

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

1 AGREEMENT

2 **33782**

3 THIS AGREEMENT is made and entered, in duplicate, as of December 12,  
4 2014, for reference purposes only, pursuant to a minute order adopted by the City  
5 Council of the City of Long Beach at its meeting on December 2, 2014, by and between  
6 TERRY A. HAYES ASSOCIATES INC., a California corporation ("Consultant"), with a  
7 place of business at 8522 National Boulevard, Suite 102, Culver City, California 90232-  
8 2400, and the CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, City requires specialized services requiring unique skills to be  
10 performed in connection with as-needed on-call environmental consulting services  
11 ("Project"); and

12 WHEREAS, City has selected Consultant in accordance with City's  
13 administrative procedures and City has determined that Consultant and its employees  
14 are 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  
25 for these services in the manner described below, not to exceed One Hundred  
26 Fifty Thousand Dollars (\$150,000), 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  
2 of 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.  
4 In the event that the City Council of the City fails to appropriate the necessary  
5 funds for any fiscal year, then, and in that event, the Agreement will terminate at  
6 no 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  
16 with 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 January 1, 2015, and shall terminate at 11:59 p.m. on December 31, 2016, unless sooner  
5 terminated as provided in this Agreement, or unless the services or the Project is  
6 completed sooner.

7 3. COORDINATION AND ORGANIZATION.

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

16 B. The parties acknowledge that a substantial inducement to City  
17 for entering this Agreement was and is the reputation and skill of Consultant's key  
18 employee, Terry A. Hayes. City shall have the right to approve any person  
19 proposed by Consultant to replace that key employee.

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

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

5 5. INSURANCE.

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

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

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

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

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

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

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

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

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

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

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

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

20 H. The procuring or existence of insurance shall not be  
21 construed or deemed as a limitation on liability relating to Consultant's  
22 performance or as full performance of or compliance with the indemnification  
23 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  
27 was 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  
2 approval of City, except that Consultant may with the prior approval of the City Manager  
3 of City, 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  
9 shall prevent Consultant from employing as many employees as Consultant deems  
10 necessary for performance of this Agreement.

11           7.     CONFLICT OF INTEREST.     Consultant, by executing this  
12 Agreement, certifies that, at the time Consultant executes this Agreement and for its  
13 duration, Consultant does not and will not perform services for any other client which  
14 would create a conflict, whether monetary or otherwise, as between the interests of City  
15 and the interests of that other client. And, Consultant shall obtain similar certifications  
16 from Consultant's employees, subconsultants and contractors.

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

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

1 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that  
2 Data shall not be made available to any person or entity for use without the prior approval  
3 of City. This warranty shall survive termination of this Agreement for five (5) years.

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

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

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



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13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

15. LAW. This Agreement shall be construed in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions. Consultant shall cause all work performed in connection with construction of the Project to be performed in compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies (including, without limitation, all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 *et seq.* of the California Labor Code); and (2) all directions, rules and

1 regulations of any fire marshal, health officer, building inspector, or other officer of every  
2 governmental agency now having or hereafter acquiring jurisdiction.

3 16. PREVAILING WAGES.

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

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

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

24 18. INDEMNITY.

25 A. Consultant shall indemnify, protect and hold harmless City, its  
26 Boards, Commissions, and their officials, employees and agents ("Indemnified  
27 Parties"), from and against any and all liability, claims, demands, damage, loss,  
28 obligations, causes of action, proceedings, awards, fines, judgments, penalties,

1 costs and expenses, including attorneys' fees, court costs, expert and witness  
2 fees, and other costs and fees of litigation, arising or alleged to have arisen, in  
3 whole or in part, out of or in connection with (1) Consultant's breach or failure to  
4 comply with any of its obligations contained in this Agreement, including any  
5 obligations arising from the Project's compliance with or failure to comply with  
6 applicable laws, including all applicable federal and state labor requirements  
7 including, without limitation, the requirements of California Labor Code section  
8 1770 *et seq.* or (2) negligent or willful acts, errors, omissions or misrepresentations  
9 committed by Consultant, its officers, employees, agents, subcontractors, or  
10 anyone under Consultant's control, in the performance of work or services under  
11 this Agreement (collectively "Claims" or individually "Claim").

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

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

26 D. The provisions of this Section shall survive the expiration or  
27 termination of this Agreement.

28 19. AMBIGUITY. In the event of any conflict or ambiguity between this

1 Agreement and any Exhibit, the provisions of this Agreement shall govern.

2           20.    NONDISCRIMINATION.

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

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

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

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

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

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

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

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

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

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

5 23. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

27 25. WAIVER. The acceptance of any services or the payment of any  
28 money by City shall not operate as a waiver of any provision of this Agreement or of any

1 right to damages or indemnity stated in this Agreement. The waiver of any breach of this  
2 Agreement shall not constitute a waiver of any other or subsequent breach of this  
3 Agreement.

4           26. CONTINUATION. Termination or expiration of this Agreement shall  
5 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
6 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

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

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

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

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

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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.

TERRY A. HAYES ASSOCIATES INC., a California

\_\_\_\_\_, 20

By [Signature]  
Name TERRY A. HAYES  
Title CEO

\_\_\_\_\_, 20

By [Signature]  
Name TERRY A. HAYES  
Title CEO

"Consultant"

CITY OF LONG BEACH, a municipal corporation

March 5, 2015

By [Signature]  
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City" Assistant City Manager

This Agreement is approved as to form on 1/26, 2015.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy

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



**WRITTEN CONSENTS IN LIEU OF  
ANNUAL MEETING OF DIRECTORS  
OF  
TERRY A. HAYES ASSOCIATES INC.  
A California Corporation  
FOR YEAR 2010  
May 28, 2010 – May 27, 2011**

**Introduction**

The undersigned, being all of the Directors of Terry A. Hayes Associates Inc. (the "Corporation"), acting pursuant to the authority of California Corporations Code §307(b) in lieu of an annual meeting of Directors do hereby adopt the following Resolutions, having the same force and effect as if resolved pursuant to a regularly noticed and held meeting of the Board of Directors, and shall be effective on the date set forth below:

**RESOLVED:** That all of the acts and transactions of the Officers of the Corporation for the preceding year are hereby approved in all respects.

**WHEREAS:** The Corporation's lease for its Principal Executive Office and Principal Place of Business at 8522 National Boulevard, Suite 102, Culver City, California, 90232 with landlord, 8520-22 National Partners, L.P. was coming to term effective June 30, 2010;

**WHEREAS:** The Corporation was still in need of maintaining its lease at 8522 National Boulevard, Suite 102, Culver City, California, 90232 for its Principal Executive Office and Principal Place of Business in order to conduct business and maintain its books and records;

**RESOLVED:** The Directors authorized the Officers to negotiate a renewal of the existing lease with 8520-22 National Partners, L.P.

**FURTHER RESOLVED:** The Directors authorized the Officers to enter into a renewed lease with 8520-22 National Partners, L.P. for its Principal Executive Office and Principal Place of Business at 8522 National Boulevard, Suite 102, Culver City, California, 90232 effective July 1, 2010 for a period of 5 years, expiring on June 30, 2015. The monthly rent will be as follows, with a 100% abatement of monthly base rent due in months two (2) and thirteen (13) of the extended lease term:

TERRY A. HAYES ASSOCIATES INC.  
WRITTEN CONSENTS IN LIEU OF  
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2010

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<u>PERIOD</u>	<u>MONTHLY BASE RENT</u>
July 1, 2010 – June 30, 2011	\$8,878.50
July 1, 2011 – June 30, 2012	\$9,144.86
July 1, 2012 – June 30, 2013	\$9,419.20
July 1, 2013 – June 30, 2014	\$9,701.78
July 1, 2014 – June 30, 2015	\$9,992.83

**WHEREAS:** The Corporation's Principal Executive Office and Principal Place of Business required a remodel to accommodate growth, expansion, and efficient use of its space in order to remain competitive in the industry and meet the demands of its clients;

**RESOLVED:** The Directors authorized the Officers to proceed with a remodel at the expense of the landlords.

**WHEREAS:** The Corporation was in need of continued support in the area of legal representation;

**RESOLVED:** That the Corporation's legal counsel shall continue to be C. Angela De La Housaye, Esq. of De La Housaye & Associates, a Law Corporation, 1655 North Main Street, Suite 260, Walnut Creek, California, 94596 and of 11755 Wilshire Boulevard, 15<sup>th</sup> Floor, Los Angeles, CA, 90025.

**WHEREAS:** The Corporation also is in need of continued support by a Certified Public Accountant, familiar with corporate filings and relevant corporate tax laws;

**RESOLVED:** That the Corporation's accountant shall continue to be Allen Deilami of Accurate Records, located at 10220 Culver Boulevard, Suite 201, Culver City, California, 90232.

**RESOLVED:** The Directors authorized the re-election of the following Officers:

<u>Name</u>	<u>Office</u>
Terry A. Hayes	President
Terry A. Hayes	Vice President
Terry A. Hayes	Secretary
Terry A. Hayes	Chief Financial Officer

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**WHEREAS:** The Corporation required additional support in various practice and service areas of its industry in order to meet the demands of its clients;

**RESOLVED:** The Directors authorized the Officers to hire new employees to fulfill required openings.

**FURTHER RESOLVED:** The Directors authorized the Officers to hire an Administrative Assistant, on a part-time, temporary basis, effective June 21, 2010.

**RESOLVED:** That the Financial Statement, specifically the 2010 Revenue and Expense Report of the Corporation for the period ending December 31, 2010, is approved by the Chief Financial Officer and President of the Corporation. A copy will be kept with other corporate records kept in the normal course and scope of business.

DATED: 8/21/12

  
Terry A. Hayes  
Its Director & Secretary

WRITTEN CONSENTS IN LIEU OF  
ANNUAL MEETING OF SHAREHOLDERS  
OF

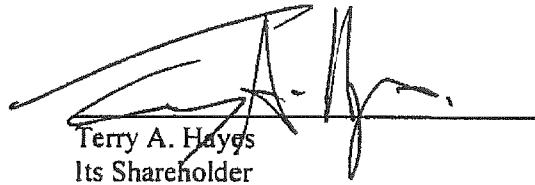
TERRY A. HAYES ASSOCIATES INC.  
A California Corporation  
FOR YEAR 2010  
May 28, 2010 – May 27, 2011

The undersigned, being the shareholder of Terry A. Hayes Associates Inc. (the "Corporation"), acting pursuant to the authority of California Corporations Code §603(a) in lieu of an annual meeting of Shareholders does hereby adopt the following Resolutions, having the same force and effect as if resolved pursuant to a regularly noticed and held meeting of the Shareholders, and shall be effective on the date set forth below:

**RESOLVED:** That the Financial Statements of the Corporation for the period ending December 31, 2010 are approved by the Chief Financial Officer and President of the Corporation. A copy will be kept with other corporate records kept in the normal course and scope of business.

**RESOLVED:** That all the acts and transactions of the Officers of the Corporation for the preceding fiscal year, ending December 31, 2010 are hereby approved in all respects.

DATED: 8/21/12

  
Terry A. Hayes  
Its Shareholder

# EXHIBIT “A”

## Scope of Work



City of Long Beach  
Purchasing Division  
333 West Ocean Boulevard, 7<sup>th</sup> Floor  
Long Beach, CA 90802

## 1. OVERVIEW OF PROJECT

The City of Long Beach, Department of Development Services, desires to engage the services of one or more professional environmental consulting firms to provide services in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The City invites consulting firms experienced in environmental consulting to submit qualifications and fee proposals.

## 2. ACRONYMS/DEFINITIONS

For purposes of this RFP, the following acronyms/definitions will be used:

<b>Awarded Consultant</b>	The organization/individual that is awarded and has an approved contract with the City of Long Beach, California for the services identified in this RFP.
<b>CEQA</b>	California Environmental Quality Act.
<b>City</b>	The City of Long Beach and any department or agency identified herein.
<b>Consultant</b>	Organization/individual submitting a proposal in response to this RFP.
<b>Department / Division</b>	City of Long Beach, Department of Development Services.
<b>Evaluation Committee</b>	An independent committee comprised solely of representatives of the City established to review proposals submitted in response to the RFP, score the proposals, and select a Consultant.
<b>May</b>	Indicates something that is not mandatory but permissible.
<b>NEPA</b>	National Environmental Policy Act.
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>RFP</b>	Request for Proposals.
<b>Shall / Must</b>	Indicates a mandatory requirement. Failure to meet a mandatory requirement may result in the rejection of a proposal as non-responsive.
<b>Should</b>	Indicates something that is recommended but not mandatory. If the Consultant fails to provide recommended information, the City may, at its sole option, ask the Consultant to provide the information or



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evaluate the proposal without the information.

**Subcontractor** Third party not directly employed by the Consultant who will provide services identified in this RFP.

### **3. SCOPE OF PROJECT**

The City of Long Beach (City), Department of Development Services (Development Services), is seeking proposals from qualified consulting firms to provide professional services in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The required services will pertain to the preparation of Environmental Impact Reports, Mitigated Negative Declarations, Environmental Assessments, peer reviews and various other environmental assignments and responsibilities.

The selected consulting firm(s) will be placed on an on-call list and will enter into a contract for a period of twenty-four (24) months with two annual renewal options at the discretion of the City. The contract terms will not exceed forty-eight (48) months. The selected consulting firms will be expected to follow procedures as required by the City and its municipal code and by State law and federal law, as applicable, for the development and preparation of environmental documents. In addition, the firms will be expected to coordinate and participate in the public review process with Development Services including, but not limited to, public outreach and community meetings with business and neighborhood groups and community stakeholders, study sessions, and public hearings before the Planning Commission and City Council.

Selected consulting firms may be required to provide services similar, but not limited to, the services described in this section. The on-call list may be utilized by the Planning, Neighborhood Services and Housing and Community Improvement Bureaus in the Department of Development Services and by other City departments, including Parks, Recreation and Marine (Tidelands) and Public Works. Submitted proposals should focus on and identify recently completed and current or on-going assignments related to environmental consultant services and client references for those assignments for public agencies.

Development Services will use consultants from the on-call list in ways best suited to each individual project. In some instances, the Development Services will select an on-call consultant directly from the on-call list and in other instances the Development Services may request proposals from multiple consultants on the on-call list prior to awarding a project.

# EXHIBIT "B"

Rates or Charges



# COST

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*This section addresses requirements under Section 10 of the RFP.*

## Fee Schedule

### Terry A. Hayes Associates Inc. (TAHA)

Chief Executive Officer .....	\$231.00
Senior Associate/Senior Environmental Scientist .....	\$150.00
Senior Planner .....	\$121.00
Planner.....	\$95.00
Associate Environmental Scientist.....	\$83.00
GIS/Graphic Design Specialist .....	\$69.00
Assistant Planner .....	\$65.00
Administrative Assistant .....	\$54.00

### Linscott, Law, & Greenspan (LLG)

Principal Engineer .....	\$252.00
Associate Principal Engineer .....	\$216.00
Planning/Design Manager .....	\$201.00
Senior Transportation Engineer.....	\$178.00
Transportation Engineer III .....	\$158.00
Transportation Engineer II .....	\$133.00
Transportation Engineer I .....	\$114.00
Senior Transportation Planner.....	\$158.00
Transportation Planner III .....	\$133.00
Transportation Planner II .....	\$114.00
Transportation Planner I .....	\$102.00
Engineering Associate II.....	\$113.00
Engineering Associate I.....	\$109.00
Engineering Computer Analyst II .....	\$108.00
Engineering Computer Analyst I .....	\$85.00
Senior CADD Drafter.....	\$109.00
CADD Drafter III .....	\$102.00
CADD Drafter II .....	\$90.00
CADD Drafter I .....	\$77.00
Senior Engineering Technician.....	\$109.00
Engineering Technician II .....	\$102.00
Engineering Technician I .....	\$77.00
Word Processor/Secretary .....	\$72.00
Engineering Aide I .....	\$55.00

# EXHIBIT “C”

City’s Representative:

Director of Development Services or Designee

# EXHIBIT "D"

Materials/Information Furnished: None