

CONTRACT FOR SERVICES

THIS AGREEMENT (together with the schedules, appendices, attachments and exhibits, if any, this "Agreement"), dated as of the date this Agreement is executed by the City of Long Beach, between (i) City of Long Beach, a municipal corporation having its principal office at One West Chester Street, Long Beach, New York 11561 (the "City") acting on behalf of the City Department of Public Works, having its principal office at same (the "Department") and (ii) D & B Engineers and Architects, P.C., an engineering firm having its principal office at 330 Crossways park Drive, Woodbury, NY 11797 (Firm or the "Contractor").

WITNESSETH:

WHEREAS, the City desires to hire the Contractor to perform the services described in this Agreement; and

WHEREAS, the Contractor desires to perform the services described in this Agreement.

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

1. Term. The term of this Agreement shall commence on the date on which this Agreement is executed by the City (the "Commencement Date") April 4, 2018 and terminate on December 2019 (the "Expiration Date") unless sooner completed, terminated or extended in accordance with its terms

2. Services

The selection of your firm was based on an evaluation of the qualifications and other available information on firms which have expressed an interest in performing these services for the City of Long Beach and have submitted The information required by our advertisement.

This assignment is made based upon the availability of the qualified personnel described in your submittal, upon their ability to accomplish this work on a timely basis, and evidence that your firm's accounting system is presently capable of supporting cost reimbursement or other methods of payment which will be negotiated for this assignment and included in the agreement.

This designation is made with the full expectation that the project will advance. However, it should be understood that due to unforeseen circumstances, there is a possibility the contract negotiated for the project may not be executed.

- (a) The services to be provided by Contractor specific work divisions and deliverables related to this project as more particularly described in the "Detailed Scope of services"-proposal submitted by Firm dated December 2017. Attached hereto and hereby made a part hereof as Exhibit "A".
- (b) If Firm is authorized, in writing, by the Department, to provide extra services, and the requirements for such extra services are not due to the fault or negligence of Contractor, the Contractor shall be compensated for the additional costs of the extra services in accordance with the terms and conditions contained herein.

3. Payment.

Amount of Consideration. The amount to be paid to Firm as full consideration for Firm services under this Agreement is \$211, 300.00 (two hundred eleven thousand three hundred dollars) and shall be payable as set forth in the " Payment Schedule" annexed hereto as Exhibit "B".

4. Ownership and Control of Work Product

(a) Copyrights.

(i) Upon execution of this Agreement, any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items, shall become the exclusive property of the City.

(ii) Any reports, documents, data, photographs and/or other materials produced pursuant to this Agreement ("Copyrightable Materials") shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials, and they shall be used by the Contractor for no other purpose without the prior written permission of the City.

(iii) The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the U.S. Copyright Office or any other government agency authorized to grant copyright

registrations. The Contractor shall cooperate in this effort, and agrees to provide any further documentation necessary to accomplish this.

(iv) The Contractor represents and warrants that the Copyrightable Materials: (1) are wholly original material not published elsewhere (except for material that is in the public domain); (2) do not violate any copyright law; (3) do not constitute defamation or invasion of the right of privacy or publicity, and (4) are not an infringement of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

(b) Patents and Inventions. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

(c) Pre-existing Rights. In no case shall 4(a) or 4(b) above apply to, or prevent the Contractor from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

(d) Infringements of Patents, Trademarks, and Copyrights. The Contractor shall indemnify and hold the City harmless against any claim for any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement. The Contractor shall indemnify and hold the City harmless regardless of whether or not the infringement arises out of compliance with the scope of services/scope of work.

(e) Antitrust. The Contractor hereby assigns, sells, and transfers to the City all right, title and interest in and to any claims and causes of action arising under the antitrust laws of the State of New York or of the United States relating to the particular goods or services procured by the City under this Agreement.

5. Independent Contractor. Firm is an independent contractor of the City. Firm shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Contractor (a "Contractor Agent"), be (i) deemed a City employee, (ii) commit the City to any obligation, or (iii) hold itself, himself, or herself out as a City employee or Person with the authority to commit the City

to any obligation. As used in this Agreement the word "Person" means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

6. No Arrears or Default.

Contractor is not in arrears to the City upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the City, including any obligation to pay taxes to, or perform services for or on behalf of, the City.

7. Compliance with Law.

(a) Generally. Contractor shall comply with any and all applicable Federal, State and local Laws and regulations. As used in this Agreement the word "Law" includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted.

(b) Records Access. The parties acknowledge and agree that all records, information, and data ("Information") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. Contractor acknowledges that Contractor's Information in the City's possession may be subject to disclosure under Article 6 of the New York State Public Officer's Law ("Freedom of Information Law" or "FOIL"). In the event that such a request for disclosure is made, the City shall make reasonable efforts to notify Contractor of such request prior to disclosure of the Information so that Contractor may take such action as it deems appropriate.

(c) Protection of Client Information. Contractor acknowledges and agrees that all information that Contractor acquires in connection with performance under this Agreement shall be strictly confidential, used solely for the purpose of performing services to or on behalf of the City, and shall not be disclosed to third parties except (i) as permitted under this Agreement, (ii) with the written consent of the City (and then only to the extent of the consent), or (iii) upon legal compulsion.

8. Minimum Service Standards. Regardless of whether required by Law:

(a) Contractor shall, and shall cause Contractor Agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.

(b) Contractor shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which Contractor operates. Contractor shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Contractor Agents to obtain and maintain, all approvals, licenses, and certifications ("Approvals") necessary or appropriate in connection with this Agreement.

9. Indemnification; Defense; Cooperation.

(a) The Contractor shall be solely responsible for and shall indemnify and hold harmless the City, the Department and its officers, employees, and agents (the "Indemnified Parties") from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys' fees and disbursements) and damages ("Losses"), arising out of or in connection with any acts or omissions of the Contractor or a Contractor Agent, regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that the Contractor shall not be responsible for that portion, if any, of a Loss that is caused by the negligence of the City.

10. Insurance.

(a) Types and Amounts. The contractor shall obtain and maintain throughout the term of this Agreement, at its own expense (i) one or more policies for commercial general liability insurance, which policy(ies) shall name "City of Long Beach" as an additional insured and have a minimum single combined limit of liability of not less than three million dollars (\$3,000,000) per occurrence and three million dollars (\$3,000,000) aggregate coverage, (ii) if contracting in whole or part to provide professional services, one or more policies for professional liability insurance, which policy(ies) shall have a minimum single combined limit liability of not less than three million dollars (\$3,000,000) per occurrence and three million dollars (\$3,000,000) aggregate coverage, (iii) compensation insurance for the benefit of the Contractor's employees ("Workers' Compensation Insurance"), which insurance is in compliance with the New York State Workers' Compensation Law, and (iv) such additional insurance as the City may from time to time specify.

(b) Acceptability; Deductibles; Sub-consultants. All insurance obtained and maintained by the contractor pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed to do business in New York State and acceptable to the City and which is (ii) in form and substance acceptable to the City. The contractor shall be solely responsible for the payment of all deductibles to which such policies are subject. The contractor

shall require any sub-consultant hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by the contractor under this Agreement.

(c) Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement, copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to the Department. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the contractor shall provide written notice to the Department of the same and deliver to the Department renewal or replacement certificates of insurance. The contractor shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the contractor to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of the contractor to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the City reserves the right to consider this Agreement terminated as of the date of such failure.

11. Termination

(a) Generally. This Agreement may be terminated (i) for any reason by the City upon thirty (30) days' written notice to the Contractor, (ii) for "Cause" by the City immediately upon the receipt by the Contractor of written notice of termination, (iii) upon mutual written Agreement of the City and the Contractor, and (iv) in accordance with any other provisions of this Agreement expressly addressing termination.

As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.

12. Accounting Procedures; Records. Contractor shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles. Such Records shall at all times be available for audit and inspection by the Comptroller, the Department, any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any

of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

13. Limitations on Actions and Special Proceedings against the City. No action or special proceeding shall lie or be prosecuted or maintained against the City upon any claims arising out of or in connection with this Agreement unless:

(a) Notice. At least thirty (30) days prior to seeking relief Firm shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the City Manager for adjustment and the City shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. Firm shall send or deliver copies of the documents presented to the City Manager under this Section to each of (i) the Department and the (ii) the Corporation Counsel (at the address specified above for the City) on the same day that documents are sent or delivered to the City Manager. The complaint or necessary moving papers of Firm shall allege that the above-described actions and inactions preceded the Firm's action or special proceeding against the City.

(b) Time Limitation. Such action or special proceeding is commenced within the earlier of (i) one (1) year of the first to occur of (A) final payment under or the termination of this Agreement, and (B) the accrual of the cause of action, and (ii) the time specified in any other provision of this Agreement.

14. Work Performance Liability. Firm is and shall remain primarily liable for the successful completion of all work in accordance with this Agreement irrespective of whether Firm is using a Contractor Agent to perform some or all of the work contemplated by this Agreement, and irrespective of whether the use of such Contractor Agent has been approved by the City.

15. Consent to Jurisdiction and Venue; Governing Law. Unless otherwise specified in this Agreement or required by Law, exclusive original jurisdiction for all claims or actions with respect to this Agreement shall be in the Supreme Court of the State of New York, County of Nassau and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

16. All Legal Provisions Deemed Included; Severability; Supremacy; Construction

In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Each

party has cooperated in the negotiation and preparation of this Agreement. Therefore, in the event that construction of this Agreement occurs, it shall not be construed against either party as drafter.

17. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

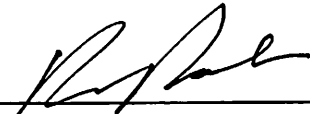
18. Entire Agreement. This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

19. Executory Clause. Notwithstanding any other provision of this Agreement,

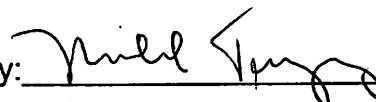
(a) The City shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all City approvals have been obtained, including, if required, approval by the City Council, and (ii) this Agreement has been executed by the City Manager (as defined in this Agreement).

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF, Contractor and the City have executed this Agreement as of the date first above written.

By: 
Name: Robert L. Raab
Title: Senior Vice President
Date: 4-5-18

CITY OF LONG BEACH

By: 
Name: M. Carter Tanager
Title: City Manager
Date: April 6, 2018

PLEASE EXECUTE IN BLUE INK

KELLY PEDONE
Notary Public, State of New York
Registration #01E5030019
Qualified in Nassau County
Commission Expires July 5, 20

EXHIBIT A

Detailed Scope of Services

THE "WALKS" SECTION OF LONG BEACH

Scope of Services

Work on this project shall be divided into four parts and categorized as follows:

- Part 1 – Technical Report Preparation
- Part 2 – Survey and Design (Prepare Plans and Specifications)
- Part 3 – Construction Administration Services
- Part 4 – Construction Inspection

EXHIBIT B

Payment Schedule

The amount to be paid to the Contractor as full consideration for services under this Agreement, **including** any extra services that may be so authorized, shall be payable as set forth below. Notwithstanding the foregoing, the maximum amount to be paid to Contractor for services under this Agreement shall not exceed.

Payments shall be made to contractor in arrears and shall be contingent upon (i) contractor submitting a claim voucher (the "Voucher") in a form satisfactory to the City, that (a) states with reasonable specificity the services provided and the payment requested as consideration for such services, (b) certifies that the services rendered and the payment requested are in accordance with this Agreement, and (c) is accompanied by documentation satisfactory to the City supporting the amount claimed, and (ii) review, approval and audit of the Voucher by the Department and/or the City Comptroller or his or her duly designated representative (the "Comptroller").

Part 1 Technical Report Preparation

Includes proposed staffing for the project, schedule, plans for accomplishing the work, and proposed ideas for the design.

Part 2 Survey & Design (Preparation of Plans and Specifications)

Under this task the Consultant shall perform all work required to prepare a topographic base map, profiles and cross sections, and detailed plans, specifications and cost estimate in such a manner that they can be used for initiating Construction. The Contractor shall be paid on a basis of X times the actual salary of the technical personnel engaged in the work.

Part 3 Construction Administration Services

Under this task the Consultant shall perform all work described herein necessary for the successful award and completion of this road improvement project. The Contractor shall be paid on a basis of X times the actual salary of the technical personnel engaged in the work.

Part 4 Construction Inspection

Under this task, the City, at its discretion, may elect to utilize the design firm to provide construction inspection services. The Consultant shall provide the City with the costs for full time inspection for the period of four months (120 days). Details such as estimates of direct technical labor, overhead and profit expenses, multiplier utilized, and rates of key personnel shall be included. The City reserves the right to select and negotiate the procurement of inspection services with the selected design consultant or seek proposals upon completion of the design phase.



City of Long Beach

NEW YORK 11561

EXHIBIT B

Payment Schedule

The amount to be paid to the Contractor as full consideration for services under this Agreement, **including** any extra services that may be so authorized, shall be payable as set forth below. Notwithstanding the foregoing, the maximum amount to be paid to Contractor for services under this Agreement shall not exceed \$211,300.00 (two hundred eleven thousand three hundred dollars).

MICHAEL TANGNEY
ACTING CITY MANAGER

Timing of Claims for Payment. Contractor shall submit claims no later than one (3) months following the City's receipt of the services that are the subject of the claim and no more frequently than once a month.

CITY COUNCIL
Payments in Connection with Termination or Notice of Termination. Unless a provision of this Agreement expressly states otherwise, payments to the Firm following the termination of this Agreement shall not exceed payments made as consideration for services that were (i) performed prior to termination, (ii) authorized by this Agreement to be performed, and (iii) not performed after the Firm received notice that the City did not desire to receive such services.

ANTHONY ERAMO, PRESIDENT
CHUMI DIAMOND, VICE PRESIDENT

JOHN BENDO
SCOTT J. MANDEL
ANISSA D. MOORE

John A. Mirando, P.E.
Commissioner of Public Works

Joseph Febrizio
Deputy Commissioner of Public Works

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