

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

AGREEMENT

32398

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIS AGREEMENT is made and entered, in duplicate, as of October 5, 2011 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on October 4, 2011, by and between TRANSPORTATION & ENERGY SOLUTIONS, INC., a California corporation, with a place of business at 5475 Brentwood Place, Yorba Linda, California 92887 ("Consultant"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires specialized services requiring unique skills to be performed in connection with As-Needed Transportation Engineering, Transportation Planning, and Related Technical and Professional Services ("Project"); and

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

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

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

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Five Hundred Thousand Dollars (\$500,000), at the rates or charges shown in Exhibit "B".

B. Consultant may select the time and place of performance for these services provided, however, that access to City documents, records, and the

1 like, if needed by Consultant, shall be available only during City's normal business
2 hours and provided that milestones for performance, if any, are met.

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

17 D. Consultant represents that Consultant has obtained all
18 necessary information on conditions and circumstances that may affect its
19 performance and has conducted site visits, if necessary.

20 E. CAUTION: Consultant shall not begin work until this
21 Agreement has been signed by both parties and until Consultant's evidence of
22 insurance has been delivered to and approved by the City.

23 2. TERM. The term of this Agreement shall commence at midnight on
24 October 5, 2011, and shall terminate at 11:59 p.m. on October 4, 2014, unless sooner
25 terminated as provided in this Agreement, or unless the services or the Project is
26 completed sooner.

27 3. COORDINATION AND ORGANIZATION.

28 A. Consultant shall coordinate its performance with City's

1 representative, if any, named in Exhibit "C", attached to this Agreement and
2 incorporated by this reference. Consultant shall advise and inform City's
3 representative of the work in progress on the Project in sufficient detail so as to
4 assist City's representative in making presentations and in holding meetings on
5 the Project. City shall furnish to Consultant information or materials, if any,
6 described in Exhibit "D" attached to this Agreement and incorporated by this
7 reference, and shall perform any other tasks described in the Exhibit.

8 B. The parties acknowledge that a substantial inducement to City
9 for entering this Agreement was and is the reputation and skill of Consultant's key
10 employees, Nathaniel Behura and Glen Pederson. City shall have the right to
11 approve any person proposed by Consultant to replace that key employee.

12 4. INDEPENDENT CONTRACTOR. In performing its services,
13 Consultant is and shall act as an independent contractor and not an employee,
14 representative, or agent of City. Consultant shall have control of Consultant's work and
15 the manner in which it is performed. Consultant shall be free to contract for similar
16 services to be performed for others during this Agreement provided, however, that
17 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.
18 Consultant acknowledges and agrees that a) City will not withhold taxes of any kind from
19 Consultant's compensation, b) City will not secure workers' compensation or pay
20 unemployment insurance to, for or on Consultant's behalf, and c) City will not provide and
21 Consultant is not entitled to any of the usual and customary rights, benefits or privileges
22 of City employees. Consultant expressly warrants that neither Consultant nor any of
23 Consultant's employees or agents shall represent themselves to be employees or agents
24 of City.

25 5. INSURANCE.

26 A. As a condition precedent to the effectiveness of this
27 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
28 duration of this Agreement, from insurance companies that are admitted to write

1 insurance in California and have ratings of or equivalent to A:V by A.M. Best
2 Company or from authorized non-admitted insurance companies subject to
3 Section 1763 of the California Insurance Code and that have ratings of or
4 equivalent to A:VIII by A.M. Best Company the following insurance:

5 (a) Commercial general liability insurance (equivalent in scope to
6 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
7 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
8 coverage shall include but not be limited to broad form contractual liability,
9 cross liability, independent contractors liability, and products and
10 completed operations liability. The City, its boards and commissions, and
11 their officials, employees and agents shall be named as additional
12 insureds by endorsement (on City's endorsement form or on an
13 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20
14 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33
15 07 04 and CG 20 37 07 04), and this insurance shall contain no special
16 limitations on the scope of protection given to the City, its boards and
17 commissions, and their officials, employees and agents. This policy shall
18 be endorsed to state that the insurer waives its right of subrogation
19 against City, its boards and commissions, and their officials, employees
20 and agents.

21 (b) Workers' Compensation insurance as required by the California
22 Labor Code and employer's liability insurance in an amount not less than
23 \$1,000,000. This policy shall be endorsed to state that the insurer waives
24 its right of subrogation against City, its boards and commissions, and their
25 officials, employees and agents.

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

28 (d) Commercial automobile liability insurance (equivalent in scope

1 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
2 amount not less than \$500,000 combined single limit per accident.

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

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

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

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

26 F. Prior to the start of performance, Consultant shall deliver to
27 City certificates of insurance and the endorsements for approval as to sufficiency
28 and form. In addition, Consultant, shall, within thirty (30) days prior to expiration of

1 the insurance, furnish to City certificates of insurance and endorsements
2 evidencing renewal of the insurance. City reserves the right to require complete
3 certified copies of all policies of Consultant and Consultant's subconsultants and
4 contractors, at any time. Consultant shall make available to City's Risk Manager
5 or designee all books, records and other information relating to this insurance,
6 during normal business hours.

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

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

17 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
18 contemplates the personal services of Consultant and Consultant's employees, and the
19 parties acknowledge that a substantial inducement to City for entering this Agreement
20 was and is the professional reputation and competence of Consultant and Consultant's
21 employees. Consultant shall not assign its rights or delegate its duties under this
22 Agreement, or any interest in this Agreement, or any portion of it, without the prior
23 approval of City, except that Consultant may with the prior approval of the City Manager
24 of City, assign any moneys due or to become due the Consultant under this Agreement.
25 Any attempted assignment or delegation shall be void, and any assignee or delegate
26 shall acquire no right or interest by reason of an attempted assignment or delegation.
27 Furthermore, Consultant shall not subcontract any portion of its performance without the
28 prior approval of the City Manager or designee, or substitute an approved subconsultant

1 or contractor without approval prior to the substitution. Nothing stated in this Section
2 shall prevent Consultant from employing as many employees as Consultant deems
3 necessary for performance of this Agreement.

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

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

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

25 10. TERMINATION. Either party shall have the right to terminate this
26 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
27 prior notice to the other party. In the event of termination under this Section, City shall
28 pay Consultant for services satisfactorily performed and costs incurred up to the effective

1 date of termination for which Consultant has not been previously paid. The procedures
2 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of
3 termination, Consultant shall deliver to City all Data developed or accumulated in the
4 performance of this Agreement, whether in draft or final form, or in process. And,
5 Consultant acknowledges and agrees that City's obligation to make final payment is
6 conditioned on Consultant's delivery of the Data to the City.

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

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

22 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

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

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

21 17. INDEMNITY.

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

1 comply with any of its obligations contained in this Agreement, or (2) negligent or
2 willful acts, errors, omissions or misrepresentations committed by Consultant, its
3 officers, employees, agents, subcontractors, or anyone under Consultant's control,
4 in the performance of work or services under this Agreement (collectively "Claims"
5 or individually "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
16 was 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
24 shall be limited as provided in California Civil Code Section 2782.8, and shall
25 apply only to Claims that arise out of, pertain to, or relate to the negligence,
26 recklessness, or willful misconduct of the Consultant.

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

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

3 19. COSTS. If there is any legal proceeding between the parties to
4 enforce or interpret this Agreement or to protect or establish any rights or remedies under
5 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

6 20. NONDISCRIMINATION.

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

17 B. It is the policy of City to encourage the participation of
18 Disadvantaged, Minority and Women-owned Business Enterprises in City's
19 procurement process, and Consultant agrees to use its best efforts to carry out
20 this policy in its use of subconsultants and contractors to the fullest extent
21 consistent with the efficient performance of this Agreement. Consultant may rely
22 on written representations by subconsultants and contractors regarding their
23 status. Consultant shall report to City in May and in December or, in the case of
24 short-term agreements, prior to invoicing for final payment, the names of all
25 subconsultants and contractors hired by Consultant for this Project and information
26 on whether or not they are a Disadvantaged, Minority or Women-Owned Business
27 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.
28 637).

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

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

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

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

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

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

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

1 22. NOTICES. Any notice or approval required by this Agreement shall
2 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
3 postage prepaid, addressed to Consultant at the address first stated above, and to the
4 City at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager
5 with a copy to the City Engineer at the same address. Notice of change of address shall
6 be given in the same manner as stated for other notices. Notice shall be deemed given
7 on the date deposited in the mail or on the date personal delivery is made, whichever
8 occurs first.

9 23. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

1 from payments due under this Agreement or otherwise recover the full amount of the fee,
2 commission, or other monies.

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

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

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

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

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

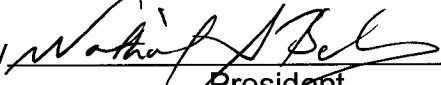
26 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
27 designed to or entered for the purpose of creating any benefit or right for any person or
28 entity of any kind that is not a party to this Agreement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

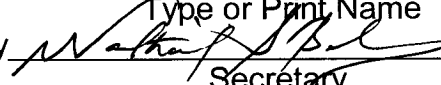
IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

TRANSPORTATION & ENERGY SOLUTIONS, INC., a California corporation

10/20, 2011

By 
President
NATHANIEL S. BEHURA
Type or Print Name


10/20, 2011

By 
Secretary
NATHANIEL S. BEHURA
Type or Print Name

"Consultant"

CITY OF LONG BEACH, a municipal corporation

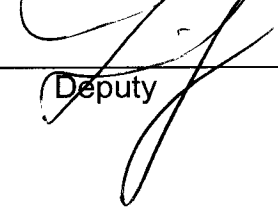
11.30, 2011

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

"City"

This Agreement is approved as to form on 10/31, 2011.

ROBERT E. SHANNON, City Attorney

By 
Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

EXHIBIT “A”

Scope of Work

A. PROJECT DESCRIPTION AND OVERVIEW

The purpose of this contract will be to provide transportation engineering, transportation planning, and related technical and professional services on an as-needed basis for various projects within the City. The number of candidates selected will be based on City's assessment of need and qualifications/types of services provided by the candidates. Each candidate will be expected to provide services in one or more of the areas listed below based on the qualifications of the firm.

Traffic Signals/Traffic Control Devices

- Determine the need for traffic control devices
- Traffic signal timing plans
- Conduct warrant studies for the deployment of traffic control devices
- Prepare traffic engineering designs to warn, regulate, and guide traffic
- Communications systems and control elements
- Traffic signal, street lighting, striping and signing plans, specifications and estimates

Parking

- Parking, speed humps and traffic calming devices
- Parking lot layout designs

Transportation

- Confirm the adequacy of transportation facilities
- Ensure the safe and efficient operation of the transportation system.
- Analyze and organize transportation funding programs and policies
- Define and develop transit and para-transit operations
- Analyze and prepare reports and recommendations relative to the City's transportation programs
- Prepare studies for future design and operation of street, pedestrian, bicycle, and/or other transportation systems
- Develop standards and guidelines for the application of Class II and Class III bikeway facilities
- Evaluate or design intelligent transportation systems

Traffic Engineering

- Conduct traffic surveys and data collection
- Investigate motorist and vehicle characteristics
- Review and comment on the impact of development
- Evaluate highway operations
- Identify and make recommendations on traffic safety
- Geometric and channelization designs
- Review design plans developed in conjunction with private development.

Planning/Studies/Reporting

- Prepare infrastructure planning studies
- Input to environmental impact studies
- Prepare project study reports
- Identify grant sources and prepare applications for funding
- Other similar tasks as necessary

B. DEFINITIONS

OWNER – City of Long Beach

CITY – The City of Long Beach, the City Engineer of the City of Long Beach or designated representative.

CITY PROJECT MANAGER – The City Engineer's designated project manager or representative overseeing the project.

CONSULTANT – The individual, partnership, corporation, joint venture, or other legal entity named as such in the contract documents to perform the work.

CONSULTANT PROJECT MANAGER – The Consultant's proposed overall project manager and team leader.

C. BASIC SERVICES

This RFQ is intended to procure transportation engineering, transportation planning, and related technical and professional services including, but not limited to, the following:

1. Design Services

- a) Review and application of City, state and federal standards.
- b) Preparation of studies, reports, calculations, designs, drawings, specifications, cost estimates and schedules.
- c) Preparation of and/or input to environmental documentation
- d) Preparation and acquisition of any required permits, in a timely manner, from the City of Long Beach and outside agencies as required.
- e) Meeting with City representatives, other agencies, and other consultants for design review and approval.

- f) Prepare and submit for review and approval construction plans, cost estimates, and specifications, including those at the 30%, 65%, 95% and 100% design completion stages.
- g) Stamped and signed plans and specifications by appropriately licensed California Engineers.

2. Bidding Services

- a) Preparation of bid documents.
- b) Attendance at pre-bid meetings.
- c) Preparation of addenda items.

3. Engineering Services During Construction

- a) Attendance at pre-construction meetings.
- b) Review of material submittals and shop drawings.
- c) Attending field meetings and visiting construction sites pursuant to resolving construction problems and issues.
- d) Responding to contractor Requests for Information.
- e) Assist and recommend to City any change order items.
- f) Preparation of record drawings of as-built project construction.
- g) Assist City with warranty-related work or other construction deficiencies.

D. CITY RESPONSIBILITIES

- 1. Advertise for bids, review bids and award contracts.
- 2. Administer contracts.
- 3. Provide or make available upon request reports, drawings, documents, GIS land base maps, records and other data deemed useful for project development.
- 4. Provide project management through oversight through an assigned City Project Manager as designated by the City. Consultants are required to perform full-scale project management. City will monitor and direct/approve/amend their activities.

E. MISCELLANEOUS

1. Drafting shall be performed, in a format acceptable to City, in the home office of the consultant, and conform to City standards.
2. All plans, specifications, estimates, studies and other documents prepared by the consultant on behalf of the City shall become the sole property of the City of Long Beach.
3. The City shall pre-approve the Consultant's Project Managers (CPM) by review of their resumes. If, after a period of time, the City is not satisfied with the work of progress of the CPM, consultant will be required to assign a new qualified project manager whose qualifications must be approved by City. The CPM, once selected, shall not be replaced unless approved by the City.
4. All engineering and traffic details and calculations shall be based on appropriate usages of the following:
 - California Vehicle Code
 - California Manual of Uniform Traffic Control Devices
 - Caltrans Standard Plans
 - Long Beach Municipal Code
 - City of Long Beach Traffic Impact Analysis Guidelines
 - City of Long Beach Standard Plans and Handbook of Design Standards
 - Institute of Transportation Engineers Trip Generation Manual
 - All other applicable local, county, state and federal policies, guidelines, codes and regulations
5. Candidates shall possess appropriate engineering licenses to be deemed qualified to perform the services outlined in this scope of work.

EXHIBIT “B”

Rates or Charges

RATE SCHEDULE

City of Long Beach as-needed Transportation Engineering, Transportation Planning, and Related Technical and Professional Services

The following are the hourly rates for the various personnel categories as shown below. These rates will be in effect from 10/5/11 to 10/4/14:

Principal/Project Manager	\$150/hour
Senior Engineer	\$150/hour
Senior Traffic Operations Specialist	\$150/hour
Senior Inspector	\$125/hour
Sr. Signal Coordination & Synchro Specialist	\$155/hour
Mobility Coordinator & Bikeway Specialist	\$155/hour
Litigation, Expert Witness & MUTCD Expert	\$250/hour* \$360/hour**
Transportation Engineer II	\$120/hour
Transportation Engineer I	\$95/hour
Analyst	\$75/hour

* Fees for standard engineering/design/review services

**Fees for expert witness, litigation and deposition related services

All rates include indirect expenses. Direct expenses (plots, FEDEX, sub-consultants, etc.) will be itemized and invoiced as incurred. Mileage will be billed at the federally approved rate of \$0.51/mile, and will only be modified as the federal rates are adjusted, with the City's consent.

EXHIBIT “C”

City’s Representative:

Mark Christoffels, City Engineer

EXHIBIT “D”

Materials/Information Furnished: None