

**CONTRACT FOR CONSULTING SERVICES
BETWEEN THE CITY OF LONG BEACH AND**

**NAME
STREET AND P.O. BOX ADDRESS
CITY, STATE, ZIP
TELEPHONE NO.
FAX NO.**

THIS CONTRACT is made and entered into, in duplicate, as of the date executed by the Executive Director of the Long Beach Harbor Department ("Executive Director"), by and between the CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("City"), pursuant to authority granted by said Board [by its Ordinance No. HD-2159] [at its meeting of _____, 20__]; and [_____,] a [_____] corporation ("Consultant").

1. This contract is made with reference to the following facts and objectives:

1.1 City[, from time to time,] has the need for [_____
_____].

1.2 Consultant represents that it has in its employ [licensed and] experienced personnel who are qualified to render these services.

1.3 City wishes to employ Consultant upon the following terms and conditions to render such services [as City shall from time to time request].

2. Consultant shall provide, in accordance with generally accepted professional and technical standards currently in effect and the current version of the Port of Long Beach Guidelines for Professional Consulting Services, Engineering Bureau, which are incorporated by this reference, such services [within the scope of work] as may be requested in writing [from time to time during the term of this contract] by City's Director of Engineering Design. [The anticipated scope of work is set forth in the [_____] dated [_____] attached hereto as Exhibit A and incorporated by this reference.]

3. The term of this contract shall [be deemed to have] commence[d] on [] and, subject to the provisions of paragraph [], shall terminate on [].

4. In requesting the services of Consultant, the Director of Engineering Design shall identify the project for which such services are requested and shall establish the maximum amount to be charged by Consultant on such project, the time limit within which Consultant is to complete the work, and the charge point(s) to be used by Consultant in billing City. Consultant's charges on any project shall not exceed the maximum amount so established without the express written approval of the Director of Engineering Design.

5. Charges made by Consultant for such services shall be based on Consultant's [], attached hereto as Exhibit [] and incorporated by this reference. [Upon written request by Consultant, the Director of Engineering Design may approve adjustments in the rates set forth in Exhibit [] from time to time. These adjustments are at the exclusive discretion of the Director of Engineering Design and may not in any event exceed []. Upon approval of any such adjustment, the contract shall be amended and the new rates attached as an exhibit to the amendment.] [Pursuant to Port of Long Beach Tariff No. 4, Item 265(g), the Executive Director has waived dockage charges for services performed by Consultant pursuant to this contract.]

6. Consultant shall submit a separate statement not later than the tenth day of each month for [each project upon which] services [which] have been performed during the immediately preceding month, referring in each of the statements to the charge point for such project previously furnished by the Director of Engineering Design and detailing the services performed and expenses, if any, incurred. The monthly statement shall also include a one page progress report as described in the Port of Long Beach Guidelines for Professional Consulting Services, Engineering Bureau. All payments to Consultant shall be made by City in due course, not to exceed thirty (30) days, after approval of invoice by the Director of Engineering Design.

7. [Subject to the provisions of subparagraph 7.1,] T[t]he total amount

1 which shall be payable by City to Consultant for Consultant's services[on all projects]
2 during the term of this contract shall not exceed \$_____.

3 [7.1 If, during the course of the described services, additional work
4 beyond the scope of services described in Exhibit A is, in the opinion of the Director
5 of Engineering Design, required or desired, the Director of Engineering Design may
6 authorize such additional work by Consultant; provided that the Director of
7 Engineering Design first receives written confirmation from the Harbor Department
8 Risk Manager that no insurance is necessary for the additional work other than the
9 insurance required by paragraph ____ of this contract, and provided further, total
10 compensation to be paid hereunder, including compensation for such additional
11 services, shall not exceed \$_____.]

12 8. All designs, sketches, drawings, specifications, data and other
13 information, in whatever form or medium, compiled or prepared by Consultant in performing
14 its services or furnished to Consultant by City shall be the property of City and City shall
15 have the unrestricted right to use or disseminate same without payment of further
16 compensation to Consultant. Copies of Consultant's work product may be retained by
17 Consultant for its own records.

18 9. All books, accounts, reports, files, correspondence, data, contract
19 information and other records relating to this contract shall be maintained by the Consultant
20 and its subconsultants during the term of this contract and for a period of five years after
21 termination or expiration of this contract and shall be subject at all reasonable times to
22 review, inspection, and audit by the City. Such records shall be produced by the Consultant
23 and/or the subconsultant within a reasonable time at a place designated by the City, upon
24 written notice to the Consultant. Consultant shall allow, and shall require subconsultants
25 to allow, City and its authorized representative(s), auditors, attorneys and accountants,
26 upon twenty-four (24) hour notice to Consultant, full access to inspect and copy all the
27 above books and records at a location within the Southern California area.

28 [10. In performing its design services hereunder, Consultant shall be

1 responsible for the following:

2 10.1 Consultant shall research record information relevant to the
3 design project, which may include, but not be limited to, underground utility maps
4 and records, survey data, soil reports, etc. City shall provide such information in its
5 possession, but the providing of same shall not relieve Consultant of its obligation
6 to review and research such information in order to assure its completeness and
7 accuracy.

8 10.2 If this contract includes construction support services by
9 Consultant, Consultant shall review and respond to any contractor submittals within
10 seven (7) calendar days.]

11 11. City shall have the right to terminate this contract at any time upon ten
12 (10) days' written notice to Consultant. If the contract is so terminated prior to the expiration
13 of the term, Consultant shall be paid for those charges which have accrued but not been
14 paid through the effective date of termination. Consultant agrees to accept such amount,
15 plus all amounts previously paid, as full payment and satisfaction of all obligations of City
16 to Consultant.

17 12. Neither City nor any of its employees shall have any control over the
18 conduct of Consultant, or employees of Consultant, except as herein set forth, and
19 Consultant and employees of Consultant shall not, at any time or in any manner, represent
20 that Consultant or employees of Consultant, or any of them, are the officers, agents, or
21 employees of City. It is expressly understood and agreed that Consultant is, and shall at
22 all times remain, as to City a wholly independent contractor, and each party's obligations
23 to the other party are solely such as are set forth in this contract. Consultant shall be free
24 to contract for similar services to be performed for others during this contract. [Consultant
25 acknowledges and agrees that: (i) City will not withhold taxes of any kind from Consultant's
26 compensation; (ii) City will not secure workers' compensation or pay unemployment
27 insurance to, for or on Consultant's behalf; and (iii) City will not provide and Consultant is
28 not entitled to any of the usual and customary rights, benefits or privileges of City

employees.]

13. Consultant agrees, subject to applicable laws, rules, and regulations, not to discriminate in the performance of this contract against any employee or applicant for employment on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, AIDS, HIV status, age, disability, handicap, or veteran status. Consultant shall ensure that applicants are employed and that employees are treated during employment without regard to any of these bases, including but not limited to employment, upgrading, promotion, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by City setting out the provisions of this nondiscrimination clause. Consultant shall in all solicitations or advertisements for employees state that all qualified applicants will receive consideration for employment without regard to these bases. Compliance with the Americans with Disabilities Act of 1990 shall be the sole responsibility of Consultant, and Consultant shall defend and hold the City harmless from any expense or liability arising from Consultant's non-compliance therewith.

14. Any notices to be given under this contract shall be given in writing. The notices may be served by personal delivery, facsimile transmission or by first class regular mail, postage prepaid. Any notice, when served by mail, shall be effective two (2) calendar days after the date of mailing, and when served by facsimile transmission or personal delivery shall be effective upon receipt. For the purposes hereof, the address of City, and the proper person to receive any such notices on its behalf, is: Executive Director, Long Beach Harbor Department, P.O. Box 570, Long Beach, California 90801; and the address of Consultant as indicated above.

15. This contract contemplates the personal services of Consultant and its employees, and it is recognized by the parties hereto that a substantial inducement to City for entering into this contract was, and is, the professional reputation and competence

1 of Consultant and its [employees] [key employee _____]. Neither this contract
2 nor any interest therein may be assigned or delegated by Consultant, except upon the prior
3 written consent of the Executive Director. Any attempted assignment or delegation without
4 such consent shall be void, and any assignee or delegate shall acquire no right or interest
5 by reason of such attempted assignment or delegation. Furthermore, Consultant shall not
6 subcontract any part of the performance contemplated and provided hereunder, except as
7 specified in this contract, in an amendment hereto, or with the prior written consent of the
8 Director. Before granting any such consent, the Director of Engineering Design shall obtain
9 the concurrence of the Directors of Finance and Risk Management to the proposed
10 subcontractor. Nothing herein shall prevent Consultant from employing or hiring as many
11 employees as Consultant may deem necessary for the proper and efficient execution of
12 this contract.

13 16. Consultant covenants that both itself, in its corporate capacity, and its
14 principals presently have no interest and shall not acquire any interest, direct or indirect,
15 which would conflict in any manner or degree with the performance of services required to
16 be performed under this contract.

17 17. Consultant shall maintain the confidentiality of all proprietary or
18 confidential information obtained as a result of any assignment pursuant to this contract.
19 Consultant shall not divulge to any person or entity other than City any conceptual designs,
20 technical details, pricing or other such information regarding new or existing proprietary
21 technology presented by prospective or current vendors who have requested that the
22 information be kept confidential.

23 18. (a) Consultant shall indemnify, protect and hold harmless City, the
24 Board of Harbor Commissioners, and their officials, employees and agents
25 (“Indemnified Parties”), from and against any and all liability, claims, demands,
26 damage, loss, obligations, causes of action, proceedings, awards, fines, judgments,
27 penalties, costs and expenses, including attorneys’ fees, court costs, expert and
28 witness fees, and other costs and fees of litigation, arising or alleged to have arisen,

1 in whole or in part, out of or in connection with (1) Consultant's breach or failure to
2 comply with any of its obligations contained in this contract, or (2) negligent or willful
3 acts, errors, omissions or misrepresentations committed by Consultant, its officers,
4 employees, agents, subcontractors, or anyone under Consultant's control, in the
5 performance of work or services under this contract (collectively "Claims" or
6 individually "Claim").

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

16 (c) If a court of competent jurisdiction determines that a Claim was
17 caused by the sole negligence or willful misconduct of Indemnified Parties,
18 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
19 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
20 percentage of willful misconduct attributed by the court to the Indemnified Parties.

21 [(d) To the extent this contract is a professional service contract for
22 work or services performed by a design professional, such as an architect,
23 landscape architect, professional engineer or professional land surveyor, subject to
24 California Civil Code Section 2782.8, the provisions of this Section regarding
25 Consultant's duty to defend and indemnify shall be limited to apply only to Claims
26 that arise out of, pertain to, or relate to the negligence, recklessness, or willful
27 misconduct of the Consultant.] [INCLUDE ONLY IN CONTRACTS INVOLVING
28 DESIGN SERVICES]

(e) The provisions of this paragraph shall survive the expiration or termination of this contract.

19. As a condition precedent to the effectiveness of this contract, Consultant shall comply with the insurance requirements attached hereto as Exhibit [____].

20. Consultant shall obtain and maintain any necessary licenses and permits required under Title 3 and Title 5 of the Long Beach Municipal Code. City may withhold any payment to Consultant until Consultant comes into compliance with such licensing and permitting requirements.

[21. This contract shall be deemed made in the State of California and shall be governed by the laws of said State (except those provisions of California law dealing with conflicts of law), both as to interpretation and performance.]

22. In the event of any conflict or ambiguity between this written agreement and any exhibit hereto, the provisions of this agreement shall govern.

23. This contract shall not be amended, nor any provision or breach hereof waived, except in writing signed by the parties which expressly refers to this contract.

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24. This contract, including all exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

[_____]

_____, 20__

By: _____
Name: _____
Title: _____

_____, 20__

By: _____
Name: _____
Title: _____

CONSULTANT

CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners

_____, 20__

By: _____
Mario Cordero
Executive Director
Long Beach Harbor Department

CITY

The foregoing document is hereby approved as to form.

CHARLES PARKIN, City Attorney

_____, 20__

By: _____
Principal Deputy/Deputy