, construction, and post-construction requirements as needed.
- 3.2.25 Provide Public Works inspection and deputy and/or special inspection as required by code. Deputy inspections shall include, but are not limited to: grading, reinforced concrete, prestressed concrete, masonry, structural steel, steel moment and ductile frames, welding, pile driving, high strength bolts, epoxy anchors, fireproofing, and structural observation. Special inspectors shall be duly certified by International Code Council and other applicable governing agencies, and licensed to perform special inspections in the City of Long Beach
- 3.2.26 Coordinate qualified, professional material laboratory testing as required by code and the City's QAP.

# EXHIBIT “B”

## Rates or Charges

---



Simplus Management Corporation  
Schedule of Rates for Services for City of Long Beach  
As Needed Construction Management  
August 31, 2016 to August 31, 2019

Title	Hourly Rate (blended for 3 years)
Principal	\$199.00
Senior Construction Manager, P.E.	\$185.00
Senior Construction Manager, CCM	\$175.00
Construction Manager	\$155.00
Scheduler	\$150.00
Estimator	\$150.00
Field Office Engineer	\$135.00
Lead Sr. Project Inspector	\$135.00
Field Inspector	\$110.00
Administrative Support	\$85.00

No mileage, transportation charges or per diem allowed.  
Pre-approved reimbursable items charged at cost.  
Sub-consultants billed at cost.  
Rates can only be changed by amendment.  
Pre-approved overtime will be charged at time and a half.

Schedule of Rates for Services for City of Long Beach

As Needed Construction Management

August 31, 2016 to August 31, 2019

Title	Hourly Rate (Blended for 3 years)
Staff Professional	\$165.00
Registered Civil Engineer	\$175.00
Registered Geotechnical Engineer	\$190.00
Principal / Principal Professional	\$220.00
Senior Principal Professional	\$230.00
Administrator	\$70.00
Project Administrator	\$113.00
CADD Operator	\$100.00
Technician	\$110.00
Senior Technician	\$110.00
Special Inspector	\$110.00

No mileage, transportation charges or per diem allowed.  
 Pre-approved reimbursable items charged at cost.  
 Sub-consultants billed at cost.  
 Rates can only be changed by amendment.  
 Pre-approved overtime will be charged at time and a half.

# EXHIBIT “C”

City’s Representative:

Sean Crumby, City Engineer

(562) 570-6695

---



# EXHIBIT “D”

## Materials/Information Furnished:

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.