

**AGENDA DESCRIPTION:**

Consideration and possible action to enter into a Professional Services Agreement with ABCx2, LLC to analyze passenger jets flights over and around the Rancho Palos Verdes airspace

**RECOMMENDED COUNCIL ACTION:**

- (1) Approve a Professional Services Agreement with ABCx2, LLC in the amount of \$30,500 to analyze passenger jets flights over and around the Rancho Palos Verdes airspace

**FISCAL IMPACT:** The services provided under this contract shall not exceed \$30,500, including no more than \$3,000 for reimbursable expenses, and has been budgeted in the Planning Division's Professional and Technical Services account.

<b>Amount Budgeted:</b>	\$193,825
<b>Additional Appropriation:</b>	N/A
<b>Account Number(s):</b>	101-400-4120-5101 <i>mn</i> (GF – Professional/Technical Services in Planning Division)

**ORIGINATED BY:** Robert Nemeth, Associate Planner *RN*  
**REVIEWED BY:** Ara Mihranian, AICP, Director of Community Development *A*  
**APPROVED BY:** Doug Willmore, City Manager *W*

**ATTACHED SUPPORTING DOCUMENTS:**

- A. Professional Services Agreement between City of Rancho Palos Verdes and ABCx2, LLC (page A-1)
- B. ABCx2, LLC Proposal to Rancho Palos Verdes (page B-1)
- C. May 30, 2018 City Attorney letter to FAA (page C-1)
- D. July 13, 2018 FAA response letter to City Attorney (page D-1)

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**BACKGROUND AND DISCUSSION:**

In March 2017, the Federal Aviation Administration (FAA) implemented its SoCal Metroplex project, which was a regional redesign of the airspace over Southern California. With respect to passenger jet departures from Los Angeles International Airport (LAX), the SoCal Metroplex project did not change established offshore flight routes near the Palos Verdes Peninsula. After the implementation of the Metroplex project, from March 2017 to March 2018, the City of Rancho Palos Verdes experienced a 53% increase in passenger jets deviating from offshore flight routes to flight paths that occurred across the City's airspace.

On May 30, 2018, the City Attorney, at the direction of the City Council, contacted the FAA asking for its cooperation to curb passenger jet Peninsula overflights and raising a concern that FAA air traffic controllers may be improperly vectoring eastbound passenger jet aircraft across the City to convenience commercial airline pilots rather than for legitimate safe aircraft spacing reasons (Attachment C).

On July 13, 2018, the City Attorney's Office received a response from the FAA acknowledging the City's concerns and cited that FAA air traffic controllers may vector jets to overfly the community when taking into account aircraft safety, separation, operational efficiency, sequencing, or other air traffic control purposes (Attachment D). Throughout the summer months, passenger jet overflights decreased to an average of 200 Peninsula overflights per month. However, starting in September 2018, passenger jet overflights began to increase. Specifically, there were 232 recorded overflights in September 2018 and 329 overflights in October 2018, a significant and noticeable increase of 42%.

As a result of this passenger jet overflight increase, the City Council on December 4, 2018, directed the City Attorney's Office to explore legal options that would compel the FAA to decrease jet flights over the City. To that end, the City Attorney's Office contacted aviation expert ABCx2, LLC, which assisted the City of Laguna Beach in its legal case against the FAA over departure patterns at John Wayne Airport, to perform an assessment of the passenger jet flights over and near the City of Rancho Palos Verdes. This proposed assessment is intended to determine whether or not the flights over the Peninsula are justified.

As described in the attached Professional Services Agreement (Attachment A), ABCx2, LLC will conduct a baseline assessment of September and October 2018, the period of the overflight upswing. The assessment will establish a baseline of the conditions that cause flight deviations from flight paths published in the Metroplex plan (this service contract does not assess the relationship between passenger jet overflight altitudes and noise, nor does it propose to monitor or install noise monitoring stations). The baseline assessment will quantify the number of passenger jet overflights that deviated from the flight path and identify the likely cause of the deviations. Ultimately, the consultant's assessment will determine whether the number of unjustified flight deviations constitute a new route for which an environmental review may be required per the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA). The findings will be presented to the City Council upon completion of the review, which is expected to be in August 2019. The cost associated with completing the baseline assessment is \$30,500, which includes reimbursable expenses.

Depending on the outcome of the baseline assessment, the City Council, at a future date, may consider expanding the professional services of ABCx2, at an additional cost, to complete a Resolution/Strategy Plan and a Data Analytics and Monitoring Plan.

**ALTERNATIVES:**

In addition to the Staff recommendation, the following alternative actions are available for the City Council's consideration:

1. Identify any issues of concern and direct the City Attorney's Office to modify the proposed contract
2. Direct the City Attorney's Office to solicit additional bids for aviation consulting services
3. Take no action

# ATTACHMENT A

## Professional Services Agreement Between City of Rancho Palos Verdes and ABCx2, LLC

**CONTRACT SERVICES AGREEMENT**

**By and Between**

**CITY OF RANCHO PALOS VERDES**

**and**

**ABCx2, LLC**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN THE CITY OF RANCHO PALOS VERDES AND  
ABCx2, LLC**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Rancho Palos Verdes, a California municipal corporation ("City") and ABCx2, LLC, a limited liability company ("Consultant"). City and Consultant may be referred to, individually or collectively, as "Party" or "Parties."

**RECITALS**

A. Pursuant to the City of Rancho Palos Verdes' Municipal Code, City has authority to enter into and execute this Agreement.

B. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

**1.2 Consultant's Proposal.**

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any

inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

### **1.3 Compliance with Law.**

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

### **1.4 California Labor Law.**

If the Scope of Services includes any “public work” or “maintenance work,” as those terms are defined in California Labor Code section 1720 *et seq.* and California Code of Regulations, Title 8, Section 16000 *et seq.*, and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 *et seq.* and 1810 *et seq.*, and all other applicable laws, including the following requirements:

(a) **Public Work.** The Parties acknowledge that some or all of the work to be performed under this Agreement is a “public work” as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Consultant shall post job site notices, as prescribed by regulation.

(b) **Prevailing Wages.** Consultant shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Consultant acknowledges receipt of a copy of the Department of Industrial Relations (DIR) determination of the prevailing rate of per diem wages, and Consultant shall post a copy of the same at each job site where work is performed under this Agreement.

(c) **Penalty for Failure to Pay Prevailing Wages.** Consultant shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Consultant shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Consultant or by any subcontractor.

(d) **Payroll Records.** Consultant shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Consultant and each subconsultant to: keep accurate payroll records and verify such records in writing under penalty of perjury, as

specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Consultant shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Consultant shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Consultant and each of its subconsultants shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Consultant acknowledges that eight (8) hours labor constitutes a legal day's work. Consultant shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Consultant shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Consultant shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Consultant in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Consultant certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Consultant's Authorized Initials



(i) Consultant's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Consultant shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Consultant shall be required to take all

actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

#### **1.5 Licenses, Permits, Fees and Assessments.**

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

#### **1.6 Familiarity with Work.**

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer.

#### **1.7 Care of Work.**

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### **1.8 Further Responsibilities of Parties.**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

### **1.9 Additional Services.**

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other Consultants. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### **1.10 Special Requirements.**

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \$30,500 (Thirty Thousand Dollars), which shall include compensation for Services in the amount of \$27,500 (Twenty Seven Thousand Five Hundred Dollars), and no more than \$3,000 (Three Thousand Dollars) for all reimbursable expenses (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

### **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

**2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

**2.4 Invoices.**

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall contain all information specified in Exhibit "C", and shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

**2.5 Waiver.**

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

**ARTICLE 3. PERFORMANCE SCHEDULE**

**3.1 Time of Essence.**

Time is of the essence in the performance of this Agreement.

**3.2 Schedule of Performance.**

Consultant shall commence the services pursuant to this Agreement following execution of the Agreement and receipt of 25% of the Contract Sum, and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

**3.3 Force Majeure.**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

**3.4 Term.**

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

**ARTICLE 4. COORDINATION OF WORK**

**4.1 Representatives and Personnel of Consultant.**

The following principals of Consultant ("Principals") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>James K. Allerdice, Jr.</u>	<u>Chief Consultant for Terminal Operations,</u> <u>Managing Partner</u>
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

#### **4.2 Status of Consultant.**

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

#### **4.3 Contract Officer.**

The Contract Officer shall be Ara Mihranian, Director of Community Services. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4 Independent Consultant.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are

agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

**4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

**ARTICLE 5. INSURANCE AND INDEMNIFICATION**

**5.1 Insurance Coverages.**

Without limiting Consultant's indemnification of City, and prior to commencement of any services under this Agreement, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c) Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

(d) Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

## **5.2 General Insurance Requirements.**

(a) Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(b) Duration of coverage. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees or subconsultants.

(c) Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(d) City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or that is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(f) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(g) Enforcement of contract provisions (non-estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass through clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements

of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) Agency's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

(o) Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) Timely notice of claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

### **5.3 Indemnification.**

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

### **6.2 Reports.**

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant

agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

### **6.4 Confidentiality and Release of Information.**

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

### **7.2 Disputes; Default.**

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear

to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

**7.4 Waiver.**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

**7.5 Rights and Remedies are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**7.6 Legal Action.**

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

**7.7 Liquidated Damages.**

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

**7.8 Termination Prior to Expiration of Term.**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this

Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

#### **7.9 Termination for Default of Consultant.**

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### **7.10 Attorneys' Fees.**

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### **8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

**8.2 Conflict of Interest.**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

**8.3 Covenant Against Discrimination.**

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

**8.4 Unauthorized Aliens.**

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

**ARTICLE 9. MISCELLANEOUS PROVISIONS**

**9.1 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of

Rancho Palos Verdes, 30940 Hawthorne Blvd., Rancho Palos Verdes, California 90275 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

## **9.2 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

## **9.3 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

## **9.4 Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

## **9.5 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

## **9.6 Warranty & Representation of Non-Collusion.**

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Consultant

warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials 

**9.7 Corporate Authority.**

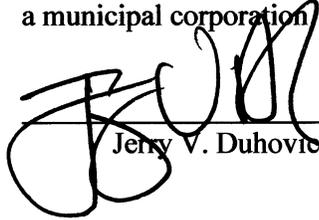
The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF RANCHO PALOS VERDES,  
a municipal corporation

  
Jerry V. Duhovic, Mayor

ATTEST:

  
Emily Colborn, City Clerk

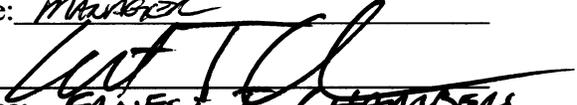
APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

  
William W. Wynder, City Attorney

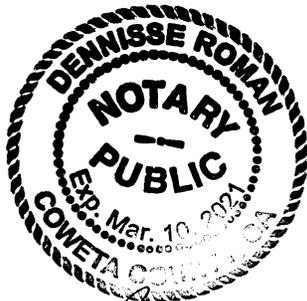
CONSULTANT:

ABCx2, LLC

By:   
Name: JAMES K. ANDERSON  
Title: MANAGER

By:   
Name: ERNEST F. CHARVISEK  
Title: MEMBER

Address: \_\_\_\_\_  
162 BRITTANY LN  
SENDIA, GA 30276



*Dennis Roman NOTARY April 4th 2019*

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF ~~CALIFORNIA~~ *Georgia*  
 COUNTY OF ~~LOS ANGELES~~ *Fayette*  
 On *April 4th*, 2019 before me, *Dennisse Roman*, personally appeared *Mark Albrooke, JR*, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ that the foregoing paragraph is true and correct. *Fayette*

WITNESS my hand and official seal.

Signature: *Dennisse Roman*



**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the instrument and to prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER <hr/> TITLE(S)	<hr/> TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____	<hr/> NUMBER OF PAGES
<hr/> _____	<hr/> DATE OF DOCUMENT
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	<hr/> SIGNER(S) OTHER THAN NAMED ABOVE



## EXHIBIT "A"

### SCOPE OF SERVICES

- I. Consultant will perform the following Services: Analyze available operations and flight track data associated with passenger and cargo air carrier jet departures from Los Angeles International Airport (LAX). The data analyzed will be based on operations for the 2-month period beginning at 12:00 AM (midnight) Sept. 1, 2018 and ending 11:59 PM on Oct. 31, 2018. The purpose of the analysis is to determine the main causes of LAX air carrier jet departures that overfly the City of Rancho Palos Verdes (City). The analysis will include a review of applicable standard instrument departure (SID) procedures published for LAX as well as other air traffic control (ATC) procedures used for departing air carrier aircraft.

Consultant will determine which if any standardized (published or ATC) procedures result in overflight of the City, in addition to identifying deviations from standard procedures which result in overflights of the City.

When deviations from the established procedures (SIDs as well as other ATC departure procedures) are identified, the Consultant shall assess conditions using available data to determine the underlying cause(s) and trends including whether the deviation was due to safety, pilot/controller workload, efficiency, weather, or other causes. The Consultant will make a best effort to identify the cause based on available data.

Overflight of the City will be based on flight track penetration of noise gate boundaries established by the Los Angeles World Airports (LAWA), operator of LAX. Before initiating the analysis, the City shall confirm the validity and acceptability of the gate geometry for this assessment.

- A. The baseline assessment will include review of the LAX Class B airspace, LAX departures and interaction with other aircraft within the LAX Class B (and adjacent) airspace. The assessment will include review of operating characteristics including fleet mix, typical weather conditions, predominant wind speed and conditions, operations by time-of-day, congestion and delay statistics, all of which may influence ATC procedures and deviations from published SIDs.

Through the airspace and procedure analysis, Consultant will inventory and catalog the departure procedures noting the level of impact attributed to each. The level of impact will be assessed based on proximity to the City. For example, procedures that do not result in overflight of the City may be classified as "no impact," while procedures that result in direct overflight of the City as "high impact." Procedures that result in aircraft flying adjacent to but not directly over the City may be classified as having "moderate impact." Note: the scope of this project phase does not include noise monitoring, so "impact" will be assessed based on aircraft proximity in relation to the City, not noise exposure.

A thorough understanding of the specific causes and conditions resulting in “moderate” and “high” impact to the City will serve as the basis for the identification of impact-reduction strategies should the City decide to move onto Phase II as proposed.

Specific steps in Phase I will include:

- Review LAX standard instrument flight procedures (SIDs) and other air traffic control procedures used for departing air carriers.
- Identify which procedures result in overflights of City (as published), which do not, and under what conditions overflights of the City occurs.
- Identify air traffic practices and procedures that result in air carrier jet overflights of the City (based on the noise gate boundary).
- Identify which procedures and/or operational measures minimize/avoid overflight of the City and how these may impact airport and air traffic goals including safety, efficiency, and environmental.
- Conduct analysis of LAX air carrier departures and overflights of the City during the data sample period. Utilize FAA flight track data and other industry adopted data sources as necessary.
  - Consultant will identify flights and aircraft types that overflew the City. Consultant will then analyze the data to identify conditions and trends associated with overflights.
  - Conduct analysis of FAA’s asserted factors for vectoring patterns.
  - Consultant will evaluate the air traffic situation at the time of the overflight(s) determine from experience if air traffic volume or complexity were likely factors.
  - Consultant will evaluate the air traffic situation at the time of the deviation from the published procedure and determine from available data and experience if weather was a factor.
  - Consultant will evaluate the air traffic situation at the time of the deviation from the published procedure and determine from available data and experience if winds were a factor.
  - Consultant will not be able to determine pilot abilities/qualifications from available data.
  - Consultant will be able to determine to a limited degree if Aircraft Equipment and Capabilities were a factor based on the availability of aircraft data.

- Consultant will evaluate the air traffic situation at the time of the deviation from the published procedure and determine from available data and experience if Safety and/or Separation was a factor.
- Consultant will evaluate the air traffic situation at the time of the deviation from the published procedure and determine from available data and experience if Operational Efficiency was a factor.
- Consultant will observe and evaluate the air traffic situation at the time of the deviation from the published procedure and determine from available data and experience if sequencing was a factor.
- “Other air traffic control purposes” – If Consultant cannot identify from the factors above why the deviation occurred, it will be placed into this category.

NOTE- While these factors can all impact flight operations, Consultant will seek to assess the significance of each with respect to overflights of the City. For example, how often is safety/separation/vectoring the cause of an overflight? (This may suggest a flight was broken off of the published procedure/track for separation). Reviewing the flight track data will help Consultant assess the frequency of such actions.

Consultant can also identify which procedures (current or revised) would be less susceptible to deviation based on the factors listed above, minimizing the risk for deviation.

**II.** As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

**A.** Deliverables within Phase I will include:

- A Baseline Assessment Report detailing results of analysis including visualizations and conclusions based upon data and observations of traffic flows during the analysis period.
  - Assessment of the LAX air carrier jet departure procedures and the resulting proximity (impact as defined above) to Rancho Palos Verdes. This will include an evaluation of flight procedures with high, medium, and low City impacts. (“Impact” will be based on the proximity of the flight track to the City and penetration of the noise gate.)
  - Determine if deviations from published procedures were likely attributed to operational necessity (safety/efficiency).

- Quantify percentage/number of air carrier jet departures that overfly/impact the LAWA noise gate boundary versus the percentage/number that do not.
  - Quantify the number/percentage of air carrier jet departure overflights that deviated from the procedures as published and identify the likely cause.
  - Assess whether or not the number and nature of deviations constitute a “new route” for which an environmental review (NEPA and/or CEQA) may be required.
- One presentation to the City Council to present findings and a final report, if deemed appropriate by the City’s Contract Officer.
- III.** In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering monthly status reports and additional status reports if requested by the City’s Contract Officer.
- NOT APPLICABLE
- IV.** All work product is subject to review and acceptance by the City. Consultant must make a reasonable effort to revise documents not found satisfactory to the City. The submission of the Final version of the Baseline Report may be revise up to three (3) times without additional charge to the City. Any further revisions required by the City will be accomplished at Consultants standard rate (\$250/hr) until found satisfactory and accepted by City.
- V.** Consultant will utilize the following personnel to accomplish the Services:
- A. James K. Allerdice, Jr., Chief Consultant for Terminal Operations, Managing Partner
  - B. Ernest Timothy Chambers, Chief Consultant for Enroute Operations
  - C. John-Paul Clarke, Senior Advisor
  - D. Katrina Jensen, Chief Consultant for Analytics
  - E. Jason L. Schwarz, Chief Consultant for Airports, Environment, and Community

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS**

**(Superseding Contract Boilerplate)**

Added text is indicated in ***bold italics***, deleted text is indicated in ~~strike through~~.

**Section 1.2, Consultant's Proposal, is amended to read:**

1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work ~~or bid~~ which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of *the attached work plan* ~~such proposal~~ and this Agreement, the terms of this Agreement shall govern.

**Section 1.4, California Labor Law, is amended to read:**

1.4 California Labor Law.

If the Scope of Services includes any "public work" or "maintenance work," as those terms are defined in California Labor Code section 1720 et seq. and California Code of Regulations, Title 8, Section 16000 et seq., and if the total compensation is \$1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 et seq. and 1810 et seq., and all other applicable laws, including the following requirements:

(a) **Public Work.** The Parties acknowledge that some or all of the work to be performed under this Agreement is a "public work" as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Consultant shall post job site notices, as prescribed by regulation.

(b) **Prevailing Wages.** Consultant shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Consultant acknowledges receipt of a copy of the Department of Industrial Relations (DIR) determination of the prevailing rate of per diem wages, and Consultant shall post a copy of the same at each job site where work is performed under this Agreement.

(c) **Penalty for Failure to Pay Prevailing Wages.** Consultant shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The

Consultant shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Consultant or by any subcontractor.

(d) Payroll Records. Consultant shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Consultant and each subconsultant to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Consultant shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Consultant shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Consultant shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Consultant and each of its subconsultants shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Consultant acknowledges that eight (8) hours labor constitutes a legal day's work. Consultant shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Consultant shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Consultant shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Consultant in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Consultant certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Consultant's Authorized Initials \_\_\_\_\_

(i) Consultant's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Consultant shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Consultant shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

***The Parties acknowledge that the Scope of Work does not include any public work and this section therefore shall not apply to the Agreement.***

**Section 1.7, Care of Work, is deleted in its entirety.**

**Section 1.9, Additional Services, is amended to read:**

1.9 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other Consultants. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed. ***Changes in scope must be submitted to Consultant in writing and any work completed up until notification of the change will be compensated based on billable time, regardless of whether the specified task is complete.***

**Section 2.2, Method of Compensation, is amended to read:**

2.2 Method of Compensation.

The method of compensation *shall be in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C"*, may include: ~~(i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.~~

**Section 2.3, Reimbursable Expenses, is amended to read:**

**2.3. Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel *time and expenses for up to one meeting at the City (e.g., for presentation to Council)* approved by the Contract Officer in advance, ~~or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall be entitled to reimbursement for actual expenses to include, airfare, hotel, rental car or other appropriate means of transportation, and reimbursement for meals and incidental expenses incurred any additional compensation for for travel requested and approved by the City attending said meetings.~~ *reimbursement of the above noted expenses is in addition to the amounts agreed upon in the "Schedule of Compensation" attached hereto as Exhibit "C".*

**Section 2.4, Invoices, is amended to read:**

*In accordance with Exhibit "C", Schedule of Compensation, Each* month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month *via electronic invoice through QuickBooks in a form approved by City's Director of Finance.* By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. *The invoice shall be accompanied with a Monthly Status Report detailing the work accomplished by the Consultant in the previous month and any approved reimbursable expenses incurred. In the event travel is required, a separate invoice may be submitted for reimbursement of travel expenses.* The invoice shall contain all information specified in Exhibit "C", and shall detail charges for all necessary and actual expenses by the following categories: labor (by sub category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause

Consultant to be paid within ~~forty-five (45)~~**thirty (30), but in no event later than sixty (60)** days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

**Section 5.1, Insurance Coverages, is amended to read:**

5.1 Insurance Coverages.

Without limiting Consultant's indemnification of City, and prior to commencement of any services under this Agreement, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Consultant shall maintain automobile insurance at least *the minimum level required by the State of Georgia*. ~~as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.~~ *California automobile liability insurance shall be waived provided Consultant only uses public transportation, taxis, or Uber/Lyft when in California.*

(c) Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than ~~three (3) years~~*one (1) year* after completion of the services required by this Agreement.

(d) Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). *This requirement is waived provided Consultant will have no employees for the entirety of performance under this Agreement.*

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each

subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

**Section 5.3, Indemnification, is amended to read:**

**5.3 Indemnification.**

To the full extent permitted by law, Consultant agrees to indemnify, ~~defend~~ and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

~~(a) — Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;~~

(b) — Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder *up to the limit of Consultant's insurance coverages*; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

~~(c) — In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.~~

*If applicable*, Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the

fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

**Section 6.1, Records, is amended to read:**

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services, *in a separate electronic folder, to which City shall have full and unfettered access.* Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and/or disclosure is required by law including but not limited to the California Public Records Act.

**Section 6.2, Reports, is amended to read:**

Consultant shall ~~periodically~~ prepare and submit to the Contract Officer *a Monthly Status Report* ~~such reports~~ concerning the performance of the services required by this Agreement ~~as the Contract Officer shall require~~. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

**Section 7.2, Disputes; Default, is amended to read:**

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the

reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, ~~t~~The City *shall may, in its sole discretion, elect to pay some or all of the outstanding invoices for work completed and conducted in good faith during-prior to* the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

**Section 7.7, Liquidated Damages, is deleted in its entirety.**

**Section 7.8, Termination Prior to Expiration of Term, is amended to read:**

**7.8 Termination Prior to Expiration of Term.**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The ~~Parties~~City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to *the other party*. Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. ~~In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine.~~ Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. ~~Except where the Consultant has initiated termination,~~ ~~t~~The Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the ~~reasonable value of the work product actually produced hereunder~~*work performed up to the date of termination on a time and materials basis*. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

**Section 7.9, Termination for Default of Consultant, is amended to read:**

**7.9 Termination for Default of Consultant.**

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), *but in no event shall Consultant be liable for more than \$55,000 for*

***replacement Services***, and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the Services for a flat rate of \$30,500.**

The flat fee shall be paid 25% at execution of the Agreement, and the balance to be paid via monthly invoices as specified below, invoiced at a rate of \$250/hour, not to exceed the total compensation of \$27,500.

Consultant shall also be entitled to reimbursement for actual expenses to include, airfare, hotel, rental car or other appropriate means of transportation, and reimbursement for meals and incidental expenses incurred for travel requested and approved by the City, up to \$3,000 for one meeting in California, if needed.

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

NOT APPLICABLE

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.9.**

NOT APPLICABLE

**IV. The City will compensate Consultant for the Services performed, and any applicable approved expenses, upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

**V. The total compensation for the Services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

**VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1. NOT APPLICABLE**

**EXHIBIT "D"**

**SCHEDULE OF PERFORMANCE**

- I. Consultant shall complete the Services within 90 days of Consultant's receipt of the necessary data (estimated at 10 business days after execution of the Agreement).**
  
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**
  - A. Upon completion of the Baseline Assessment, for those study items that only relate to the analysis of flights where the consultant has determined and identified operational necessity and operational advantageous flight deviations, the consultant shall submit to the City their findings.
  
  - B. Upon completion of all the study items contained in Section I and II and in accord with Section III of Exhibit "A", the consultant shall submit a draft report to the City.
  
  - C. Consultant shall submit a Final Report to the City within the time provided in Section I, above.
  
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

**MUST BE DISPLAYED IN PLACE OF BUSINESS – NON TRANSFERABLE**



City of Rancho Palos Verdes  
30940 Hawthorne Blvd.  
Rancho Palos Verdes, CA 90275  
310-544-5301

**BUSINESS TAX REGISTRATION CERTIFICATE**

ABCx2, LLC  
162 BRITTANY LN  
SENOIA, GA 30276

Number: BLOC-0119  
Issue Date: 3/26/2019  
Expiration Date: 12/31/2019

ISSUING OFFICER:

Business Name: ABCx2, LLC  
Business Address: OUT OF CITY BUSINESS

A handwritten signature in black ink, appearing to read 'D. Berchfield'.

This certificate is evidence that the person or firm named has paid a tax to conduct and operate a business as indicated hereon pursuant to the provisions of Chapter 5.04 of the Rancho Palos Verdes Municipal Code.

ABCx2, LLC  
162 BRITTANY LN  
SENOIA, GA 30276



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**Endorsement 9**

NAMED INSURED: ABCx2, LLC

**E6999.2 REVISED Additional Insured Endorsement**

In consideration of the premium charged of \$100.00, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed that Endorsement E6149 is deleted in its entirety and replaced by the following:

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the Professional Liability Coverage Part is/are amended as follows:

I. The following definition is added to the end of Section III. Who is an insured:

**Additional insured** means the person or organization listed below:

The City of Laguna Beach  
The City of Rancho Palos Verdes, CA

Coverage is available for **additional insureds** solely for their liability arising out of the **named insured's** negligence or of those acting on the **named insured's** behalf and not for any liability arising out of the sole negligence of the **additional insured**.

II. In the preamble of Section III. Who is an insured, the words "**additional insured,**" are added after "**named insured,**".

III. In Section VII. Definitions, the definition of "**You, your, or insured**" is amended to add the words "**additional insured,**" after "**named insured,**".

Endorsement effective: 03/27/2019

Certificate No.: MPL1793983.18

Endorsement No: 9

Processed Date: 03/28/2019

Hiscox Inc.



Authorized Representative  
Kathleen Ray

## ATTACHMENT B

ABCx2, LLC Proposal to Rancho  
Palos Verdes

## Proposal to Rancho Palos Verdes

c/o June S. Ailin  
Aleshire & Wynder, LLP  
2361 Rosecrans Ave., Suite 475  
El Segundo, CA 90245

### Who We Are

ABCx2 is a partnership with a unique combination of talent and experience. Our knowledge, skills and abilities represent decades of Air Traffic Control (ATC) data analytics and research and development experience uncommon in aviation. ABCx2 brings an abundance of experience in airspace redesign, flight procedure design, performance-based navigation, noise abatement, and program management with an outstanding record of success while maintaining fiscal responsibility and environmental stewardship.

ABCx2 provides consulting services and technical expertise to both the aviation industry and the community. With over twenty-five years of airport experience, including airport operations, aircraft noise abatement, environmental programs, and stakeholder engagement, ABCx2 has the experience needed to navigate the complexities of aviation and aviation noise issues, maximizing the local benefits of industry while mitigating the impact to communities.

ABCx2's experience in processing large complex sets of data into intuitive and compelling visualizations used to communicate results to a diverse audience is beneficial as communication with stake holders and communities continues demand a higher level of interaction.

ABCx2 and its affiliates are global leaders in aviation impact management. We facilitate compatibility between the aviation industry and nearby communities. We do this by leveraging our extensive aviation experience and proven collaboration and engagement skills. The outcome is a strategy that reduces aviation environmental impacts and creates sustainable relationships that result in win-win solutions for all stakeholders.

Please see our individual bios. (Attached)

## Proposed Scope of Services

### Phase I: Baseline Assessment

The intent of Phase I is to assess the current conditions, specifically focusing on overflights and the subsequent impacts to the community of Rancho Palos Verdes. This assessment will include reviewing the LAX airspace, aircraft departures out of LAX, and the interaction among aircraft including arrivals and departures from other airports as well as LAX. Assessing operations within the LAX airspace will enable the ABCx2 Team to identify the specific flights (airlines, aircraft types, etc.) and conditions (winds, weather, time-of-day, etc.), associated with overflights of the client's community.

It is possible that some of the published procedures (conventional, visual, or RNAV) result in overflights of Rancho Palos Verdes while other procedures avoid this area. Through the airspace and procedure analysis, the team will inventory and catalog the departure procedures noting the level of impact attributed to each. For example, some procedures may have no impact to Rancho Palos Verdes, while others may directly overfly the community, and some may fly near but not directly over. Similarly, during certain traffic or weather conditions, flight tracks may vary resulting in increased or decreased impact. A thorough understanding of the conditions in which Rancho Palos Verdes is impacted will serve as the baseline for the identification of potential solutions to be developed in Phase II.

Specific steps in Phase I will include:

- Review LAX flight procedures (SIDs/STARs/Approaches) to understand how airspace and procedures are used and how these interact with client community/area.
- Identify which procedures result in overflights of client's community intentionally (as published) and non-intentionally (deviation from published procedures and for what reason(s)).
- Identify which procedures minimize/avoid overflight of client community while meeting LAX and FAA goals for safety and efficiency.
- Conduct initial review of LAX operations (flight track analysis using up to 60 days of data) to determine overall volume of operations impacting client (determine scale of issue).
  - Determine if these are arrivals, departures or approaches.
  - Identify trends in terms of aircraft type, flow, time-of-day, etc.
  - Validate that these are LAX arrivals/departures and not aircraft from other airports.
- Conduct analysis of reported overflight events in October and November of 2018 utilizing FAA flight track data and other sources as necessary to identify patterns and trends (as noted above).

### **Deliverables within Phase I will include:**

- A Baseline Assessment Report detailing results of analysis including visualizations and conclusions based upon data and observations of traffic flows during the analysis period.
  - Assessment of the LAX departure procedures and the level of impact on Rancho Palos Verdes and other communities.
  - Evaluation of flight procedures with high, medium, and low community impacts.
  - Determine if deviation from published procedures is based on “operational necessity<sup>1</sup>” (safety/efficiency) or “operationally advantageous<sup>2</sup>”.
  - Quantify percentage/number of departures that overfly/impact the Rancho Palos Verdes community versus the percentage/number that do not.
  - Quantify the number/percentage of flights that are not flying procedures as published and typical causes (operational necessity versus operationally advantageous).
  - Identify potential strategies for reducing overflights and resulting aircraft noise impacts to Rancho Palos Verdes and surrounding communities. Strategies may include airspace changes, changes in published flight procedures, changes in air traffic control policies and practices, preferred departure procedures, etc. These may be incorporated via Letter of Agreement, Settlement Agreement, etc. An assessment of each strategy will include the potential costs, benefits, and likelihood of success being implemented and used.
  - Assess whether or not the number and nature/severity of deviations constitutes a “new route” for which an environmental review (NEPA and/or CEQA) would be required.
  - Assess whether or not air traffic patterns are consistent with federal and/or state environmental analyses conducted as part of the SoCal Metroplex project and airspace changes and flight procedure development.

***NOTE-** This Phase is budgeted on a fixed cost.*

<sup>1</sup> Operational Necessity is defined as those actions required for separation or sequencing of aircraft, collision avoidance, terrain avoidance, weather avoidance or other safety related requirements or activities.

<sup>2</sup> Operationally Advantageous is defined as those activities that may provide operational benefits for air traffic control or the aircraft operator, such as shorter routes, reduced flight time, and reduced controller workload. These route changes are not required by standard operating procedures and remain at the discretion of the air traffic controller and/or pilot-in-command.

## Phase II: Resolution/Strategy Development (Optional)

Phase II will focus on leveraging what was learned in the Phase I Baseline Assessment to develop and implement strategies to reduce overflights and impacts to Rancho Palos Verdes and other surrounding communities, while meeting regulatory and operational requirements.

Strategy development will require advocating on behalf of the client and collaboration with key industry stakeholders including the FAA air traffic control, LAX Airport, and potentially, aircraft operators. (Airline sponsorship can help encourage FAA and airport support for program changes and improvements). Engagement with key stakeholders will be required for implementation of new operational strategies.

Specific strategies for reducing community impacts may include airspace changes, flight procedure changes, changes in Air Traffic Control practices and procedures, and operational changes by the airlines. Some of these will be explored during Phase I and expanded on in Phase II.

Strategies selected for pursuit by the clients will be further assessed and discussed with the appropriate organizations (i.e. air traffic control, the airport, the airlines, etc.). Further assessment will determine expected cost/benefit and likelihood of success.

Proposed activities in Phase II include:

- Support and advocacy for implementation of strategies identified in Phase I and selected by clients (i.e. revised flight procedures, other airspace changes, prioritized use of specific flight procedures, etc.).
- Develop an engagement strategy to encourage use of preferred (community-friendly) procedures. This may include work with the LAX Airport, LAX Air Traffic Control, SoCal TRACON, LA ARTCC, NATCA, and key airlines.
- List of specific operational strategies and elements for reducing overflights and noise impacts to Rancho Palos Verdes and surrounding communities, including and assessment of potential costs, benefits, and likelihood of success.
- Development/design of new and/or revised flight procedures, airspace changes, tower procedures, etc. The ABCx2 team will work with the appropriate stakeholders through implementation.

### Phase III: Data Analytics and Monitoring (Optional)

Phase III activities will follow implementation of selected strategies. Phase III focuses on monitoring compliance and use of procedures and practices established in Phase II. This Phase can include the development of data analytics such as information dashboards which will provide the client with the tools to monitor overflights and deviations from procedures and practices established in Phase II. Alternatively, the client may opt to have the ABCx2 team monitor and report compliance or non-compliance on a periodic basis (i.e. monthly, quarterly, etc.). This monitoring can include ongoing engagement with the appropriate industry stakeholders (i.e. air traffic control or the airlines) to address performance concerns.

Proposed activities in Phase III include:

- Development of data analytics and/or dashboards for ongoing monitoring of flight operations (i.e. deviations from published procedures, overflight of Rancho Palos Verdes). This information could be monitored by the client or by the ABCx2 team with period reports to the client and/or FAA, LAX Airport, airlines, etc.
- Ongoing monitoring and reporting of flight performance and use of new/revised procedures and compliance with any agreements established as part of this project.
- Work with airport/FAA to address performance issues and community concerns.

## Rates and Charges

Project Rates	
Phase I: Baseline Assessment (Fixed Price)	\$27,500 – 25% Retainer Up Front*
Phase II: Resolution/Strategy Development	\$250/Hour - By Task Order (20 hrs./TO)*
Phase III: Implementation/Execution	\$250/Hour - By Task Order (20 hrs./TO)* \$400/Hour – Procedure Design & Modeling*

*\*All required travel expenses including airfare, hotel, meals and incidentals will be reimbursed.*



James K. Allerdice, Jr.  
Chief Consultant for Terminal Operations  
Managing Partner, ABCx2, LLC  
[j.allerdice@bcx2.com](mailto:j.allerdice@bcx2.com)  
Ph. 678-485-0852

**JAMES K. (JIM) ALLERDICE, JR.**  
**CHIEF CONSULTANT FOR TERMINAL OPERATIONS,**  
**MANAGING PARTNER, ABCX2, LLC**

Jim Allerdice began his Air Traffic Control career when he entered the United States Air Force in May 1980. After receiving an Honorable discharge from the US Air Force, Jim began his 31-year FAA career in November 1983. He has worked in all types of Terminal facilities culminating with over 22-years at Atlanta Tower/TRACON.

Jim was the Chief Designer of the Area Navigation (RNAV) infrastructure for the Atlanta Hartsfield-Jackson International Airport (ATL). He pioneered new and innovative designs such as the Equivalent Lateral Spacing Operations (ELSO) based on the MITRE Study, which enables reduced divergence RNAV Off-The-Ground (OTG) departure operations. The ELSO design was predicted to increase departure capacity between 8-13 operations per hour and has equaled or exceeded those expectations since full implementation in October 2011.

Jim was also heavily involved in the research and development of Optimized Profile Descents (OPD). Through collaborative efforts with Georgia Tech and the FAA, some of the first OPD Standard Terminal Arrivals (STARs) were designed and implemented within the Atlanta Terminal Radar Approach Control (TRACON) (A80) and Atlanta Air Route Traffic Control Center (ARTCC) (ZTL) airspace.

Jim also worked on other pioneering efforts such as RNAV Visual Flight Procedures (RVFP) Established on Required Navigational Performance (RNP) (EoR) approaches, and RNAV Closely Spaced Parallel Operations (CSPO) procedures.

Jim was the Lead Specialist for the Atlanta Class B Airspace redesign. This required organizing public forums for discussion and feedback on the Class B design through contacts with local, state and federal agencies. Jim was also the Lead Presenter at numerous public forums interacting with various groups that were interested in the impact that the proposed design would have on their homes, business and communities.

Jim was presented the Secretary of Transportation's Award for Excellence on November 15, 2012, for "Outstanding Service to the American People, Recognizing [his] Dedication, Achievement and Leadership in the areas of Performance Based Navigation, Environmental Stewardship and Fiscal Responsibility." This award was presented for his work designing and implementing Performance Based Navigation procedures as the Atlanta TRACON NEXTGEN Support Specialist.



**Areas of Expertise**

- NextGen
- Procedure Design
- Project Management
- Industry Collaboration

**Education**

- Studied Aviation Technology, Purdue University;
- Air Traffic Control, Community College of the Air Force

**Certifications**

- Private Pilot Certificate
- Control Tower Operator
- Black Belt (1<sup>st</sup> Dan) Choi Kwang Do Martial Art

**Awards & Publications**

- Secretary of Transportation Award for Excellence – 2012
- (Co-Author) Development and Operational Transition of the First PBN-Enabled Departure Separation Standard – Presented at ICNS Conference, April 2015. - Winner of Best Performance Based Navigation Paper in Session.
- (Co-Author) Concept and Benefits of PBN-Enabled Parallel Approach Operations – Presented at the AIAA Forum and Exposition in June 2015.

**ERNEST TIMOTHY (TIM) CHAMBERS**  
**CHIEF CONSULTANT FOR ENROUTE OPERATIONS,**  
**ABCX2, LLC**



Mr. Chambers is a founding partner of and Chief Enroute Consultant for ABCx2, LLC. He has 31 years enroute Air Traffic Control experience with the Federal Aviation Administration (FAA) including over 19 years as an Airspace and Procedures Specialist at Atlanta Air Route Traffic Control Center (ARTCC). He has an extensive background in Performance-Based Navigation (PBN) procedures development and implementation at high volume airports including Hartsfield-Jackson Atlanta International (ATL), Charlotte Douglas International (CLT) as well as other regional airports.

Mr. Chambers led the enroute procedures team during the development of the initial RNAV Standard Instrument Departures (SIDs) and Standard Terminal Arrival Routes (STARs) at ATL and CLT. His work continued through the various revisions and updates as technology and aircraft capabilities evolved. His work included the design, modeling and implementation of dual arrival flows from the northeast and northwest into ATL.

In cooperation with other FAA organizations, industry and Georgia Tech, Mr. Chambers was also instrumental in the early research and flight trials of Continuous Descent Arrivals/Approaches (CDAs) at ATL. This work led to the development of Optimum Profile Descents (OPDs) which have become a cornerstone of NextGen/PBN implementation throughout the NAS.

Mr. Chambers' background includes:

- Development of airspace & procedures for various military training/maintenance operations
- Collaboration with aircraft manufacturing facilities for flight test of prototype and newly manufactured production airframes
- Implementation of special departure/arrival procedures for medical emergency helicopter operations in remote landing areas
- Integration of sky diving and soaring activities in congested, high traffic areas

Since joining ABCx2, Mr. Chambers has provided consulting services to several major airports with respect to proposed PBN initiatives and the impacts and benefits of those procedures to the airport and surrounding community. He also provides ongoing services to a major airline seeking to maximize PBN benefits from a user perspective.

**Areas of Expertise**

- NextGen
- Procedure Design
- Traffic Analysis

**Education**

- Georgia Southern University
- FAA Academy (ATC EnRoute)

**Professional Courses/Certifications**

- (FAA Course 50019)  
AIRSPACE AND PROCEDURES
- (FAA Course 12000)  
INTRODUCTION TO NEPA REQUIREMENTS AND PROCEDURES
- (FAA Course 15300050)  
INTRODUCTION TO FLIGHT PROCEDURES (TERPS)
- (FAA Course 21000061)  
FLIGHT VALIDATION OF SATELLITE-BASED PERFORMANCE BASED INSTRUMENT FLIGHT PROCEDURES

**JOHN-PAUL CLARKE.**  
**SENIOR ADVISOR**  
**ABCX2, LLC**

John-Paul Clarke is a College of Engineering Dean's Professor at the Georgia Institute of Technology (Georgia Tech), where he has appointments in Aerospace Engineering and Industrial and Systems Engineering, and serves as Director of the Air Transportation Laboratory.

Dr. Clarke is a leading expert in aircraft trajectory prediction and optimization, especially as it pertains to the development of flight procedures that reduce the environmental impact of aviation. His research has been instrumental in changing both the theory and the practice of flight procedure design, and has spurred the global effort to reduce the environmental impact of aviation via changes in operational procedures. He is also an expert in the development and use of stochastic models and optimization algorithms to improve the efficiency and robustness of airline, airport, and air traffic operations.

Professor Clarke was co-Chair of the National Academies Committee that developed the US National Agenda for Autonomy Research related to Civil Aviation, and a member of the National Academies Committee that reviewed the Next Generation Air Transportation System. He is currently co-Chair of the Joint Planning Committee for the AIAA-AAAF Aviation Noise and Emissions Reduction Symposium (ANERS) and a member of the NASA Advisory Council Aeronautics Committee. Over the years, he has chaired or served on advisory and technical committees chartered by the AIAA, EU, FAA, ICAO, NASA, the National Academies, the US Army, and the US DOT.

Dr. Clarke received the S.B., S.M., and Sc.D. degrees from the Massachusetts Institute of Technology (MIT) in 1991, 1992, and 1997, respectively. His many prior honors include the 1999 AIAA/AAAE/ACC Jay Hollingsworth Speas Airport Award, the 2003 FAA Excellence in Aviation Award, the 2006 National Academy of Engineering Gilbreth Lectureship, the 2012 AIAA/SAE William Littlewood Lectureship, and the SAE Environmental Excellence in Transportation Award in 2015. He is a Fellow of the AIAA, and is a member of AGIFORS, INFORMS, and Sigma Xi.



**Areas of Expertise**

- Trajectory Prediction and Optimization
- Aviation Environmental Modeling and Mitigation
- Stochastic Models and Optimization Algorithms

**Education**

- S.B., MIT, 1991
- S.M., MIT, 1992
- Sc.D., MIT, 1997

**Awards**

- 1999 AIAA/AAAE/ACC Jay Hollingsworth Speas Airport Award
- 2003 FAA Excellence in Aviation Award
- 2006 National Academy of Engineering Gilbreth Lectureship
- 2012 AIAA/SAE William Littlewood Lectureship
- 2015 SAE Environmental Excellence in Transportation Award

**Publications**

- 7 Refereed Book Chapters
- 48 Refereed Journal Articles
- 54 Refereed Conference Papers
- 2 Patents
- 3 Software Tools

**KATRINA JENSEN**  
**CHIEF CONSULTANT FOR ANALYTICS,**  
**ABCX2, LLC**

Katrina Jensen has over 20 years of project management experience with clients as diverse as the FAA, Starbucks, HP Europe, Clorox, Kraft Foods, Cooper Lighting, Meijer Consumer Goods, and many more global companies. Through her professionalism, leadership, business acumen, and analytical skills, she assisted these global companies in streamlining national and international distribution networks, validating and modeling Greenfield locations in North America, provided both short and long term network plans, optimized the number and location of present and future distribution and corporate warehouses, rationalizing key network functions to include order consolidation and realignment of vendor inbound and customer territories for the different product channels. She developed in-house Network Optimization process and network models enabling client self-reliance focused on greater business efficiencies. Ms. Jensen's greatest strengths lie in structure, organization, client interactions, and ensuring on-time product deliveries through robust client engagement and updates. With experience in multiple industries and more recently in aviation, she has determined and implemented supply chain savings, distribution networks, inventory rationalization methodologies and reduction around the globe utilizing unique software solutions while managing teams within large client engagements with consultant and client members. She is dedicated to training, motivating and developing clients and associates.

Ms. Jensen's experience in processing large complex sets of data into intuitive and compelling visualizations used to communicate results to a diverse audience is beneficial as communication with stake holders continue to grow.



**Areas of Expertise**

- Data Analytics
- Supply Chain Design
- Operations Management

**Education**

- Business Logistics & International Business; The Pennsylvania State University
- Russian; The Pennsylvania State University
- Russian; St Petersburg State Technical University, Russia
- General Studies; University of Maryland

JASON L. SCHWARTZ  
CHIEF CONSULTANT FOR AIRPORTS, ENVIRONMENT, AND  
COMMUNITY  
ABCx2



Jason has over 25 years of airport management experience including airport operations, airport noise abatement, community relations and unmanned aerial systems. He has worked at airports including general aviation airports, air carrier airports, and joint-use military/civilian facilities.

Jason provides support to the aviation industry, local and state governments, and communities, advocating for a greater understanding of community interests and impacts, while leveraging the local and regional benefits of airports and aviation. Jason has developed and managed noise abatement offices and noise programs for airports across the US. This includes developing and modifying flight procedures and local operational practices to reduce community impacts. Jason has managed Part 150 studies as well as supported airport master planning and NEPA projects including and environmental impact statements (EIS), environmental analyses (EA).

Jason has worked with both airports and communities in the design and deployment of NextGen/performance-based navigation procedures to ensure the interests of both industry and community stakeholders were understood and addressed. Jason has served as the airport and community lead on flight procedure at multiple airports.

Inclusive stakeholder engagement is critical in addressing airport-community issues and Jason has developed and deployed community engagement and outreach programs for airports and aviation businesses and industry groups. This experience includes the establishment and facilitation of aircraft noise roundtables, working groups, and advisory groups to encourage communication and collaboration among industry and community stakeholders.

Jason's industry involvement includes participation on multiple International Civil Aviation Organization (ICAO) working groups, Airports Council International, FAA's NextGen Advisory Committee, and the National Academies. Jason is a long-time community advocate and technical advisor to the National Organization to Insure a Sound Controlled Environment (N.O.I.S.E.).

Jason has been recognized nationally and internationally as an expert in community engagement, airport noise management, and flight procedure design. He has been presenter and subject-matter expert across North America and Europe.

#### Areas of Expertise

- Aircraft Noise Abatement
- Airport Operations
- Aviation Environmental
- Community Engagement

#### Education

- B.S. Aviation Management  
Embry-Riddle Aeronautical  
University
- M.S. Aeronautics/Air Traffic  
Management  
Embry-Riddle Aeronautical  
University

#### Technical Training/Certifications

- Public Participation Certification,  
International Association for Public  
Participation
- Community Relations for Business  
Aviation,  
Embry-Riddle Aeronautical  
University
- Airport Environmental Management  
Certification,  
Airports Council International
- Airport Operations and Safety  
School,  
American Association of Airport  
Executives

#### Recent Industry Involvement

- Committee on Aviation  
Environmental Protection,  
International Civil Aviation  
Organization
- FAA NextGen Advisory  
Committee, PBN Blueprint for  
Success Task Group
- ACRP Panel Chair - Understanding  
the Airport's Role in Performance-  
Based Navigation
- (Co-Author) Airports' Role in the  
Development and Implementation  
of PBN,  
Airports Council International
- Technical advisor to the National  
Organization to Insure a Sound  
Controlled Environment  
(N.O.I.S.E.)

## ATTACHMENT C

May 30, 2018 City Attorney letter  
to FAA



May 30, 2018

**VIA FEDEX & U.S. MAIL**

Daniel K. Elwell  
Acting Administrator  
Federal Aviation Administration  
U.S. Department of Transportation  
800 Independence Ave, SW  
Washington D.C., 20591

Subject: City of Rancho Palos Verdes Jet Overflight Noise Abatement

Dear Mr. Elwell:

We are the City Attorney for the City of Rancho Palos Verdes. In that capacity, we have been directed by the City Council to raise with you our client's concerns about jet overflight of this community. We are advised that the City of Rancho Palos Verdes (City) and its residents have made repeated requests to the Federal Aviation Administration (FAA), through the LAX Community Noise Roundtable and by direct communication from its officials and residents, to address excessive and unwarranted jet aircraft being directed by FAA traffic controllers to overfly the Palos Verdes Peninsula (PV Peninsula).

These attempts to seek your cooperation to have jet aircraft adhere to offshore flight paths (OSHNN8) have been largely ignored by the FAA in the past. Since the implementation of the FAA's Southern California Metroplex project, there has been a disturbing trend in the number of increased jet overflights across the PV Peninsula. Such excessive increase of PV Peninsula jet overflights since the Metroplex project implementation has been well documented by Los Angeles World Airports (LAWA), where jet overflights over the Peninsula have doubled.

There has also been reporting that 70% of eastbound departures from LAX have shortcut the SID route so that jet aircraft cross the PV Peninsula airspace towards CAHIL. The City and its residents have attributed this increase to FAA air traffic controllers who are suspected of improperly vectoring eastbound jet aircraft across the PV Peninsula to convenience commercial airline pilots rather for legitimate safe aircraft spacing reasons. Because FAA traffic air controllers continue, on a routine basis, to direct jet aircraft over our community seemingly without cause, the quality of life within the City of Rancho Palos Verdes has been negatively impacted by the noise producing overflights.

Federal Aviation Administration  
May 30, 2018  
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Since March 2018, the FAA air traffic controllers have improved in adhering to the published OSHNN8 departure procedure; however, the City is concerned that individual controllers continue to divert jets unwarranted from the published flight path. The City seeks the FAA's long term cooperation and a lasting commitment to reduce PV Peninsula jet overflights and the resulting noise pollution by directing air traffic controllers to not vector east and northeast bound jet aircraft from standard offshore route procedures (OSHNN8).

More importantly, on behalf of our client we seek your commitment to eliminate the suspected improper, perhaps unlawful, practice by FAA air traffic controllers of authorizing jet aircraft to depart from the OSHNN8 procedure and shortcut the PV Peninsula when no aircraft spacing requirement is present. Our client further requests that the FAA produce results that are timely, measurable and meaningful to the residents of the Palos Verdes Peninsula, particularly Rancho Palos Verdes' residents.

The City Council has instructed this office to consider legal avenues to address the matter should the FAA chose to ignore or reject these requests. As you know, other Southern California communities such as Newport Beach and Laguna Beach, which have been negatively impacted by aircraft noise as a result of the Metroplex project, have sought legal redress in the courts from a "tone deaf" FAA. Before our client seeks judicial intervention in this matter, it is our client's sincere wish to work with the FAA to obtain your cooperation in resolving these overflight issues amicably.

Our client shall appreciate your immediate attention to this matter and your full-throated cooperation in resolving these unwarranted overflights. Please contact Robert Nemeth, Associate Planner with the City, at (310) 544-5285 or contact me at (310) 527-6667 to discuss how we can resolve the matter.

Very truly yours,

Very truly yours,



William W. Wynder  
of ALESHIRE & WYNDER, LLP

Copies: Carl E. Burlison  
Acting Deputy Administrator  
Federal Aviation Administration  
U.S. Department of Transportation  
800 Independence Ave, SW  
Washington D.C., 20591

Jodi S. McCarthy  
Vice President, Mission Support Services  
Federal Aviation Administration  
U.S. Department of Transportation  
800 Independence Ave, SW  
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Chris Brown  
Assistant Administrator, Office of Government and Industry Affairs  
Federal Aviation Administration  
U.S. Department of Transportation  
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Western-Pacific Region Regional Administrator  
FAA Western-Pacific Region  
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San Diego, CA 92126

David V Keeling  
Air Traffic Control Specialists Supervisor  
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Staff Manager of SCT – San Diego  
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Gregory Haywood  
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FAA Los Angeles ARTCC  
2555 E Ave P  
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Walter Williams  
Supervisor Air Traffic Control Specialist  
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Eric Chavez  
Manager of ZLA – Los Angeles  
FAA Los Angeles ARTCC  
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Palmdale, CA 93550

Sherry Avery  
LAX Control Tower Manager  
Los Angeles International Airport  
FAA Los Angeles ATCT  
245 World Way North  
Los Angeles, CA 90045

Anthony Porras  
Manager of LAX – Los Angeles  
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FAA Los Angeles ATCT  
245 World Way North  
Los Angeles, CA 90045

Jason P Dedrick  
Supervisor Air Traffic Control Specialist  
Los Angeles International Airport  
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245 World Way North  
Los Angeles, CA 90045

Kim Stover  
Director, Air Traffic Operations – Western Service Area  
FAA Seattle Headquarters  
2200 S 216<sup>th</sup> St  
Des Moines, WA 90198

Brian Harmelink  
Deputy Director of Operations – Western Service  
Landmark Bldg FAA Northwest Mountain Regional Office  
Western Service Center  
1601 E Valley Rd  
Renton, WA 98057

Dianne Feinstein  
United States Senate  
11111 Santa Monica Blvd., Suite 915  
Los Angeles, CA 90025

Federal Aviation Administration  
May 30, 2018  
Page 6

Kamala Harris  
United States Senate  
11845 West Olympic Boulevard, Suite 1250W  
Los Angeles, CA 90064

Ted Lieu  
US House of Representatives, 33<sup>rd</sup> District  
5055 Wilshire Blvd., Suite 310  
Los Angeles, CA 90036

Nanette Barragán  
US House of Representatives, 44<sup>th</sup> District  
302 W. Fifth St., Suite 201  
San Pedro, CA 90731

Al Muratsuchi  
California State Assembly 66<sup>th</sup> District  
3424 W. Carson St., Suite 450  
Torrance, CA 90503

Ben Allen  
California State Senate 26<sup>th</sup> District  
2512 Artesia Blvd., Suite 320  
Redondo Beach, CA 90278

Janice Hahn  
Los Angeles County 4<sup>th</sup> Supervisorial District  
825 Maple Ave., Room 150  
Torrance, CA 90503

Honorable Mayor & Councilmembers,  
City of Rancho Palos Verdes

Mr. Doug Willmore,  
City Manager, City of Rancho Palos Verdes

## ATTACHMENT D

July 13, 2018 FAA response letter  
to City Attorney



Department  
U.S. of Transportation

Federal Aviation  
Administration

Western-Pacific Region  
Office of the Regional Administrator

15000 Aviation Blvd.,  
Lawndale, CA 90261

**JUL 13 2018**

William W. Wynder, Esq.  
City Attorney for Rancho Palos Verdes  
c/o Aleshire & Wynder, LLP  
18881 Von Karman Ave.  
Suite 1700  
Irvine, CA 92612

Dear Mr. Wynder:

Thank you for your letter addressed to the Federal Aviation Administration (FAA) Acting Administrator, Dan Elwell, on behalf of the City of Rancho Palos Verdes. You conveyed concerns about noise from Los Angeles International Airport (LAX) departure aircraft and the Southern California (SoCal) Metroplex Project, specifically those aircraft flying the OSHNN8 Standard Instrument Departure (SID) procedure. I appreciate that you have taken time to share them with our office.

The FAA implemented the SoCal Metroplex in a phased approach starting in November 2016. The project encompassed most of Southern California and included 21 airports and more than 150 aircraft procedures. It replaced conventional air traffic control procedures with new satellite-based procedures, improving the safety, efficiency, and reliability of the National Airspace System.

The Federal Aviation Administration complied with the requirements of the National Environmental Policy Act and prepared an environmental assessment (EA) of the SoCal Metroplex Project. The project consisted of satellite-based departure and arrival procedures at six major airports (Hollywood Burbank Airport, John Wayne Airport, LAX, Long Beach Airport, Ontario International Airport, and San Diego International Airport) and fifteen satellite airports throughout Southern California. The project involved improving flexibility and predictability of air traffic routes through increased use of performance based navigation. It is a key component in FAA's Next Generation Air Transportation System.

The EA found that the proposed project caused no significant impacts to people, historic properties, parks or other applicable environmental resources. Implementing the project did not significantly affect noise, energy, climate and air quality emissions in the study area. The project did not require any ground disturbance or increase the number of aircraft operations.

The FAA released the Draft EA for public review and comment on June 10, 2015. The FAA published notices of its availability in local newspapers and sent via e-mail, provided local libraries with copies, made it available on-line, and notified local, state and federal officials with constituents residing in the study area. The public comment

period for the Draft EA was open for 120 days from June 10, 2015, through October 8, 2015, to allow for greater public input. The FAA conducted 11 public workshops. Additional outreach was conducted with airports, elected officials and governments. The FAA received over 4,000 comments to the Draft EA.

On August 31, 2016, the FAA completed the Final EA for the SoCal Metroplex Project and signed the final SoCal Metroplex decision (FONSI/ROD). On September 2, 2016, the FAA issued the notice of availability of the EA and FONSI/ROD through the Federal Register. The notice was also published in major newspapers in both English and Spanish, published on-line and announced through email notification. Notices were sent to federal and state agencies, local elected officials, study airports and libraries. The administrative process is closed. As a legal matter, the FAA's decision became final on September 2, 2016, and will not be revisited.

As far as the OSHNN8 SID procedure is concerned, the FAA instructs its controllers to keep aircraft on the SID procedure and only vector aircraft from the SID when circumstances warrant it. The FAA continues to remind and train its controllers on those procedures. Please further know that due to safety and efficiency for air traffic control purposes, it is impossible to restrict or otherwise limit an air traffic controller's options for vectoring aircraft at all times. Adherence to procedures is dependent on a variety of factors at any given time and depends on individual circumstances. Factors and circumstances include air traffic volume and complexity, weather, winds, pilot abilities, aircraft and equipment capabilities, and other flight and air traffic dynamics. Therefore, FAA must be able to vector aircraft in controlled airspace for safety, separation, operational efficiency, sequencing, or other air traffic control purposes.

Thank you for this opportunity to review and respond to your concerns. Our mission is to provide the safest, most efficient aerospace system in the world. We will continually strive to improve the safety and efficiency of flight in this country. If we can be of further assistance, please contact Chris Brown, Assistant Administrator for Government and Industry Affairs, at (202) 267-3277.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis E. Roberts". The signature is fluid and cursive, with the first name "Dennis" being the most prominent.

Dennis E. Roberts  
Regional Administrator