



1 (\$192,000), for a total not to exceed amount of One Million One Hundred Fifty-Two  
2 Thousand Dollars (\$1,152,000), at the rates or charges shown in Exhibit "B".

3 B. The City's obligation to pay the sum stated above for any one  
4 fiscal year shall be contingent upon the City Council of the City appropriating the  
5 necessary funds for such payment by the City in each fiscal year during the term of  
6 this Agreement. For the purposes of this Section, a fiscal year commences on  
7 October 1 of the year and continues through September 30 of the following year. In  
8 the event that the City Council of the City fails to appropriate the necessary funds  
9 for any fiscal year, then, and in that event, the Agreement will terminate at no  
10 additional cost or obligation to the City.

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

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

1 E. Consultant represents that Consultant has obtained all  
2 necessary information on conditions and circumstances that may affect its  
3 performance and has conducted site visits, if necessary.

4 F. CAUTION: Consultant shall not begin work until this  
5 Agreement has been signed by both parties and until Consultant's evidence of  
6 insurance has been delivered to and approved by City.

7 2. TERM. The term of this Agreement shall commence at midnight on  
8 August 1, 2021, and shall terminate at 11:59 p.m. on July 31, 2022, unless sooner  
9 terminated as provided in this Agreement, or unless the services or the Project is  
10 completed sooner. The term may be extended for two (2) additional one-year periods, at  
11 the discretion of the City Manager.

12 3. COORDINATION AND ORGANIZATION.

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

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

26 4. INDEPENDENT CONTRACTOR. In performing its services,  
27 Consultant is and shall act as an independent contractor and not an employee,  
28 representative or agent of City. Consultant shall have control of Consultant's work and the

1 manner in which it is performed. Consultant shall be free to contract for similar services to  
2 be performed for others during this Agreement; provided, however, that Consultant acts in  
3 accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges  
4 and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation;  
5 (b) City will not secure workers' compensation or pay unemployment insurance to, for or  
6 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of  
7 the usual and customary rights, benefits or privileges of City employees. Consultant  
8 expressly warrants that neither Consultant nor any of Consultant's employees or agents  
9 shall represent themselves to be employees or agents of City.

10 5. INSURANCE.

11 A. As a condition precedent to the effectiveness of this  
12 Agreement, Consultant shall procure and maintain, at Consultant's expense for the  
13 duration of this Agreement, from insurance companies that are admitted to write  
14 insurance in California and have ratings of or equivalent to A:V by A.M. Best  
15 Company or from authorized non-admitted insurance companies subject to Section  
16 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII  
17 by A.M. Best Company, the following insurance:

18 i. Commercial general liability insurance (equivalent in  
19 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less  
20 than One Million Dollars (\$1,000,000.00) per each occurrence and Two  
21 Million Dollars (\$2,000,000.00) general aggregate. This coverage shall  
22 include but not be limited to broad form contractual liability, cross liability,  
23 independent contractors liability, and products and completed operations  
24 liability. City, its boards and commissions, and their officials, employees and  
25 agents shall be named as additional insureds by endorsement (on City's  
26 endorsement form or on an endorsement equivalent in scope to ISO form CG  
27 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04  
28 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain

1 no special limitations on the scope of protection given to City, its boards and  
2 commissions, and their officials, employees and agents. This policy shall be  
3 endorsed to state that the insurer waives its right of subrogation against City,  
4 its boards and commissions, and their officials, employees and agents. Such  
5 insurance shall not exclude XCU (explosion, underground, and collapse)  
6 perils or sudden and accidental pollution and cleanup liability.

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

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

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

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

23 C. Each insurance policy shall be endorsed to state that coverage  
24 shall not be reduced, non-renewed or canceled except after thirty (30) days prior  
25 written notice to City, shall be primary and not contributing to any other insurance  
26 or self-insurance maintained by City, and shall be endorsed to state that coverage  
27 maintained by City shall be excess to and shall not contribute to insurance or self-  
28 insurance maintained by Consultant. Consultant shall notify City in writing within

1 five (5) days after any insurance has been voided by the insurer or cancelled by the  
2 insured.

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

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

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

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

28 H. The procuring or existence of insurance shall not be construed

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

1 or deemed as a limitation on liability relating to Consultant's performance or as full  
2 performance of or compliance with the indemnification provisions of this Agreement.

3 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
4 contemplates the personal services of Consultant and Consultant's employees, and the  
5 parties acknowledge that a substantial inducement to City for entering this Agreement was  
6 and is the professional reputation and competence of Consultant and Consultant's  
7 employees. Consultant shall not assign its rights or delegate its duties under this  
8 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval  
9 of City, except that Consultant may with the prior approval of the City Manager of City,  
10 assign any moneys due or to become due Consultant under this Agreement. Any  
11 attempted assignment or delegation shall be void, and any assignee or delegate shall  
12 acquire no right or interest by reason of an attempted assignment or delegation.  
13 Furthermore, Consultant shall not subcontract any portion of its performance without the  
14 prior approval of the City Manager or designee, or substitute an approved subconsultant  
15 or contractor without approval prior to the substitution. Nothing stated in this Section shall  
16 prevent Consultant from employing as many employees as Consultant deems necessary  
17 for performance of this Agreement.

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

28 8. MATERIALS. Consultant shall furnish all labor and supervision,

1 supplies, materials, tools, machinery, equipment, appliances, transportation and services  
2 necessary to or used in the performance of Consultant's obligations under this Agreement,  
3 except as stated in Exhibit "D".

4           9.    OWNERSHIP OF DATA. All materials, information and data  
5 prepared, developed or assembled by Consultant or furnished to Consultant in connection  
6 with this Agreement, including but not limited to documents, estimates, calculations,  
7 studies, maps, graphs, charts, computer disks, computer source documentation, samples,  
8 models, reports, summaries, drawings, designs, notes, plans, information, material and  
9 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
10 in a format identified by City, and City shall have the unrestricted right to use and disclose  
11 the Data in any manner and for any purpose without payment of further compensation to  
12 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that  
13 Data shall not be made available to any person or entity for use without the prior approval  
14 of City. This warranty shall survive termination of this Agreement for five (5) years.

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

25           11. CONFIDENTIALITY. Consultant shall keep all Data confidential and  
26 shall not disclose the Data or use the Data directly or indirectly, other than in the course of  
27 performing its services, during the term of this Agreement and for five (5) years following  
28 expiration or termination of this Agreement. In addition, Consultant shall keep confidential



1 all information, whether written, oral or visual, obtained by any means whatsoever in the  
2 course of performing its services for the same period of time. Consultant shall not disclose  
3 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit  
4 of others except for the purpose of this Agreement.

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

11 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

1 expressly refers to this Agreement.

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

13 16. PREVAILING WAGES.

14 A. Consultant agrees that all public work (as defined in California  
15 Labor Code section 1720) performed pursuant to this Agreement (the "Public  
16 Work"), if any, shall comply with the requirements of California Labor Code sections  
17 1770 *et seq.* City makes no representation or statement that the Project, or any  
18 portion thereof, is or is not a "public work" as defined in California Labor Code  
19 section 1720.

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

1 Labor Code section 1775 and the payroll record keeping requirements of California  
2 Labor Code section 1771.”

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

6 18. INDEMNITY.

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

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

1 in the defense.

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

7 D. The provisions of this Section shall survive the expiration or  
8 termination of this Agreement.

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

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

19 21. NONDISCRIMINATION.

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

1 including apprenticeship.

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

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

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

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

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

28 C. If the Consultant fails to comply with the EBO, the City may

1 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or  
2 to become due under the Agreement may be retained by the City. The City may  
3 also pursue any and all other remedies at law or in equity for any breach.

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

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

12 23. NOTICES. Any notice or approval required by this Agreement shall  
13 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,  
14 postage prepaid, addressed to Consultant at the address first stated above, and to City at  
15 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy  
16 to the City Engineer at the same address. Notice of change of address shall be given in  
17 the same manner as stated for other notices. Notice shall be deemed given on the date  
18 deposited in the mail or on the date personal delivery is made, whichever occurs first.

19 24. COPYRIGHTS AND PATENT RIGHTS.

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

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

26 C. Consultant warrants that the Data does not violate or infringe  
27 any patent, copyright, trade secret or other proprietary right of any other party.  
28 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials

1 and employees harmless from any and all claims, demands, damages, loss, liability,  
2 causes of action, costs or expenses (including reasonable attorney's fees) whether  
3 or not reduced to judgment, arising from any breach or alleged breach of this  
4 warranty.

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

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

18 27. CONTINUATION. Termination or expiration of this Agreement shall  
19 not affect rights or liabilities of the parties which accrued pursuant to the Sections titled  
20 "Ownership of Data", "Confidentiality", "Breach of Confidentiality", "Law", "Indemnity", and  
21 "Audit" prior to termination or expiration of this Agreement.

22 28. TAX REPORTING. As required by federal and state law, City is  
23 obligated to and will report the payment of compensation to Consultant on Form 1099-  
24 Misc. Consultant shall be solely responsible for payment of all federal and state taxes  
25 resulting from payments under this Agreement. Consultant shall submit Consultant's  
26 Employer Identification Number (EIN), or Consultant's Social Security Number if  
27 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of  
28 Financial Management. Consultant acknowledges and agrees that City has no obligation

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CHARLES PARKIN, City Attorney  
411 West Ocean Boulevard, 9th Floor  
Long Beach, CA 90802-4664

1 to pay Consultant until Consultant provides one of these numbers.

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

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

9           31. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
10 designed to or entered for the purpose of creating any benefit or right for any person or  
11 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.

THE BROADBAND GROUP, a Nevada corporation

July 23, 2021

By [Signature]  
Name JEFFREY M. REIMAN  
Title PRESIDENT

July 23, 2021

By [Signature]  
Name Cynthia B. Reiman  
Title CFO

"Consultant"

CITY OF LONG BEACH, a municipal corporation

Aug 5, 2021

By [Signature]  
City Manager

"City"

This Agreement is approved as to form on August 3, 2021.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy

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

# EXHIBIT “A”

## Scope of Work

## SCOPE OF SERVICES

### CITY OF LONG BEACH, CA

#### Targeted Field Assessment of Existing City Fiber & Conduit Facilities

##### Existing Infrastructure & Technical Assessment

**Description:** The Broadband Group (TBG) will do a targeted assessment of the City conduit and fiber assets to be used in the backbone of the expanded citywide design.

##### Update Records on Available Conduit & Fiber Routes

**Description:** Confirm existing fiber & conduit routes identified during Scenario 1 Implementation Planning with City Technology & Innovation and Traffic personnel and identify any additional conduit routes that might be available, or any new conduit/fiber constructed over the last year. Review available records to minimize new construction requirements and redline records if any discrepancies are found. Confirm departmental needs for each location to be added to the network.

##### Targeted Field Assessment

**Description:** Conduct a field assessment of the following key locations

- For existing fiber cables to be spliced into the expanded network
  - Check fiber panel at each endpoint
  - Test spare fibers to confirm their functionality
  - Locate termination points
- For each City building to be added to the fiber network: Locate the nearest vault for Traffic's Twisted Pair Conduit network and inspect it for conduit capacity. Determine if the vault is fiber-ready, and note any upgrades required.
- For Interconnection Sites (i.e., locations where new fiber routes intersect with existing fiber routes), Locate existing handholes and splice cases and verify that there is a fiber loop available. Determine if upgrades are required to accommodate additional capacity and meet current standards.
- For Endpoints on Ring Routes and Critical Crossings (i.e., bridges, Long Beach Airport, Caltrans right of way): Locate the nearest Fiber or Twisted Pair Traffic Vault & verify that conduit duct exists. Determine if the vault is fiber-ready, and note any upgrades required.

Following the survey, validate and update the HLD to a Mid-Level Design (MLD) based on observations from the Field Assessment. At this point, the MLD will show street-level designs for new construction, existing conduit routes to be used for placement of fiber, and the interconnection for the existing and new, expanded network as well as which existing assets will be used in the expanded network.

#### Engineering, Construction Prints, & Additional Construction Bid Documents

##### Engineering

**Description:** Following the survey, validate and update the HLD to a Mid-Level Design (MLD) based on observations from the Field Assessment and confirm departmental needs for each location to be added to the network. At this point, the MLD would show:

- Street-level designs for new construction,
- Existing conduit routes to be used for placement of fiber,
- Interconnection for the existing and new, expanded network, and
- Existing assets to be used in the expanded network.

### **Construction Prints (Low-Level Design)**

**Description:** Detailed construction prints, stamped by a Professional Engineer (PE), for all new construction required to implement Scenario 1.

- Perform a detailed survey of each new construction route to determine exact conduit and handhole construction locations.
- Draft detailed construction prints consistent with construction permit requirements. These will include new construction as well as installation of fiber in existing conduit.
- As required, have a Professional Engineer (PE) review and stamp the construction prints.

### **Additional Construction Bid Documents**

**Description:** To provide a clear project description with specific requirements that will reduce the risk for the City and the bidding Contractors, TBG will work with the City to create the following documents in preparation for a Construction Bid to be issued by the City of Long Beach, CA.

- Phased Construction Plan
- Construction Estimate
- Bill of Materials & Material Standards
- Splice Tables
- Construction Standards & Specifications
- List of Required Permitting Agencies for Each Route
- City of Long Beach Construction Requirements (e.g., Traffic Control Plan, Excavation Permits, Inspections, etc.)

TBG will also provide advice and guidance on how best to define a streamlined process for coordinating with City departments during the planning and construction of the network.

## **Guidance During the Bid Preparation, Review, Evaluation, & Selection Process**

### **Preparation and Review for Construction Bid**

**Description:** TBG will work with City of Long Beach Public Works and TID to de-risk the bid using best practices and lessons learned from other citywide fiber builds:

- Permit process documentation
- Permit requirements from other jurisdictions and agencies
- Documenting known requirements
- Permit Bond requirements
- Meeting with city departments to clear roadblocks prior to pre-bid

Complying with all State and City bid process requirements, TBG will provide support and input to the City in the review, evaluation, and selection of a contractor, including:

- Selection Criteria (Non-discrimination requirements, MWOB bid requirements/score weighting)
- Self-performance requirement (or weighted score)
- Subcontractor requirements
- Bond Requirement (50% of project, Labor Bond, Subcontractor Bond)
- Insurance Requirements
- Construction Pre-bid meeting
- Bid Opening Meeting
- Prevailing wage requirements
- Validation of vendors, including Financial review

# EXHIBIT “B”

## Rates or Charges

# **BUDGET SUMMARY**

## CITY OF LONG BEACH, CA

### PROFESSIONAL TIME/RESOURCE ESTIMATE

SUBJECT	RESOURCE	MONTHS OF ACTIVITY	ESTIMATED BUDGET
Targeted Field Assessment of Existing City Fiber & Conduit Facilities	Business & Network Planning	9	\$250,000
Engineering, Construction Prints, & Additional Construction Bid Documents	Principal Engineering	12	\$440,000
Guidance during the Bid Preparation, Review, Evaluation, & Selection Process	Business & Network Planning	6	\$240,000
<b>TOTAL</b>		<b>27</b>	<b>\$930,000</b>

*Resource Estimates Subject to Change with City of Long Beach, CA Prior Approval*

### REIMBURSIBLE EXPENSES

DESCRIPTION	COST
Travel Expense Estimate	\$30,000*

*\*Travel expenses submitted at cost, only as costs are incurred.*

### TOTAL

DESCRIPTION	COST
Professional Time/Resource Estimate	\$930,000
Reimbursable Expenses	\$30,000
<b>TOTAL</b>	<b>\$960,000</b>

**TERM: July 1, 2021 – September 30, 2023**

### PROFESSIONAL FEES

RESOURCE	RATE	RESOURCE	RATE
Business & Network Planning	\$300/hour	Principal Engineering	\$300/hour
Financial Analysis	\$300/hour	Operations	\$150/hour

# EXHIBIT “C”

City’s Representative:

Cason Lee

(562) 570-5553

[Cason.Lee@longbeach.gov](mailto:Cason.Lee@longbeach.gov)

# EXHIBIT “D”

Materials/Information Furnished: None



# EXHIBIT “E”

Consultant’s Key Employee:

Jeffrey M. Reiman