

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

1 AGREEMENT

2 36109

3 THIS AGREEMENT is made and entered, in duplicate, as of October 8, 2021  
4 for reference purposes only, pursuant to a minute order adopted by the City Council of the  
5 City of Long Beach at its meeting on September 7, 2021, by and between TRB AND  
6 ASSOCIATES, a California corporation ("Consultant"), with a place of business at 4182  
7 North Viking Way, #204, Long Beach, California 90808, and the CITY OF LONG BEACH,  
8 a municipal corporation ("City").

9 WHEREAS, the City requires specialized services requiring unique skills to  
10 be performed in connection with as-needed plan review and inspection services ("Project");  
11 and

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

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

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

21 1. SCOPE OF WORK OR SERVICES.

22 A. Consultant shall furnish specialized services more particularly  
23 described in Exhibit "A", attached to this Agreement and incorporated by this  
24 reference, in accordance with the standards of the profession, and City shall pay for  
25 these services in the manner described below, in an amount not to exceed Fifty  
26 Thousand Dollars (\$50,000), at the rates or charges shown in Exhibit "B".

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

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

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

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

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

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

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

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

8 3. COORDINATION AND ORGANIZATION.

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

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

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

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

6 5. INSURANCE.

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

14 i. Commercial general liability insurance (equivalent in  
15 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less  
16 than One Million Dollars (\$1,000,000.00) per each occurrence and Two  
17 Million (\$2,000,000.00) general aggregate. This coverage shall include but  
18 not be limited to broad form contractual liability, cross liability, independent  
19 contractors liability, and products and completed operations liability. The  
20 City, its boards and commissions, and their officials, employees and agents  
21 shall be named as additional insureds by endorsement (on City's  
22 endorsement form or on an endorsement equivalent in scope to ISO form CG  
23 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04  
24 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain  
25 no special limitations on the scope of protection given to the City, its boards  
26 and commissions, and their officials, employees and agents. This policy shall  
27 be endorsed to state that the insurer waives its right of subrogation against  
28 City, its boards and commissions, and their officials, employees and agents.

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

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

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

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

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

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

1           uninterrupted, continuing coverage for a period of not less than three (3) years,  
2           commencing on the date this Agreement expires or is terminated.

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

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

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

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

25          6.       ASSIGNMENT AND SUBCONTRACTING.       This Agreement  
26          contemplates the personal services of Consultant and Consultant's employees, and the  
27          parties acknowledge that a substantial inducement to City for entering this Agreement was  
28          and is the professional reputation and competence of Consultant and Consultant's

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

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

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

26 9. OWNERSHIP OF DATA. All materials, information and data  
27 prepared, developed, or assembled by Consultant or furnished to Consultant in connection  
28 with this Agreement, including but not limited to documents, estimates, calculations,

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

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

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

27 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
28 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates



1 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available  
2 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
3 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
4 disclosed pursuant to subpoena or court order.

5 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

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

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16. PREVAILING WAGES.

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

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

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

18. INDEMNITY.

A. Consultant shall indemnify, protect and hold harmless City, its Boards, Commissions, and their officials, employees and agents ("Indemnified Parties"), from and against any and all liability, claims, demands, damage, loss, obligations, causes of action, proceedings, awards, fines, judgments, penalties, costs and expenses, arising or alleged to have arisen, in whole or in part, out of or 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.

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

20. NONDISCRIMINATION.

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

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

21. FORCE MAJEURE. If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, pandemic, civil commotion, fire or other casualty, or other causes

1 beyond the reasonable control of the party obligated to perform, then that party's  
2 performance will be excused for a period equal to the period of such cause for failure to  
3 perform.

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

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

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

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

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

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

26 E. If the City determines that the Consultant has set up or used its  
27 contracting entity for the purpose of evading the intent of the EBO, the City may  
28 terminate the Agreement on behalf of the City. Violation of this provision may be

1 used as evidence against the Consultant in actions taken pursuant to the provisions  
2 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

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

10 24. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

1 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments  
2 due under this Agreement or otherwise recover the full amount of the fee, commission, or  
3 other monies.

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

9 27. CONTINUATION. Termination or expiration of this Agreement shall  
10 not affect rights or liabilities of the parties which accrued pursuant to the Sections titled  
11 "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", [If prevailing wage  
12 language is used include "Indemnity", and "Audit" prior to termination or expiration of this  
13 Agreement.

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

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

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

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CHARLES PARKIN, City Attorney  
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31. THIRD PARTY BENEFICIARY. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

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

TRB AND ASSOCIATES, a California corporation

October 21, 2021

By [Signature]  
Name FOOD BAILEY  
Title PRESIDENT

October 21, 2021

By [Signature]  
Name FOOD BAILEY  
Title SECRETARY

"Consultant"

CITY OF LONG BEACH, a municipal corporation

November 8, 2021

By [Signature]  
City Manager

NOTED PURSUANT TO SECTION 301 OF CITY CHARTER.

This Agreement is approved as to form on October 26, 2021.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy



**EXHIBIT “A”**  
**OVERVIEW OF SERVICES**  
**SCOPE OF SERVICE**  
**PROJECT SPECIFICATIONS**



City of Long Beach  
Purchasing Division  
411 West Ocean Boulevard, 6<sup>th</sup> Floor  
Long Beach, CA 90802

## 1. OVERVIEW OF SERVICES

The City of Long Beach (City) is seeking Statements of Qualifications (SOQs) from professional consulting firms to help supplement existing Building Bureau staff and provide as-needed plan review, inspection services, and other services as described in Section 3 – Scope of Project.

The Department's Building and Safety Bureau (Building Bureau) serves as the lead to ensure compliance with State and local building codes. Using the Infor Public Sector (aka Hansen) system and Adobe Pro Software, the Building Bureau is tasked with providing streamlined, efficient services to its customers. Specifically, the Building Bureau is responsible for coordinating the review and approval of all construction documents, processing plan submittals, issuing permits, performing required inspections and construction approvals during the course of a development, and offering routine and technical assistance to both professional and nonprofessional applicants.

The ideal Consultant should have a range of staffing available on an as-needed basis, with limited notice, and to provide one or more of the following services:

1. Plan review of Construction Documents to determine compliance with the California Building Standards Code, Long Beach Municipal Code or other ordinances of the City, or laws and statutes of the State (Code), where applicable.
2. Inspection services of construction projects to determine compliance with the City-approved Construction Documents and aforementioned Codes.
3. Permit counter services to provide routine and technical information related to the processing of permit applications, plan submittal and issuance of permits.
4. Plan review and inspection services for Medical Marijuana (MMJ) businesses.
5. Staff training and community workshops related to Code changes.



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### **3. SCOPE OF SERVICE**

The following is intended to provide a description of the types of services that would be requested from the Awarded Consultant(s). Consultants are encouraged to provide additional details and/or value additions to the proposed scope of services to be included in the Statement of Qualifications (SOQ).

The Consultant may specialize in a type of service or a range of services as described below. Consultants will clearly label responses to indicate which areas they are including in their SOQ. Once awarded, Development Services will select an Awarded Consultant(s) in ways that best suit the project or task on a case by case basis.

#### **3.1 Plan Review**

Plan review provides examination, analysis, and review of construction documents for various developments within the City in order to determine compliance with all applicable Codes.

##### **3.1.1 As-needed plan review services may include, but are not limited to:**

- Building plans (i.e., architectural, structural, civil);
- Electrical plans;
- Plumbing plans;
- Mechanical plans;
- Fire-Building plans (i.e., fire sprinkler system, fire alarm system, smoke control, etc.);
- Grading and Civil plans;
- Stormwater/Standard Urban Stormwater Mitigation Plans (SUSMP);
- Technical reports (i.e., structural calculations, geotechnical/soils engineering reports, hydrology report, Title 24 energy, etc.); and
- Green Code and Energy Code inspection.

##### **3.1.2 As-needed plan review staff tasks may include, but are not limited to:**

- Reviewing and providing plan review comments on submitted Construction Documents to check for architectural, structural, mechanical, plumbing, electrical, fire, grading, civil, stormwater, accessibility, Green and/or energy requirements;
- Ensuring Construction Documents adhere to the Codes;
- Coordinating plan reviews with other City departments or agencies;
- Systematically logging/entering status of plan review activities and records;
- Meeting and conferring with permit applicants to resolve all outstanding plan review comments, and approving their developments;
- Performing over-the-counter plan review of Construction Documents for simple developments;
- Working with permit counter staff to facilitate the issuance of construction permits for approved Construction Documents;



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- Attending/participating in meetings with other City plan review or inspection staff, property owners, Consultants, or design professionals;
- Conducting Model Water Efficiency Landscape Ordinance (MWELo) review; and
- Performing other related duties, as required.

### **3.2 Inspection Services**

Inspection services involves comprehensive field inspections for various developments within the City, in order to determine compliance with the City-approved Construction Documents and all applicable Codes.

3.2.1 As-needed inspection services may include, but are not limited to:

- Building inspections (multi-family dwellings and nonresidential);
- Plumbing inspections;
- Mechanical inspections;
- Electrical inspections;
- Combination residential inspections (one- and two-family dwellings);
- Fire inspections;
- Grading inspections; and
- Erosion/Stormwater Best Management Practices (BMPs).

3.2.2 As-needed inspection services tasks may include, but are not limited to:

- Reviewing approved Construction Documents to gain familiarity with a development;
- Conducting inspections on developments to determine conformity with approved Construction Documents and Codes;
- Working closely with property owners and consultants to provide solutions to problems on-site;
- Attending/participating in meetings with other City inspection or plan review staff, property owners, consultants, or design professionals;
- Maintaining a record of non-complying items and ensuring the resolution of such items;
- Ensuring that any construction changes are properly documented and approved by the appropriate City staff;
- Systematically logging/entering status of construction inspection activities and records; and
- Performing other related duties, as required.



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### **3.3 Permit Counter Services**

Permit counter services provide routine and technical information related to processing permit applications and the issuance of permits to architects, engineers, consultants, business owners and homeowners.

**3.3.1 As-needed permit counter services may include, but are not limited to:**

- Processing plan submittals;
- Verifying necessary approvals for permit issuance;
- Calculating fees;
- Maintaining records;
- Reviewing and approving simple non-structural plans at the counter;
- Processing applications using the City's permitting system (Infor Public Sector) to process applications; and
- Providing customer support and assistance.

**3.3.2 As-needed permit counter services tasks may include, but are not limited to:**

- Providing customer support and assistance at the Permit Center counter and over the phone; assisting the public in completing permit applications and other necessary forms; determining permit, plan, and process requirements for permit applicants; and notifying permit applicants when Construction Documents or permits are ready for pick-up or issuance;
- Reviewing permit applications and other pertinent information at the Permit Center counter to verify accuracy and completeness of information; processing permit applications and plan intake; and calculating a variety of fees;
- Reviewing and approving less-complicated non-structural plan reviews over the counter;
- Maintaining a variety of permit-related records;
- Verifying that projects have obtained all necessary approvals before issuing permits and that the following have been filed with the City: valid consultant's license, workers' compensation, and valid business license information;
- Coordinating/routing Construction Documents to the appropriate City staff for plan review and approval; and
- Performing other related duties, as required.

### **3.4 Medical Marijuana Businesses**

As a result of the passage of the State of California's Proposition 64 Marijuana Legalization and the City of Long Beach's Measure MM: Regulation of Medical Marijuana Businesses, the City has been receiving a large number of applications for Medical Marijuana (MMJ) businesses starting in early 2017.

In addition to more routine inspection services as described above, the City desires Consultants that have experience in performing plan review and inspections of MMJ



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businesses. Consultants with this expertise should demonstrate the ability to review multiple MMJ businesses simultaneously, as well as the ability to meet expedited time frames.

### **3.5 Building Bureau Training**

Changes in federal, State and/or local laws may require staff and community trainings to ensure compliance with new regulations. At the request of the Building Bureau, a Consultant shall be requested to facilitate or assist with training opportunities to introduce or provide continuing education on changing regulations. These trainings may include presentations, outreach, meeting planning, preparation of training materials, and Bulletin writing.

### **3.6 COVID-19 Pandemic Consideration**

Due to the COVID-19 pandemic, in March of 2020, City facilities were closed to the public. The Building Bureau temporarily suspended in-person plan review and is currently only accepting plans in an electronic, digital format (PDF). On a case by case basis, some contract staff may be approved to work remotely.

The successful Consultant will explain how their firm is prepared to carryout plan review and Permit Center tasks remotely should the pandemic continues through 2021 or another unforeseen incident occurs. The Consultant should describe the technology Contract Staff would use to work remotely and how they can adapt to changing work environments.

If permitted to work remotely, Contract Staff will, after instruction, connect to the City's permitting system. Contract Staff with experience working with electronic permitting systems is desirable. They will also need to be able to communicate with applicants via email, telephone or other remote-working methods.



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## **7. PROJECT SPECIFICATIONS**

- 7.1 Contract Staff assigned to work at the City may work up to 960 hours in a 12-month period from July 1 through June 30 annually. This is a cumulative total for each contact staff employee and includes hours worked at all City departments and any work performed at the City while employed by other temporary agencies. Consultant is responsible for tracking contract staff hours to ensure the total hours worked for the City do not exceed 960. (See Section 3 – Scope of Project.)
- 7.2 Contract Staff are not eligible for alternative work schedules that exceed 8 hours per day or 40 hours per week. Any exceptions must be preapproved in writing by the City.
- 7.3 All Contract Staff are required to maintain a record of hours worked via timecard or sheet. Department/Division designee will approve timecards/sheets.
- 7.4 Background/Live Scan, paid for by the Department, is required for all Contract Staff assigned to the City and must be coordinated with Department/Division designee prior to the assignment.
- 7.5 Contract Staff provided by the Consultant are independent contractors and not employees of the City of Long Beach.
- 7.6 The Consultant acknowledges and agrees that the City will not withhold taxes of any kind from Contract Staff compensation; nor will the City secure Worker's Compensation or pay unemployment insurance to, for, or on Contract Staff behalf; and the City will not provide Contract Staff, and Contract Staff are not entitled to, any of the usual customary rights, benefits, or privileges of City employees. Consultant expressly warrants that neither Consultant nor Contract Staff shall represent themselves to be employees of the City.
- 7.7 To comply with CalOSHA's reporting requirements, employers are required to record injuries and illnesses for all workers, including Contract Staff, on one work location OSHA log. The host employer is an employer that is in charge of the Contract Staff's day to day supervision and should report their injuries and illnesses. The City of Long Beach (host employer and/or client of the Consultant) will manually record the Contract Staff's injuries and illnesses on its log. The selected Consultant is required to report to the City any injuries or illnesses reported by a Contract Staff employee that occurred in a City facility. The selected Consultant will be required to provide the City with a copy of their firm's work-related injuries and illnesses procedures and train each Contract Staff how to report these types of injuries and illnesses.
- 7.8 The Consultant shall be responsible and liable for any mandates, requirements, implementation, and/or costs associated with federal and State mandates, acts, and/or requirements pertaining to the Affordable Care Act, as well as any subsequent



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mandates that arise from such, including any State and local mandates, laws, and/or requirements that arise in response to said mandates.

- 7.9 The Consultant shall be responsible and liable for any mandates, requirements, implementation, and/or costs associated with federal and State mandates, acts, and/or requirements pertaining to the Affordable Care Act, as well as any subsequent mandates that arise from such, including any State and local mandates, laws, and/or requirements that arise in response to said mandates.
- 7.10 The Consultant shall be responsible and liable for any mandates, requirements, implementation, and/or costs associated with federal and State mandates, acts, and/or requirements pertaining to the minimum wage, as well as any subsequent mandates that arise from such, including any State and local mandates, laws, and/or requirements that arise in response to said mandates.
- 7.11 The Consultant shall be responsible and liable for any mandates, requirements, implementation, and/or costs associated with federal and State mandates, acts, and/or requirements pertaining to the COVID-19 Pandemic, as well as any subsequent mandates that arise from such, including any State and local mandates, laws, and/or requirements that arise in response to said mandates.



**EXHIBIT “B”**  
**RATES AND CHARGES**

**Fee Schedule**

TRB and Associates offers the following fixed-fee and hourly rate schedules for services provided. Please note that Building Plan Review services may be rendered on either a fixed fee or hourly rate basis, as noted below. If additional services are requested such as Fire Plan Review, Building Inspection, Staff Augmentation and Other services (e.g. CASp consulting), those services can be provided on an hourly basis at rates shown in the provided Schedule of Hourly Rates and Reimbursables.

**Plan Review Services**

Our plan review fees may be calculated as a percentage of the total plan review fee collected by the City. The fee compensation shown covers three total plan review cycles – the initial plan review and two rechecks. Any further review cycles which become necessary and reviews of revisions to approved plans would be billed based upon a negotiated hourly rate. Please note that the turnaround timeframe for providing expedited and express plan reviews would be negotiated/mutually agreed upon prior to commencement of the review. Please also note that all plan reviews are subject to a minimum \$250 fee.

<b>Turnaround Timeframe* (in business days)</b>	<b>Structural Only Review</b>	<b>M/E/P Only Review</b>	<b>Complete Review (Structural, Life Safety/Disabled Access, M/E/P, Green, Title 24 Energy, Grading &amp; Drainage)</b>
<b>Standard:</b> - 7-10 days first check - 5 days rechecks	40%	40%	69%
<b>Expedited**</b> - 5 days first check - 5 days rechecks	Standard fee plus an additional 50 percent	Standard fee plus an additional 50 percent	Standard fee plus an additional 50 percent

\* For exceptionally large/complex projects, 15-day first check and 10-day rechecks may apply, as mutually agreed upon prior to commencement of review.

\*\* Turnaround timeframe would be mutually agreed upon prior to commencement of work.

\*\*\* Note: For other review scope combinations not specifically identified in the above table (e.g. Electrical Only, Mechanical/Plumbing Only, etc.), the fee compensation would be on an hourly basis.

Please note that the pickup, shipment, and delivery of hardcopy and/or electronic plan documents and other relevant correspondence to the City is included in the above-noted cost.

### **Schedule of Hourly Rates and Reimbursables**

The following billing rates apply for services rendered on an hourly basis:

<u>Position</u>	<u>Hourly Rate</u>
Principal / Director	\$175.00
Project Manager	\$155.00
Building Official	\$150.00
Assistant Project Manager	\$135.00
Analyst	\$ 95.00
Plan Review Task Leader	\$145.00
Senior Plan Review Engineer / Architect	\$135.00
Senior Plans Examiner (Building & Fire)	\$120.00
Plan Review Engineer/Architect	\$110.00
Plans Examiner (Building & Fire)	\$ 95.00
Intern Plans Examiner	\$ 65.00
Permit Technician Task Leader	\$ 85.00
Senior Permit Technician	\$ 75.00
Permit Technician	\$ 65.00
Clerical/Admin	\$ 58.00
Fire Protection Engineer	\$195.00
CASp Certified Inspector/Examiner	\$135.00
Grading/Storm Water Plan Review Engineer	\$135.00
QSP Storm Water Inspector	\$110.00
Inspection Task Leader	\$135.00
Supervising Inspector	\$120.00
Senior Inspector III	\$110.00
Senior Inspector II	\$105.00
Senior Inspector I	\$ 95.00
Inspector II	\$ 85.00
Inspector I	\$ 80.00
Intern Inspector	\$ 65.00

- Overtime, Emergency, Expedited, and After-hours work is billed at the above-noted rates plus an additional 50 percent (Note that no overtime will be charged without client authorization)
- Project inspections subject to prevailing wage requirements are at the above-published rates plus 30 percent.
- All requested inspection and other staff-augmentation services are subject to a minimum 4-hour fee.
- Reimbursement for direct expenses, incurred in connection with the work, will be at cost plus 10 percent.
- Other in-house charges for prints, reproductions and equipment use, etc. will be at standard company rates.

*The above Schedule is valid through June 30, 2022 and may be adjusted thereafter to account for CPI changes, as mutually agreed upon.*

# **EXHIBIT “C”**

**DEPARTMENT REPRESENTATIVE  
DIRECTOR OF DEVELOPMENT  
SERVICES OR DESIGNEE**

**EXHIBIT “D”**  
**MATERIALS AND INFORMATION**  
**NONE**

# EXHIBIT “E”

## KEY EMPLOYEE

Todd Bailey  
Principal

[tbailey@trbplus.com](mailto:tbailey@trbplus.com)