

AGREEMENT

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3 THIS AGREEMENT is made and entered, in duplicate, as of September 9,
4 2015 for reference purposes only, pursuant to a minute order adopted by the City Council
5 of the City of Long Beach at its meeting on September 8, 2015, by and between PACIFIC
6 ADVANCED CIVIL ENGINEERING, INC., a California corporation (Consultant"), with a
7 place of business at 17520 Newhope Street, Suite 200, Fountain Valley, California 92708,
8 and the CITY OF LONG BEACH, a municipal corporation ("City").

9 WHEREAS, the City requires specialized services requiring unique skills to
10 be performed in connection with professional engineering design services for the
11 rehabilitation of the Aquarium Plaza Wave Fountain ("Project"); and

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

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

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

21 1. SCOPE OF WORK OR SERVICES.

22 A. Consultant shall furnish specialized services more particularly
23 described in Exhibit "A", attached to this Agreement and incorporated by this
24 reference, in accordance with the standards of the profession, and City shall pay for
25 these services in the manner described below, for a total amount not to exceed One
26 Hundred Forty-Seven Thousand Three Hundred Dollars (\$147,300), at the rates or
27 charges shown in Exhibit "B".

28 B. The City's obligation to pay the sum stated above for any one

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

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

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

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

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

4 2. TERM. The term of this Agreement shall commence at midnight on
5 September 23, 2015, and shall terminate at 11:59 p.m. on September 22, 2017, unless
6 sooner terminated as provided in this Agreement, or unless the services or the Project is
7 completed sooner. The parties have the option to extend the term for one (1) additional
8 one-year period.

9 3. COORDINATION AND ORGANIZATION.

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

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

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

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

6 5. INSURANCE.

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

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

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

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

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

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

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

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

1 commencing on the date this Agreement expires or is terminated.

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

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

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

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

24 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
25 contemplates the personal services of Consultant and Consultant's employees, and the
26 parties acknowledge that a substantial inducement to City for entering this Agreement was
27 and is the professional reputation and competence of Consultant and Consultant's
28 employees. Consultant shall not assign its rights or delegate its duties under this

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

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

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

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

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

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

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

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

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13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

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

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

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1 17. INDEMNITY.

2 A. Consultant shall indemnify, protect and hold harmless City, its
3 Boards, Commissions, and their officials, employees and agents (“Indemnified
4 Parties”), from and against any and all liability, claims, demands, damage, loss,
5 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
6 costs and expenses, including attorneys’ fees, court costs, expert and witness fees,
7 and other costs and fees of litigation, arising or alleged to have arisen, in whole or
8 in part, out of or in connection with (1) Consultant’s breach or failure to comply with
9 any of its obligations contained in this Agreement, or (2) negligent or willful acts,
10 errors, omissions or misrepresentations committed by Consultant, its officers,
11 employees, agents, subcontractors, or anyone under Consultant’s control, in the
12 performance of work or services under this Agreement (collectively “Claims” or
13 individually “Claim”).

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

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

28 D. To the extent this Agreement is a professional service

1 agreement for work or services performed by a design professional (architect,
2 landscape architect, professional engineer or professional land surveyor), the
3 provisions of this Section regarding Consultant's duty to defend and indemnify shall
4 be limited as provided in California Civil Code Section 2782.8, and shall apply only
5 to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or
6 willful misconduct of the Consultant.

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

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

11 19. NONDISCRIMINATION.

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

21 B. It is the policy of City to encourage the participation of
22 Disadvantaged, Minority and Women-owned Business Enterprises in City's
23 procurement process, and Consultant agrees to use its best efforts to carry out this
24 policy in its use of subconsultants and contractors to the fullest extent consistent
25 with the efficient performance of this Agreement. Consultant may rely on written
26 representations by subconsultants and contractors regarding their status.
27 Consultant shall report to City in May and in December or, in the case of short-term
28 agreements, prior to invoicing for final payment, the names of all subconsultants

1 and contractors hired by Consultant for this Project and information on whether or
2 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
3 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

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

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

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

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

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

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

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

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

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

10 22. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

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

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

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

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

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

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

27 29. THIRD PARTY BENEFICIARY. This Agreement is not intended or
28 designed to or entered for the purpose of creating any benefit or right for any person or

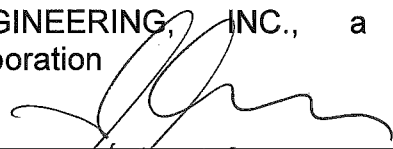
OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

1 entity of any kind that is not a party to this Agreement.


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

4 PACIFIC ADVANCED CIVIL
5 ENGINEERING, INC., a California
6 corporation

7 _____, 2015

By 
Name SONNY D. SIM
Title V.P.

9 _____, 2015

By 
Name Mark Krebs
Title President

11 "Consultant"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 Oct. 5, 2015

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

16 "City" Assistant City Manager

17 This Agreement is approved as to form on 9/17, 2015.

18 CHARLES PARKIN, City Attorney


19 By 
20 Deputy
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Exhibit A

Scope of Work



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

3. SCOPE OF PROJECT

3.1 SCOPE OF SERVICES OVERVIEW

The following preliminary scope of services is included as the minimum services required by the Awarded Consultant/engineering team. Engineering teams are encouraged to provide additional details and/or value additions to the proposed scope of services to be included in the Statement of Qualifications (SOQ).

The Awarded Consultant shall provide design services to ascertain the problems plaguing the existing fountain system (assessment phase), develop options that rectify the problem and address the City's goals (feasibility study and recommended options/solutions), and prepare engineering designs and construction bid documents for the City's review and Public Works bid process implementation.

The design team shall also provide additional creative services related to the fountain's aesthetics and programming, to enhance the visual appearance of the fountain and its entertainment value through lighting enhancements, enhanced sound effects, and/or coordination with the existing Rainbow Harbor light shows, to name a few examples.

3.2 BASIC SERVICES

The City is requesting qualifications from teams comprised of mechanical, electrical, and plumbing engineering consultants, in collaboration with an experienced fountain designer/vendor with proven experience in the development or rehabilitation of water feature systems. Other sub-consultants with specialty disciplines (including structural engineering, OSHA and confined space experts, and water features programmers) will be required for the successful completion of this solicitation. The successful respondent firm shall be led by a registered engineer, licensed in California that will be principally responsible for all communication with the City's assigned Project Manager (PM).

The design work shall be performed in accordance with the latest applicable codes, standards, and regulations at the local, State and Federal levels. The Awarded Consultant will be referred to as the "Engineering Design Team." A brief overview of professional responsibilities and work to be performed, as fully applicable and encompassing to the project include:

- Review existing information including as-built plans, documentation, and previous reports and assessments;
- Verify conclusions and findings in previous reports and designs
- Research and verify confined space requirements



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

- Obtain a detailed understanding of all existing computers, electronics, equipment, programs, and design features associated with the existing system
- Provide all certifications necessary to perform the work
- Perform pre-design studies as necessary
 - Mechanical, electrical and plumbing
 - Safety analysis
 - Structural assessment
 - Utilities investigation and relocation as necessary
- Research all applicable OSHA regulations and requirements
- Derive feasible options and solutions for repair and/or replacement
- Progress meetings and outreach
- Preliminary design
- Detailed design
- Permitting and support
- Geotechnical investigation
- Development of complete plans & specifications (construction bid documents) in conformance to City standards and guidelines
- Design of informational signage and interpretative signage, as needed
- Civil engineering
- Acoustics, noise and vibration control
- Cost estimating and scheduling
- Cost benefit analysis
- Attendance at biweekly progress meetings, weekly construction meetings, and special meetings and hearings as necessary
- Construction bid phase services
- Construction support services

3.3 WORK PLAN

The Awarded Consultant shall establish a team Project Manager (PM) to manage the services arising from this procurement and administer all services performed by the firm, and its sub-consultants (engineering design team). Such management activities and controls shall include, but will not be limited to, the following:



City of Long Beach
Purchasing Division
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- Develop project documentation necessary to manage the design and engineering process
- Establish and update schedules for the project duration inclusive of design and construction including identifying document delivery milestones
- Regularly monitor the time expended and quantities and quality of work performed by firm and sub-consultants
- Submit a proposed list of deliverables for the City PM to review and approve at the start of each phase.

The Engineering Design Team's PM shall be the primary contact person for the overall design team and shall be the point of contact for coordination of the services with the City. The Primary Contact or PM must also designate key staff for each of the design disciplines required for this project. If changes must be made to the primary contact or any key staff due to unavoidable circumstances, the design team shall submit the name(s) of the proposed substitute person(s) and related statements of professional qualifications to the City in writing for approval by the City.

3.3.1 SERVICE PHASES. The scope of services are broken down into the following phases:

- **Phase I** - services shall include performing due diligence by reviewing all existing documentation available including as-built plans, memoranda, and discussing with key personnel and maintenance staff; assessing existing MEP systems and preparing a detailed findings report and conditions assessment; developing a feasibility study with preferred options with associated cost and solutions for long-term improvements for the fountain and providing a recommendation to City staff. Please anticipate up to four (4) progress review meetings with necessary Departments.
- **Phase II** - services shall include the implementation of the City's preferred option through the preparation of construction drawings, specifications and estimates (30%, 60%, 90%, 100% and Final Design Documents), and bid phase support services. Please anticipate two (2) meetings with stakeholders, and on-going progress meetings with the City PM.
- **Phase III** - shall include construction support services, attendance at weekly construction meetings, and coordination with the City PM, Construction Manager, and Contractor.
- **The selected consultant shall not commence work on any phase of the work without prior written approval of the City's PM.**

3.3.2 Engineering Design Team: The design team shall provide all materials, equipment, management and professional services necessary to complete the services in a timely manner. As the services progress, the City PM and



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Engineering Design Team PM shall participate in the creative aspects of the project, as well as co-evaluate the performance related to the execution of this agreement. In that capacity, the City and the City's PM reserves the option to periodically visit the office of the design team and/or its sub-consultants to review the work in progress, provide creative input, and generally assist in resolving design issues and constraints.

3.3.3 Milestone Reviews and Authorization: The City PM will conduct periodic and milestone in-progress reviews of the engineering team's design progress at designated times. The Engineering Design Team's PM (and any appropriate staff or professional disciplines, if necessary) shall participate in biweekly progress meetings with City staff for progress review.

- Formal reviews and progress submittals will be required at a minimum at milestones noted in Section 3.3.1. It is understood that certain elements may require more time to refine including those related to the development of design options. Any concerns and issues that should delay the deliverables and cause slippage to the overall schedule shall be made in writing to the City PM.
- Authorization to proceed to the next phase of work may be issued in writing by the City PM to the Engineering Design Team PM and may be withheld for one or more disciplines depending on their progress and the acceptance of their work (at the City's discretion).

3.3.4 Engineering Design Team Responsibilities: It is the responsibility of the Engineering Design Team PM to provide the management, organization, resources and talent to achieve the design, and intent of this RFQ. Those responsibilities include, but are not limited to:

- Researching and performing due diligence, including understanding current constraints, existing designs, current building and life safety codes, and the needs of the City.
- Managing and directing the work of the design team's personnel and sub-consultants.
- Coordinating with City staff as necessary to generate input and receive direction.
- Use of best professional judgment.
- Coordinating with project stakeholders including City staff and Aquarium staff. Commissioning and project close-out with transfer of operations and maintenance manuals, as-builts and CAD files.

3.3.5 Document Standards: All documents shall be prepared according to the City of Long Beach Public Works Design Standards and on AutoCAD 2013. Any recommendations to the City on changes to the standards must be made



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to the City PM in writing within two (2) weeks of the execution of the agreement and approval by the City.

3.3.6 Code Compliance: The Engineering Design Team shall verify code compliance of the design of all features with all applicable rules, regulations, codes, orders and/or laws applicable to and/or affecting the Project in any way including, without limitation to local, County, State, Federal or other review entities.

3.3.7 Engineering Design Team Recommendations: The design team shall make recommendations to the City PM regarding any investigations, surveys, tests analyses and reports that are deemed necessary and required by the team and its sub-consultants to properly perform the Services and meet the design objectives required by this RFQ. Such recommendations shall be made in writing and in a timely manner to allow implementation without causing delay to the Project.

3.3.8 Submittals to City: Reports and Drawings submittals from the design team shall be sent to the City PM electronically (PDF format), hard copy, and with CAD plot file via the most time appropriate delivery service as applicable. The date of transmission will be the triggering date for the time of a response. Drawing submittals will be reviewed by the City's PM and the appropriate City Departments.

All sketches, drawings, models, illustrations, specifications, and similar type items, developed by the Consultant and/or its sub-consultants during the course of the Project, including originals, become the property of City, and shall be delivered to City upon completion of services.

3.3.9 Value Engineering: Value Engineering is an integral part of the design process and is accomplished in conjunction with estimating during the preparation of design documents. The Engineering Design Team shall consider relevant alternatives within the project design to optimize and balance constructability, maintenance, and advise City during all phases on to make a value determination on best and most economical methods, and systems and equipment proposed for the Project.

3.3.10 Cost Estimates: The Engineering Design Team shall submit a rough order magnitude of costs for each recommended option noted in the Feasibility Study and Options/Solutions Report. As the project progresses, each milestone submittal shall include increasingly refined cost estimates.

3.3.11 Schedule: The Engineering Design Team shall submit an opinion of probable Contract Time (construction) in the requisite level of detail with an appropriate contingency for the level of design with each design submittal (milestone dates).



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3.3.12 Contract Progress Monitoring, Reporting & Billings: The Engineering Design Team PM shall submit a monthly invoice along with an updated design schedule, current billings, work performed during billing period, current contract balance and project budget balance trend. Any issues that may impact the budget shall be identified in each invoice submittal.

3.4 DETAILED SCOPE OF SERVICES

The Engineering Design team shall prepare deliverables that meet the intent of this RFQ, and achieve a permanent solution to address the problems stated in Section 1, Project Overview. The consultant shall furnish all services as required to improve the operation and performance of the Aquarium Plaza Wave Fountain. These tasks will include, but will not be limited to the following:

3.4.1 Phase I – CONDITIONS ASSESSMENT, PREDESIGN STUDIES, PRELIMINARY DESIGN PHASE DELIVERABLES

3.4.1.1 Review of Existing Documents and Systems

Understanding the existing system through the review and analysis of existing record drawings, previous assessments, memoranda, and if necessary performing calculations to validate the original assumptions made by previous designers. Perform on-site inspections/site visits/systems tests, reviewing existing documentation provided by the City, and meet with operations and maintenance staff.

Consultants are encouraged to model the existing system to better hone in on conditions and operations, design flaws, and to serve as the basis of design in future efforts.

3.4.1.2 Prepare a Detailed Conditions and Assessment Report

The Engineering Design team shall prepare a detailed conditions and assessment report to document the current failures of the existing system including, but not limited to, design issues, system inefficiencies, maintenance shortcomings, equipment malfunctions, and all other factors discussed in Section 1. The report shall also detail the safety risks and any liabilities posed by the vault, system, and design. This shall inform City staff in future design efforts, and during the options selection phase.

3.4.1.3 Provide Recommended Options for Repair/Replacement (Feasibility Study & Recommended Options/Solutions)



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Based on the Engineering Team's Conditions and Assessment Report, the engineering team shall prepare three feasible repair options, and three replacement options with accompanying rough order of magnitude (ROM) cost estimates to be presented to City staff. All repair and replacement options should incorporate the City's stated objectives and goals for the project, and shall be feasible. Repair and replacement options can be characterized by low, medium, or high performance or another scale as deemed appropriate. The repair and replacement options shall include a narrative explanation of each option's design intent and associated user-experience for each. Visuals should accompany each repair and replacement option.

The Engineering Design Team shall provide with each recommendation the level of maintenance associated with each option. The Engineering Design Team shall prepare a cost benefit analysis to determine whether the cost of repair outweighs the cost of full replacement.

3.4.1.4 Engineering Design Team Deliverables (Basis of Design)

Prior to the preparation of the preliminary design or 30% plans, the Engineering Design Team shall also conduct a design review with City staff and stakeholders to present the preferred design concept as recommended by the engineering team and selected by the City. The Engineering Design Team PM shall participate in design reviews with the City and the City PM to finalize the preferred design option and prepare the basis of design. The estimated construction cost and construction time shall be provided at the time of submittal.

3.4.2 Phase II – CONSTRUCTION BID DOCUMENTS

3.4.2.1 Engineering Design Team Deliverables (Preliminary Design or 30%)

Based on the accepted basis of design and City's PM's written approval to proceed, the Engineering Design Team shall prepare design documents consisting of drawings and specifications, which correct and/or refine concerns addressed in the basis of design drawings and documents.



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The designer of record shall develop cost estimates at 30% to determine the feasibility of the proposed program. The following deliverables are anticipated:

- Proposed program
- Site plan of existing and proposed improvements
- Updated equipment/infrastructure/materials removals specifications
- Proposed new equipment/materials
- Proposed civil and structural, if any
- Mechanical, electrical, plumbing drawings
- Elevations
- Typical detail sheets
- Update and expand outline specifications
- Finalize utility plans and relocation, if any

3.4.2.2 Based on the approved preliminary design documents, the Engineering Design Team PM shall manage and oversee all engineering disciplines and specialty sub-consultants for the preparation of Construction Bid Documents by advancing all deliverables required to obtain prime contractors' construction bids, building and regulatory permits, and for use in constructing the Project.

The Awarded Consultant shall provide construction bid documents including plans, specifications and cost estimates at milestone design stages.

During the design phase, the Engineering Design Team shall participate in technical review of the design development documents prior to review and approval by the City at the 30%, 60% and 100% milestone phases.

Construction Bid Documents shall include, but are not limited to, Building Division submittals, demolition plans and specifications, and construction plans and specifications.



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The Awarded Consultant shall process the construction bid documents through approving agencies and incorporate all revisions/corrections as necessary to obtain the required approvals from the agencies having jurisdiction. The Awarded Consultant (Engineering Design Team PM) and key staff shall participate in technical reviews of the Construction Bid Documents with City staff at milestone stages (30%, 60%, 90% and 100%). The Awarded Consultant shall incorporate the City's 100% review comments and submit the final construction bid documents to the City's PM for the public bidding process.

Final plans shall always be stamped and signed by Licensed Engineers (in State of California) in their respective discipline.

- 3.4.2.3** The Awarded Consultant shall provide professional services during the bid period including attending the pre-bid conference, responding to bidders' questions, preparing addenda, and assisting the City in evaluating public bids.

3.4.3 PHASE III – CONSTRUCTION SUPPORT SERVICES

3.4.3.1 Support services during construction

The Construction Phase shall commence with the execution of the contract between the City and prime contractor for the Project ("Contract for Construction").

The engineer of record shall also provide Construction Support Services of the Contracts for Construction. Construction Support Services shall include, but will not be limited to, the following:

- Represent, advise and consult with the City PM and Construction Manager (CM) during the administration of the Contract for Construction.
- At all times, the engineer of record and all of its sub-consultants shall promptly and expeditiously render interpretations of the Construction Documents, and review and provide timely responses to RFI's, submittals, shop drawings, substitution requests, and other contract submittals.
- Assist with the review of Change Orders and Contract Schedules and provide input to the assigned City PM and City CM.
- Periodically visit the site during the construction phase to become familiar with the progress, acceptability, and quality of



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the work and to determine if the work is proceeding in accordance with the Construction Documents.

- Attend weekly project meetings on-site.
- Independently inform City of the progress, acceptability, and quality of the work completed and guard the City against defects and deficiencies in the work, and determine, in general, if the work, as it progresses, is in conformance with the Construction Documents.
- Prepare Site Observation Reports within three (3) business days subsequent to a site visit or sooner if such information to be transmitted is of substantial and immediate importance.
- The consultant team's engineer of record shall issue reports to the City PM and City CM (with copies to the City staff as needed) any known deficiencies, errors, and non-adherence to schedules and opinions on disagreements with pricing, requests for additional time on change orders as requested by the City.
- Conduct observations throughout construction of the Project to determine the date or dates of Substantial Completion and the date of final completion. The engineer will provide observations in writing to the City PM.
- Report to the City PM and CM known deviations from the Contract Documents and from the most recent construction schedule submitted by the general contractor.
- When requested by the City's PM, the engineer of record shall render written responses and opinions on all claims, addenda, proposals, disputes and all other matters in question between the City, prime contractor, and/or vendors in order to maintain the Project schedule to assist the City PM and CM in its pursuit of successful negotiation and completion of the Project.
- Assist prime contractor, City PM, and or City CM in the assembling, reviewing and submitting to City of indexed binders (number of copies as required by City) containing originals of all manuals, brochures, and drawings and warranties needed for operation and maintenance of all systems installed.

Exhibit B

Rates or Charges



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EXHIBIT A

SCHEDULE OF FIXED HOURLY RATES

Please attach and submit separate from the SOQ.

A handwritten signature in black ink, appearing to be "J. H.", written over a horizontal line.

Pacific Advanced Civil Engineering, Inc. (PACE)

June 19, 2015

Signed

Name of Firm

Date



2015 HOURLY LABOR RATES

Principal	\$235.00
Sr. Project Manager / Sr. Consulting Engineer	\$190.00
Project Manager / Consulting Engineer / Sr. Hydrologist	\$177.00
Sr. Project Engineer / Sr. Design Engineer	\$156.00
Project Engineer / Design Engineer II	\$136.00
Instrumentation Controls Specialist	\$125.00
Sr. CAD Designer / Sr. GIS Analyst	\$117.00
Design Engineer	\$115.00
Graphic Designer	\$92.00
CAD Designer / GIS Analyst	\$91.00
Project Coordinator / Administrative Support	\$70.00
Assistant Designer	\$70.00
G.P.S. Survey Unit (w/ Operator)	\$241.00
Expert Witness / Legal Consultation	\$350.00 + Exp.

REIMBURSABLE EXPENSE RATES*

	Units	Cost
Travel		
Mileage (Per Mile)	Mile	\$0.57.5
Airfare, Auto Rental, Hotel		At Cost
Misc. Travel (Parking, tax, tolls, meals, etc.)		At Cost
Per Diem (Contract Rate)	DAY	Contract Rate
Outside Reproduction		
		At Cost
Shipping (FedEx, UPS, Courier, etc.)		
		At Cost
Misc. (Review Fees, Specific Charges)		
		At Cost
Reproduction (In-House)		
Sheet Bond - B/W Prints and Copies – All sizes (8 ½ x 11 to 12 x18)	SF	\$0.16
Sheet - Color Prints and Copies – All sizes	SF	\$1.20
Sheet - Glossy Color Print/Photo – All sizes	SF	\$2.60
Roll - Plots and Copies (Roll Paper)		
- Bond (B/W)	SF	\$0.88
- Bond (Color)	SF	\$1.56
Roll - Vellum or Mylar Plots	SF	\$2.60
Roll - Glossy Color Plot Exhibits (Roll Paper)	SF	\$3.12
Report 3-Ring Binders		
< 1.5"	EA	\$10.40
1.5" to 3"	EA	\$15.60
> 3"	EA	\$26.00
Coil or GBC Punch Binding	EA	\$1.04

*Note: All reimbursable expenses will be invoiced at the above rates + 10%

Exhibit C

City's Representative:

Eric Lopez,

Tidelands Development Officer

(562)570-5690

Exhibit D

Materials/Information Furnished:

None