

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

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AGREEMENT

**35842**

THIS AGREEMENT is made and entered, in duplicate, as of January 12, 2021, for reference purposes only, pursuant to Resolution No. RES-21-0003 adopted by the City Council of the City of Long Beach at its meeting on on January 5, 2021, by and between DOWNTOWN LONG BEACH ALLIANCE, a California domestic nonprofit corporation ("DLBA"), with a place of business at 100 West Broadway, Suite 120, Long Beach, California 90802, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with downtown transit corridor maintenance on First Street between Pacific Avenue and Long Beach Boulevard ("Project" or "Scope of Work"); and

WHEREAS, City did by Resolution No. RES-21-0003 determine that the City's need for downtown transit corridor maintenance on First Street between Pacific Avenue and Long Beach Boulevard could only be met by DLBA and, by reason of the foregoing, no useful purpose would be served by advertising for bids, and to do so would constitute an idle and useless act and an unnecessary expenditure of public funds;

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. DLBA 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, from January 1, 2021 to December 31, 2021 an amount not to exceed Two Hundred Forty-Three Thousand Four Hundred Dollars (\$243,400), and from January 1, 2022 to December 31, 2022 an amount not to exceed Two Hundred Fifty-Two Thousand Dollars (\$252,000), at the rates or charges shown in Exhibit "A".

B. City shall pay DLBA in due course of payments following receipt

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

13 C. DLBA represents that DLBA has obtained all necessary  
14 information on conditions and circumstances that may affect its performance and  
15 has conducted site visits, if necessary.

16 D. By executing this Agreement, DLBA warrants that DLBA (a)  
17 has thoroughly investigated and considered the scope of services to be performed,  
18 (b) has carefully considered how the services should be performed, and (c) fully  
19 understands the facilities, difficulties and restrictions attending performance of the  
20 services under this Agreement. If the services involve work upon any site, DLBA  
21 warrants that DLBA has or will investigate the site and is or will be fully acquainted  
22 with the conditions there existing, prior to commencement of services set forth in  
23 this Agreement. Should DLBA discover any latent or unknown conditions that will  
24 materially affect the performance of the services set forth in this Agreement, DLBA  
25 must immediately inform the City of that fact and may not proceed except at DLBA's  
26 risk until written instructions are received from the City.

27 E. DLBA must adopt reasonable methods during the life of the  
28 Agreement to furnish continuous protection to the work, and the equipment,

1 materials, papers, documents, plans, studies and other components to prevent  
2 losses or damages, and will be responsible for all damages, to persons or property,  
3 until acceptance of the work by the City, except those losses or damages as may  
4 be caused by the City's own negligence.

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

8 2. TERM. The term of this Agreement shall commence at midnight on  
9 January 1, 2021, and shall terminate at 11:59 p.m. on December 31, 2022, unless sooner  
10 terminated as provided in this Agreement.

11 3. COORDINATION AND ORGANIZATION.

12 A. DLBA shall coordinate its performance with City's  
13 representative, Mark Whitaker. DLBA shall advise and inform City's representative  
14 of the work in progress on the Project in sufficient detail so as to assist City's  
15 representative in making presentations and in holding meetings on the Project.

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

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

1 employees. DLBA expressly warrants that neither DLBA nor any of DLBA's employees or  
2 agents shall represent themselves to be employees or agents of City.

3 5. INSURANCE.

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

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

25 (b) Workers' Compensation insurance as required by the California  
26 Labor Code and employer's liability insurance in an amount not less than  
27 \$1,000,000. This policy shall be endorsed to state that the insurer waives  
28 its right of subrogation against City, its boards and commissions, and their

1 officials, employees and agents.

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

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

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

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

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

25 E. DLBA shall require that all sub-contractors or contractors that  
26 DLBA uses in the performance of these services maintain insurance in compliance  
27 with this Section unless otherwise agreed in writing by City's Risk Manager or  
28 designee.

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

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

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

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

1 approval of the City Manager or designee, or substitute an approved subcontractor or  
2 contractor without approval prior to the substitution. Nothing stated in this Section shall  
3 prevent DLBA from employing as many employees as DLBA deems necessary for  
4 performance of this Agreement.

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

11 8. MATERIALS. DLBA shall furnish all labor and supervision, supplies,  
12 materials, tools, machinery, equipment, appliances, transportation and services necessary  
13 to or used in the performance of DLBA's obligations under this Agreement.

14 9. OWNERSHIP OF DATA. All materials, information and data  
15 prepared, developed or assembled by DLBA or furnished to DLBA in connection with this  
16 Agreement, including but not limited to documents, estimates, calculations, studies, maps,  
17 graphs, charts, computer disks, computer source documentation, samples, models,  
18 reports, summaries, drawings, designs, notes, plans, information, material and  
19 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
20 and City shall have the unrestricted right to use and disclose the Data in any manner and  
21 for any purpose without payment of further compensation to DLBA. Copies of Data may  
22 be retained by DLBA but DLBA warrants that Data shall not be made available to any  
23 person or entity for use without the prior approval of City. This warranty shall survive  
24 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 thirty (30) calendar days prior  
27 notice to the other party. In the event of termination under this Section, City shall pay DLBA  
28 for services satisfactorily performed and costs incurred up to the effective date of

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

7 11. CONFIDENTIALITY. DLBA shall keep all Data confidential and shall  
8 not disclose the Data or use the Data directly or indirectly, other than in the course of  
9 performing its services, during the term of this Agreement and for five (5) years following  
10 expiration or termination of this Agreement. In addition, DLBA shall keep confidential all  
11 information, whether written, oral or visual, obtained by any means whatsoever in the  
12 course of performing its services for the same period of time excluding information or  
13 documents requested under the California Public Records Act (Chapter 3.5 of Division 7  
14 of Title 1 of the California Government Code). DLBA shall not disclose any or all of the  
15 Data to any third party, or use it for DLBA's own benefit or the benefit of others except for  
16 the purpose of this Agreement.

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

23 13. ADDITIONAL SERVICES. The City has the right at any time during  
24 the performance of the services, without invalidating this Agreement, to order extra work  
25 beyond that specified in the RFP or make changes by altering, adding to or deducting from  
26 the work. No extra work may be undertaken unless a written order is first given by the City,  
27 incorporating any adjustment in the Agreement Sum, or the time to perform this Agreement.  
28 Any increase in compensation of ten percent (10%) or less of the Agreement Sum, or in



1 the time to perform of One Hundred Eighty (180) days or less, may be approved by the  
2 City Representative. Any greater increases, taken either separately or cumulatively, must  
3 be approved by the City Council. It is expressly understood by DLBA that the provisions  
4 of this paragraph do not apply to services specifically set forth in the RFP or reasonably  
5 contemplated in the RFP. DLBA acknowledges that it accepts the risk that the services to  
6 be provided pursuant to the RFP may be more costly or time consuming than DLBA  
7 anticipates and that DLBA will not be entitled to additional compensation for the services  
8 set forth in the RFP.

9           14. RETENTION OF FUNDS. DLBA authorizes the City to deduct from  
10 any amount payable to DLBA (whether or not arising out of this Agreement) any amounts  
11 the payment of which may be in dispute or that are necessary to compensate the City for  
12 any losses, costs, liabilities or damages suffered by the City, and all amounts for which the  
13 City may be liable to third parties, by reason of DLBA's acts or omissions in performing or  
14 failing to perform DLBA's obligations under this Agreement. In the event that any claim is  
15 made by a third party, the amount or validity of which is disputed by DLBA, or any  
16 indebtedness exists that appears to be the basis for a claim of lien, the City may withhold  
17 from any payment due, without liability for interest because of the withholding, an amount  
18 sufficient to cover the claim. The failure of the City to exercise the right to deduct or to  
19 withhold will not, however, affect the obligations of DLBA to insure, indemnify and protect  
20 the City as elsewhere provided in this Agreement.

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

24           16. LAW. This Agreement shall be construed in accordance with the laws  
25 of the State of California, and the venue for any legal actions brought by any party with  
26 respect to this Agreement shall be the County of Los Angeles, State of California for state  
27 actions and the Central District of California for any federal actions. DLBA shall cause all  
28 work performed in connection with the Scope of Work to be performed in compliance with

1 (1) all applicable laws, ordinances, rules and regulations of federal, state, county or  
2 municipal governments or agencies (including, without limitation, all applicable federal and  
3 state labor standards, including the prevailing wage provisions of sections 1770 *et seq.* of  
4 the California Labor Code); and (2) all directions, rules and regulations of any fire marshal,  
5 health officer, building inspector, or other officer of every governmental agency now having  
6 or hereafter acquiring jurisdiction. If any part of this Agreement is found to be in conflict  
7 with applicable laws, that part will be inoperative, null and void insofar as it is in conflict  
8 with any applicable laws, but the remainder of the Agreement will remain in full force and  
9 effect.

10 17. PREVAILING WAGES.

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

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

28 18. ENTIRE AGREEMENT. This Agreement, including all Exhibits,

1 constitutes the entire understanding between the parties and supersedes all other  
2 agreements, oral or written, with respect to the subject matter in this Agreement.

3 19. INDEMNITY.

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

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

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

1 willful misconduct attributed by the court to the Indemnified Parties.

2 D. The provisions of this Section shall survive the expiration or  
3 termination of this Agreement.

4 20. FORCE MAJEURE. If any party fails to perform its obligations  
5 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain  
6 labor or materials or reasonable substitutes for labor materials, governmental restrictions,  
7 governmental regulations, governmental controls, judicial orders, enemy or hostile  
8 governmental action, civil commotion, fire or other casualty, or other causes beyond the  
9 reasonable control of the party obligated to perform, then that party's performance will be  
10 excused for a period equal to the period of such cause for failure to perform.

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

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

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

26 A. During the performance of this Agreement, the DLBA certifies  
27 and represents that the DLBA will comply with the EBO. The DLBA agrees to post  
28 the following statement in conspicuous places at its place of business available to

1 employees and applicants for employment:  
2 "During the performance of a contract with the City of Long Beach, the  
3 DLBA will provide equal benefits to employees with spouses and its  
4 employees with domestic partners. Additional information about the City of  
5 Long Beach's Equal Benefits Ordinance may be obtained from the City of  
6 Long Beach Business Services Division at 562-570-6200."

7 B. The failure of the DLBA to comply with the EBO will be deemed  
8 to be a material breach of the Agreement by the City.

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

13 D. Failure to comply with the EBO may be used as evidence  
14 against the DLBA in actions taken pursuant to the provisions of Long Beach  
15 Municipal Code 2.93 et seq., Contractor Responsibility.

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

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

28 25. COVENANT AGAINST CONTINGENT FEES. DLBA warrants that

1 DLBA has not employed or retained any entity or person to solicit or obtain this Agreement  
2 and that DLBA has not paid or agreed to pay any entity or person any fee, commission or  
3 other monies based on or from the award of this Agreement. If DLBA breaches this  
4 warranty, City shall have the right to terminate this Agreement immediately notwithstanding  
5 the provisions of Section 10 or, in its discretion, to deduct from payments due under this  
6 Agreement or otherwise recover the full amount of the fee, commission or other monies.

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

12 27. CONTINUATION. Termination or expiration of this Agreement shall  
13 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
14 18, 21 and 28 prior to termination or expiration of this Agreement.

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

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

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

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

1 books, records, accounts and other documents of DLBA relating to this Agreement.

2 31. THIRD PARTY BENEFICIARY. This Agreement is not intended or  
3 designed to or entered for the purpose of creating any benefit or right for any person or  
4 entity of any kind that is not a party to this Agreement.

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

7 DOWNTOWN LONG BEACH ALLIANCE, a  
8 California domestic nonprofit corporation

9 JANUARY 15, 2021 By [Signature]  
10 Name KRAIG KOTIAN  
11 Title PRES. & CEO

12 JANUARY 15, 2021 By [Signature]  
13 Name BROD COWARD  
14 Title COO

"DLBA"

15 CITY OF LONG BEACH, a municipal  
16 corporation

17 February 18, 2021 By [Signature]  
18 City Manager

19 EXECUTED PURSUANT  
20 TO SECTION 301 OF  
21 THE CITY CHARTER

This Agreement is approved as to form on February 18, 2021.

22 CHARLES PARKIN, City Attorney  
23 By [Signature]  
24 Deputy

25  
26  
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# EXHIBIT "A"



**DOWNTOWN LONG BEACH ALLIANCE  
AND DEPARTMENT OF PUBLIC WORKS  
MEMORANDUM OF UNDERSTANDING**

**JANUARY 1, 2021 – DECEMBER 31, 2022**

**Downtown Transit Corridor Maintenance  
First Street between Pacific Avenue and Long Beach Boulevard**

**I. Background**

In Fiscal Year 2013, the Department of Public Works and Downtown Long Beach Alliance (DLBA) entered into an agreement for DLBA to provide ongoing maintenance in specific transit related areas. Based on the success during last fiscal year, both parties agree to continue these services.

**II. Services**

Based on discussions between the DLBA and Public Works, Attachment A was developed to outline services to be provided by the DLBA.

**III. Budget**

The DLBA will fully fund their downtown maintenance operations. Public Works will provide Proposition A funds as well as Refuse funds to offset the scope of work (Attachment A).

**IV. Changes to MOU**

This Memorandum of Understanding may be altered as needed by mutual written agreement by the President/CEO of the Downtown Long Beach Alliance and the Director of Public Works.

**Attachment A**

**DOWNTOWN LONG BEACH ALLIANCE (DLBA)  
AND DEPARTMENT OF PUBLIC WORKS  
SCOPE OF WORK**

**JANUARY 1, 2021 – SEPTEMBER 30/DECEMBER 31, 2022**

**Project Name:** Downtown Long Beach Maintenance

**Project Location:** First Street between Pacific Avenue and Long Beach Boulevard and trash receptacles throughout the Downtown Area  
(See Attachment B & C for maps)

**Project Annual Cost:** \$243,400 (2021) and \$252,000 (2022)

**Project Scope:** The following scope of work will be performed by DLBA

**Proposition A Eligible Expenses:**

- I. **Trash Receptacles – Daily:**
  - Includes 20 trash receptacles within the transit mall as well as 34 Prop A eligible trash receptacles located in the Downtown Area (see Attachment B for map)
  - Empty all trash receptacles daily
  - Emptying of receptacles 7 days per week between 7:00 am – 3:30 pm
  
- II. **Pressure Washing – Weekly:**
  - Clean bus stops and adjacent sidewalks
  - Tuesdays & Thursdays at 6:00am
  
- III. **Landscape Maintenance – Weekly:**
  - Remove weeds and apply pre-emergent weed control
  - Remove declining or dead plants
  - Prune and shape shrubs
  - Haul away debris
  - Install organic mulch
  - Replace annual plants (up to 150, 1-gallon plants and 12 flats of sedum)
  - Twice per week – Monday & Friday mornings
  
- IV. **Litter Removal – Daily:**
  - Remove litter from sidewalks between 7:00pm – 12:00 am
  - Thursday/Friday/Saturday sweeping night pass

**Refuse Fund Reimbursement:**

**V. Trash Receptacles – Daily:**

- Empty 57 trash receptacles daily throughout the downtown area (see Attachment C for map) in non-Prop A eligible locations.
- Emptying of receptacles 7 days per week between 7:00 am – 3:30 pm