

AGREEMENT

**35209**

THIS AGREEMENT is made and entered, in duplicate, as of March 13, 2019, 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 5, 2019, by and between RINCON CONSULTANTS, INC., a California corporation ("Consultant"), with a place of business at 180 North Ashwood Avenue, Ventura, California 93003, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with on-call environmental, planning, affordable housing, and community engagement consultant 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 Two Hundred Twenty-Five Thousand Dollars (\$225,000), 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 March 6, 2019, and shall terminate at 11:59 p.m. on March 5, 2021, 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 the  
25 manner in which it is performed. Consultant shall be free to contract for similar services to  
26 be performed for others during this Agreement; provided, however, that Consultant acts in  
27 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;

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

5. INSURANCE.

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

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

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

6                   iii.    Professional liability or errors and omissions insurance  
7                   in an amount not less than \$1,000,000 per claim.

8                   iv.    Commercial automobile liability insurance (equivalent in  
9                   scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in  
10                  an amount not less than \$500,000 combined single limit per accident.

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

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

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

1 the date this Agreement expires or is terminated.

2 E. Consultant shall require that all subconsultants or contractors  
3 that 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, 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 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 City.

18           11. CONFIDENTIALITY. Consultant shall keep all 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 City due to Consultant's failure to meet  
6 the standards required by the scope of work or Consultant's failure to perform fully  
7 the tasks described in the scope of work which, in either case, causes City to request  
8 that Consultant perform again all or part of the Scope of Work shall be at the sole  
9 cost of Consultant and City shall not pay any additional compensation to Consultant  
10 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 construed in accordance with the laws  
24 of the State of California, and the venue for any legal actions brought by any party with  
25 respect to this Agreement shall be the County of Los Angeles, State of California for state  
26 actions and the Central District of California for any federal actions. Consultant shall cause  
27 all work performed in connection with construction of the Project to be performed in  
28 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,

1 county or municipal governments or agencies (including, without limitation, all applicable  
2 federal and state labor standards, including the prevailing wage provisions of sections 1770  
3 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire  
4 marshal, health officer, building inspector, or other officer of every governmental agency  
5 now having or hereafter acquiring jurisdiction.

6 16. PREVAILING WAGES.

7 A. Consultant agrees that all public work (as defined in California  
8 Labor Code section 1720) performed pursuant to this Agreement (the "Public  
9 Work"), if any, shall comply with the requirements of California Labor Code sections  
10 1770 *et seq.* City makes no representation or statement that the Project, or any  
11 portion thereof, is or is not a "public work" as defined in California Labor Code  
12 section 1720.

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

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

27 18. INDEMNITY.

28 A. Consultant shall indemnify, protect and hold harmless City, its

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

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

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

28 D. The provisions of this Section shall survive the expiration or

1 termination of this Agreement.

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

4 20. NONDISCRIMINATION.

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

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

26 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in  
27 accordance with the provisions of the Ordinance, this Agreement is subject to the  
28 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the

1 Long Beach Municipal Code, as amended from time to time.

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

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

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

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

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

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

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

1 to the City Engineer at the same address. Notice of change of address shall be given in  
2 the same manner as stated for other notices. Notice shall be deemed given on the date  
3 deposited in the mail or on the date personal delivery is made, whichever occurs first.

4 23. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

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

1 Agreement shall not constitute a waiver of any other or subsequent breach of this  
2 Agreement.

3 26. CONTINUATION. Termination or expiration of this Agreement shall  
4 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
5 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

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

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

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

21 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
22 designed to or entered for the purpose of creating any benefit or right for any person or  
23 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 RINCON CONSULTANTS, INC., a  
4 California corporation

5 \_\_\_\_\_, 2019

By [Signature]  
6 Name Joseph P. Power  
7 Title Vice President

8 \_\_\_\_\_, 2019

By [Signature]  
9 Name Lacrisa Davis  
10 Title Vice President

11 Tom Modica  
12 Assistant City Manager

"Consultant"

13 EXECUTED PURSUANT  
14 TO SECTION 301 OF  
15 THE CITY CHARTER

CITY OF LONG BEACH, a municipal  
corporation

16 April 5, 2019

By [Signature]  
City Manager

"City"

17 This Agreement is approved as to form on 4/1, 2019.

18 CHARLES PARKIN, City Attorney

By [Signature]  
Deputy



# EXHIBIT “A”

## Scope of Work



City of Long Beach  
Department of Development Services

## **OVERVIEW OF PROJECT**

The City of Long Beach (City), Department of Development Services (Department), seeks to engage the services of multiple professional consultants to provide on-call professional services in the areas of environmental, planning, and affordable housing policy and program development.

The City has historically used consultants on an as-needed basis for projects and programs proposed by external private developers, City departments, and City Council directives. Consultants have been utilized to prepare environmental documents in accordance with the California Environmental Quality Act and the National Environmental Policy Act including Environmental Impact Reports, Mitigated Negative Declarations, Environmental Assessments, and Environmental Impact Statements. Consultants have also assisted in the preparation of policy documents including specific plans, special studies, zoning code amendments, peer review of developer proposals and reports by other consultants, policy development, and other tasks as necessary. When needed, the City has retained consultants to conduct public outreach, organize community meetings, and participate in internal or public review processes.

The City invites experienced environmental, planning, and affordable housing policy Consultants to submit proposals. The ideal Consultant should be able to provide a range of experienced staff on an as-needed basis with limited notice.

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## **SCOPE OF PROJECT**

The Awarded Consultant shall assist the City with professional environmental, planning, and affordable housing policy services. Environmental and planning services will include, but are not limited to, the preparation of Environmental Impact Reports (EIR), Mitigated Negative Declarations (Neg Dec), Environmental Assessments, peer reviews, and other assignments as needed in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). Affordable housing services will include, but are not limited to, special policy development and community engagement tasks.

The City has used consulting services for the preparation of specific plans, special studies, zoning code updates, peer review of developer proposals, creation of public outreach materials, coordination of events, housing policy recommendations, and other similar tasks. More recent and upcoming services may consist of the implementation of the City's recently prepared General Plan Land Use Element and Urban Design Element, the Uptown Long Beach Neighborhood Mobility Enhancement Plan, and the 2017 Report on Revenue Tools and Incentives for the Production of Affordable and Workforce Housing. The City will also be undertaking a comprehensive zoning code update to facilitate implementation of an updated Land Use Element.

Consultants have also been used to coordinate and participate in the public review process with Department staff at public outreach events, community meetings, study sessions, and public hearings before the City's Planning Commission and City Council. Attendees at these meetings may include business associations members, neighborhood groups, community stakeholders, commission members, and City Council members.

The Department plans to award to more than one Consultant to provide services outlined in Section 7 – Project Specifications. The Awarded Consultants shall be expected to follow procedures as required by the City, the Long Beach Municipal Code, and State law, as applicable, for the development and preparation of environmental, planning, and affordable housing documents. The on-call list may be utilized by all bureaus within the Department, as well as on projects where the Department partners with another City department, municipality or governmental jurisdiction, or external entity.

The Consultant may specialize in a type of service or a range of services as described in this section and Section 7 – Project Specifications. Consultants shall clearly label responses to indicate which areas of expertise they are including in their proposal. Development Services will use Awarded Consultants from the on-call list in ways best suited to each individual project. In some instances, the Department may select an Awarded Consultant directly from the on-call list and in other instances the Department may request proposals from multiple Awarded Consultants prior to awarding a project or task.



## **PROJECT SPECIFICATIONS**

### **ENVIRONMENTAL PLANNING ON-CALL SERVICES**

1. Support the City's efforts with the following essential environmental planning on-call services that will include, but are not limited to:
  - 1.1. Provide professional environmental compliance consulting services for public and private development projects, as well as for the formation, amendment, and implementation of general and specific plans and zoning regulations.
  - 1.2. Perform sensitivity testing and analysis to assist with project design. Provide continual guidance and feedback to reduce project impacts to less than significant levels through design.
  - 1.3. Preparation and/or peer review for technical environmental studies such as noise, traffic, air quality, greenhouse gases, geotechnical, hydrology, hazardous materials, human health impacts, water quality, and biological impacts.
  - 1.4. Preparation of mitigation monitoring and compliance reports, including National Pollutant Discharge Elimination System (NPDES), and other environmental planning and compliance regulations.
  - 1.5. Provide expert testimony at public hearings.
  - 1.6. Assist the Department in the coordination, collaboration, strategy, negotiation and consultation with government entities and regulatory agencies, such as the California Coastal Commission, Army Corps of Engineers, United States Fish and Wildlife Service, California Department of Fish and Wildlife, California Department of Transportation, Los Angeles County Metropolitan Transportation Authority, and the California State Lands Commission.
  - 1.7. Consultation on CEQA and NEPA processes, strategy, and requirements, including litigation risk reduction, tiering and streamlining strategies, treatment of new or emerging impact topics, and compliance with new or evolving legislation.
  - 1.8. Prepare comment letters on behalf of the City of Long Beach on other entities' EIRs.
  - 1.9. Provide training to City staff regarding CEQA and NEPA.
  - 1.10. Prepare local CEQA thresholds guidance for City consideration.



## **PROJECT SPECIFICATIONS - Continued**

### **PLANNING ON-CALL SERVICES**

2. Support the City's planning efforts by providing on-call services that include but are not limited to:
  - 2.1. Development and preparation of planning documents, such as new or updated General Plan elements, Specific Plans, urban design guidelines, zoning, corridor studies, plans and other planning-related documents, and consultation on planning-related best practices.
  - 2.2. Update the City's Zoning Code with a particular focus on making meaningful improvements that complement the updated General Plan Land Use Element. The improvements would not require a single complete rewrite of the code; instead it would focus on a series of incremental steps to update the zoning code over time. These improvements shall encourage housing production, improve predictability and outcomes, attract investment, increase flexibility for use of existing improvements, and improve the overall built environment for the City's residents.
  - 2.3. Coordination and participation in the internal or public review process, including peer review of projects or documents with Department staff.
  - 2.4. Attendance at public hearings and participation in study sessions before the Planning Commission and City Council.
  - 2.5. Performance of a zoning code audit in preparation of a zoning code update.

### **OUTREACH ON-CALL SERVICES**

3. Support the City's public outreach efforts, including but not limited to:
  - 3.1. Development of outreach strategies, practices, mediation and conflict reduction approaches, collateral materials, and staff support to improve the Department's relationship with diverse stakeholders. The outreach strategies shall relate to individual projects and initiatives, as well as broadly within the context of the Department's overall relationship to the public including through community learning and capacity building activities such as "Planning 101" trainings to reach a diversity of ages, incomes, language abilities and other such focus populations.
  - 3.2. Coordination of and participation in public outreach and community meetings with business and neighborhood groups and community stakeholders.
  - 3.3. Facilitation of meetings with diverse stakeholders to have constructive discussions that achieve the objectives of the meeting and lead to viable conclusions.



City of Long Beach  
Department of Development Services

## **PROJECT SPECIFICATIONS - Continued**

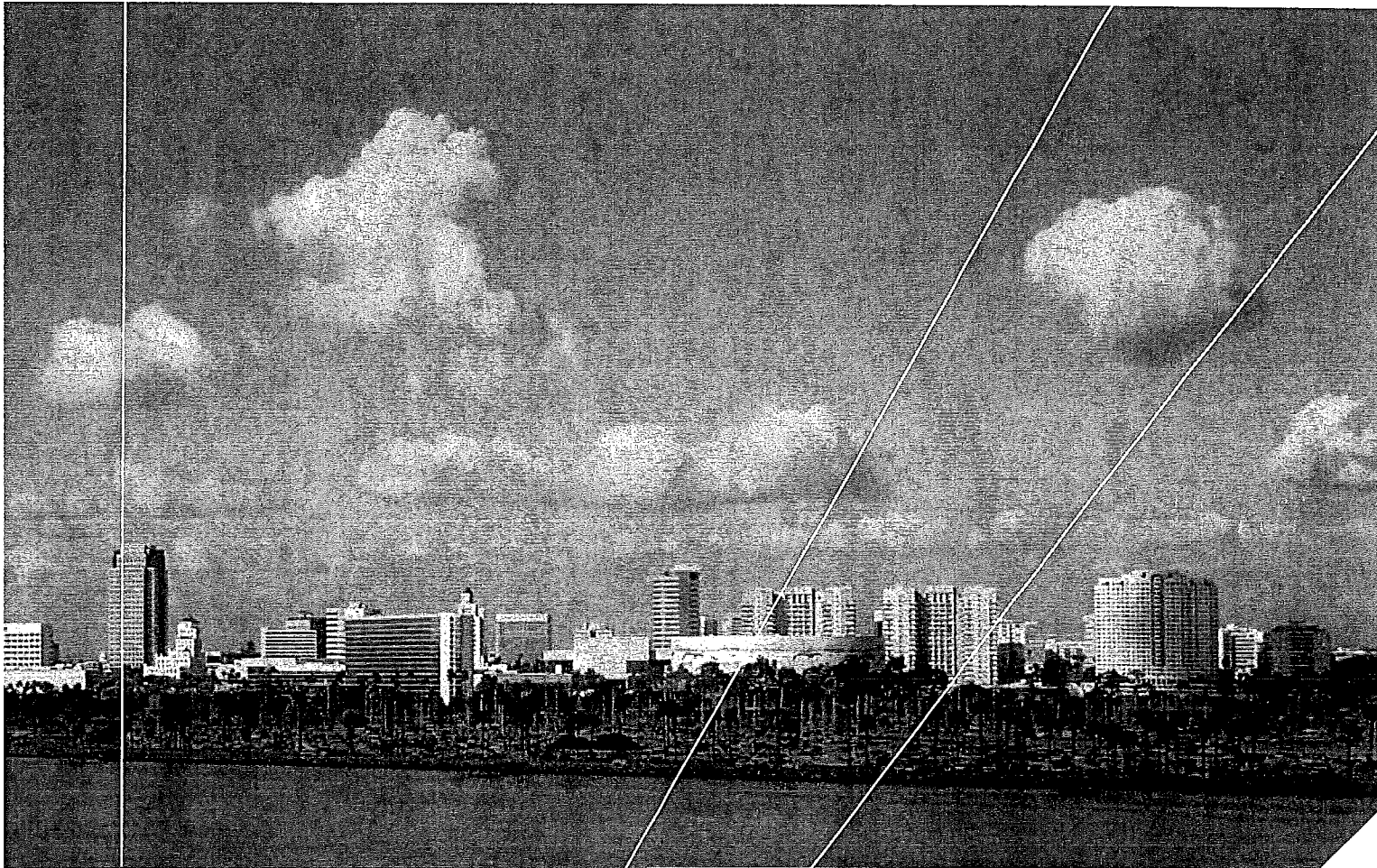
### **HOUSING ON-CALL SERVICES**

4. Support the City's efforts to create and implement an affordable housing policy, including but not limited to:
  - 4.1. Develop and prepare policy recommendations and documents that increase housing opportunities for all income levels and increases the supply of affordable housing.
  - 4.2. Develop and coordinate outreach strategies to support new housing opportunities and engage the City's diverse stakeholders.

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# EXHIBIT “B”

## Cost Proposal



Proposal for

## On-Call Environmental, Planning & Affordable Housing Consultant Services

RFP Number DV-19-007

Part 2 - Cost Proposal

Proposal Due:  
November 13, 2018

City of Long Beach  
Purchasing Division  
333 West Ocean Boulevard, 7th Floor  
Long Beach, California 90802

**rincon**

Rincon Consultants, Inc.  
250 East 1st Street, Suite 301  
Los Angeles, California 90012  
213-788-4842





## RINCON CONSULTANTS, INC.

### Standard Fee Schedule for Environmental Sciences and Planning Services

Professional, Technical & Support Personnel*	Hourly Rate
Principal II / Director II	\$235
Principal / Director I	\$215
Senior Supervisor II	\$200
Supervisor I	\$190
Senior Professional II	\$170
Senior Professional I	\$156
Professional IV	\$140
Professional III	\$125
Professional II	\$112
Professional I	\$100
Associate III	\$92
Associate II	\$86
Associate I	\$80
Project Assistant	\$75
Senior GIS Specialist	\$136
GIS/CADD Specialist II	\$120
GIS/CADD Specialist I	\$108
Technical Editor	\$110
Production Specialist	\$86
Clerical	\$75

\*Professional classification includes: environmental scientists, urban planners, biologists, geologists, marine scientists, GHG verifiers, sustainability experts, cultural resources experts and other professionals. Expert witness services consisting of depositions or in-court testimony are charged at the hourly rate of \$350.

Direct Costs	Rate
Photocopies – Black and White	\$0.20 (single sided) & \$0.36 (double sided)
Photocopies – Color	\$1.50 (single sided) & \$3.20 (double sided)
Photocopies – 11 x 17	\$0.80 (B & W) & \$3.20 (color)
Oversized Maps	\$8.00/square foot
Reproduction: CDs	\$10 / disc
Light duty /Passenger Vehicles**	\$85/day
4-WD/Off-Road Vehicles**	\$135/day

\*\* \$0.65/mile for mileage over 50 and for all miles incurred in employee-owned vehicles.

#### Other Direct Costs

Other direct costs associated with the execution of a project are billed at cost plus 15% to cover General and Administrative services. Other direct costs associated with completing a project that are not included in the hourly billing rates described above may include, but are not limited to, laboratory and drilling services, subcontractor services, authorized travel expenses, permit charges and filing fees, mailings and postage, performance bonds, sample handling and shipment, rental equipment and vehicles other than covered by the above charges, etc.



# RINCON CONSULTANTS, INC.

Equipment	Day Rate
<b>Environmental Site Assessment</b>	
Brass Sample Sleeves, Bailers, Disposable Bailers	\$25
Water Level Indicator, DC Purge Pump	\$40
Hand Auger Sampler	\$55
Oil-Water Interface Probe	\$85
Four Gas Monitor or Photo-Ionization Detector	\$120
Soil Vapor Extraction Monitoring Equipment	\$140
Flame Ionization Detector	\$200
<b>Natural Resources Field Equipment</b>	
Trimble GPS (sub-meter accuracy)	\$190
UAS Drone	\$250
Pettersson Bat Ultrasound Detector/Recording Equipment	\$150
Spotting or Fiberoptic Scope	\$150
Amphibian/Vernal Pool Field Package: (digital camera, GPS, thermometer, decon chlorine, waders, float tube, hand net, field microscope)	\$150
Remote Field Package, (digital camera, GPS, thermometer, binoculars, tablet and mifi, Delorme Satellite Beacon, 24-Hour Safety Phone)	\$125
Sound Level Metering Field Package: anemometer, tripod and digital camera.	\$100
Standard Field Package (digital camera, GPS, thermometer, binoculars, tablet, safety equipment, and botanic collecting equipment)	\$95
Fisheries Equipment Package: (waders, wetsuits, dip nets, seine nets, bubblers, buckets)	\$50
Water Quality Equipment (DO, pH, Turbidity, refractometer, temperature)	\$55
Large Block Nets	\$100
Minnow trap	\$85
Infrared Sensor Digital Camera or Computer Field Equipment	\$50
Scent Station	\$20
Laser Rangefinder/Altitude	\$10
Net, Hand/Large Seine	\$10/\$50
Pit-fall Traps, Spotlights, Anemometer, GPS Units, Sterilized Sample Jar	\$8
Mammal Trap, Large/Small	\$1.50/\$.50
<b>Water &amp; Marine Resources Equipment</b>	
Refractometer (salinity) or Turbidity Meter	\$35
Multi Parameter Sonde (Temp, Cond, Turbidity, DO, pH) with GPS	\$150
Boat (20 ft. Boston Whaler or Similar)	\$300
Boat (26 ft. Radon or Similar)	\$550
Side Scan or Single Beam Sonar	\$700
Underwater & Marine Sampling Gear includes: U/W Photo/Video Camera, SCUBA Equipment (Tanks, BCD, Regulators, Wetsuits, etc.)	\$50/diver
Marine Field Package: (Personal Flotation Devices (PFDs), 100 ft. Reel Tapes w/ Stainless Carabiners, Pelican Floats, Underwater Slates, Thermometer, Refractometer, Anemometer, various Field Guides)	\$50
<b>Insurance, Hazard &amp; Safety Fees</b>	
L & H Dive Insurance	\$50/diver
Hazard Premium (In or Underwater ONLY per/hour)	\$1.25 X hourly
Level C Health and Safety	\$60 person

# FEE SCHEDULE

Effective January 1, 2018

**LINSCOTT  
LAW &  
GREENSPAN**  
*engineers*

<u>TITLE</u>	<u>PER HOUR</u>
<b>Principals</b>	
Principal Engineer.....	\$ 255.00
Associate Principal Engineer.....	\$ 229.00
Planning/Design Manager.....	\$ 213.00
<b>Transportation Engineers</b>	
Senior Transportation Engineer.....	\$ 189.00
Transportation Engineer III.....	\$ 167.00
Transportation Engineer II.....	\$ 141.00
Transportation Engineer I.....	\$ 121.00
<b>Transportation Planners</b>	
Senior Transportation Planner.....	\$ 167.00
Transportation Planner III.....	\$ 141.00
Transportation Planner II.....	\$ 121.00
Transportation Planner I.....	\$ 108.00
<b>Technical Support</b>	
Engineering Associate II.....	\$ 120.00
Engineering Associate I.....	\$ 116.00
Engineering Computer Analyst II.....	\$ 114.00
Engineering Computer Analyst I.....	\$ 90.00
Senior CADD Drafter.....	\$ 116.00
CADD Drafter III.....	\$ 108.00
CADD Drafter II.....	\$ 95.00
CADD Drafter I.....	\$ 82.00
Senior Engineering Technician.....	\$ 116.00
Engineering Technician II.....	\$ 108.00
Engineering Technician I.....	\$ 82.00
Word Processor/Secretary.....	\$ 76.00
Engineering Aide I.....	\$ 58.00

Public Hearing and litigation support may be charged at 125% of the base rate. Consultation in connection with litigation and Court appearances will be quoted separately.

Project-related mileage will be billed at the prevailing standard mileage rate as determined by the IRS. Subcontractors and other project-related expenses will be billed at cost plus 15%.

The above schedule is for straight time. Overtime will be charged at 1.50 times the standard hourly rates. Interim and/or monthly statements will be presented for completed work. These will be due and payable upon presentation unless prior arrangements are made. A finance charge of 1.5% may be charged each month on the unpaid balance.

**Engineers & Planners**  
Traffic  
Transportation  
Parking

**Linscott, Law &  
Greenspan, Engineers**

2 Executive Circle  
Suite 250  
Irvine, CA 92614  
949.825.6175 r  
949.825.6173 f  
www.llgengineers.com

Pasadena  
Irvine  
San Diego  
Woodland Hills

Philip M. Linscott, PE (1924-2000)  
Jack M. Greenspan, PE (Ret.)  
William A. Law, PE (Ret.)  
Paul W. Wilkinson, PE  
John P. Keating, PE  
David S. Shender, PE  
John A. Boorman, PE  
Clare M. Look-Jaeger, PE  
Richard E. Barretto, PE  
Keil D. Maberry, PE

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# EXHIBIT “C”

City’s Representative:

Director of Development Services or Designee

# EXHIBIT “D”

Materials/Information Furnished: None

# EXHIBIT “E”

Consultant’s Key Employee:

**Joseph Power**