

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

1 AGREEMENT

2 **35500**

3 THIS AGREEMENT is made and entered, in duplicate, as of March 12, 2020,
4 for reference purposes only, pursuant to Chapters 2.69 and 2.85 of the Long Beach
5 Municipal Code, by and between NITELINES USA, INC., a Georgia corporation
6 ("Contractor"), with a place of business at 1172 Satellite Blvd. NW, Suwanee, GA 30024,
7 and the CITY OF LONG BEACH, a municipal corporation ("City").

8 WHEREAS, as a result of the need to proactively slow the spread of, and
9 combat, COVID-19 in the City, the City Public Health Officer issued a Declaration of Local
10 Health Emergency and the Acting City Manager issued a Proclamation of Local Emergency
11 on March 4, 2020; and

12 WHEREAS, on March 10, 2020, the City Council of the City of Long Beach
13 recognized that an emergency did exist and unanimously passed a Resolution ratifying the
14 City Manager's Proclamation of a Local Emergency and the Public Health Officer's
15 Declaration of Local Health Emergency; and

16 WHEREAS, the scope and magnitude of the response necessary to
17 proactively slow the spread of, and combat, COVID-19 in the City is beyond the control of
18 the services, personnel, equipment, and facilities of the City; and

19 WHEREAS, City requires specialized services requiring unique skills to be
20 performed in connection with the Health Department's COVID-19 response, which includes
21 temporary medical staffing for COVID-19 related work and temporary medical staffing
22 because regular staff have been reassigned to COVID-19 related work ("Project"); and

23 WHEREAS, pursuant to Chapter 2.85 of the Long Beach Municipal Code, the
24 City Manager and Purchasing Agent have the authority to approve purchases, rentals, or
25 leases of goods or services related to a proclaimed emergency;

26 WHEREAS, City has selected Contractor in accordance with City's
27 administrative procedures using Request for Qualifications No. HE19-072 for Temporary
28 Medical Staffing, incorporated herein by this reference, and City has determined that

1 Contractor and its employees are qualified, licensed, if so required, and experienced in
2 performing these specialized services, which are necessary to respond to the City's
3 proclaimed emergency and to protect the public health and to slow, and combat, the spread
4 of COVID-19; and

5 WHEREAS, City desires to have Contractor perform these specialized
6 services to respond to the threat of COVID-19 in the City, and Contractor is willing and able
7 to do so on the terms and conditions in this Agreement;

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

10 1. SCOPE OF WORK OR SERVICES.

11 A. Contractor shall furnish specialized services more particularly
12 described in Request for Qualifications No. HE19-072 ("RFQ"), incorporated by
13 this reference as if fully set forth herein, in accordance with the standards of the
14 profession, and City shall pay for these services in the manner described below, in
15 an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000), at the
16 rates or charges shown in Exhibit "A".

17 B. The City's obligation to pay the sum stated above for any one
18 fiscal year shall be contingent upon the City Council of the City appropriating the
19 necessary funds for such payment by the City in each fiscal year during the term of
20 this Agreement. For the purposes of this Section, a fiscal year commences on
21 October 1 of the year and continues through September 30 of the following year. In
22 the event that the City Council of the City fails to appropriate the necessary funds
23 for any fiscal year, then, and in that event, the Agreement will terminate at no
24 additional cost or obligation to the City.

25 C. Contractor may select the time and place of performance for
26 these services; provided, however, that access to City documents, records and the
27 like, if needed by Contractor, shall be available only during City's normal business
28 hours and provided that milestones for performance, if any, are met.

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

15 E. Contractor represents that Contractor has obtained all
16 necessary information on conditions and circumstances that may affect its
17 performance and has conducted site visits, if necessary.

18 F. CAUTION: Contractor shall not begin work until this
19 Agreement has been signed by both parties and until Contractor's evidence of
20 insurance has been delivered to and approved by City.

21 2. TERM. The term of this Agreement shall commence at midnight on
22 March 12, 2020, and shall terminate at 11:59 p.m. on September 11, 2020, unless sooner
23 terminated as provided in this Agreement, or unless the services or the Project is
24 completed sooner. City shall have the option to extend the term of this Agreement for two
25 (2) additional six-month periods, at the discretion of City Manager.

26 3. COORDINATION AND ORGANIZATION.

27 A. Contractor shall coordinate its performance with City's
28 representative, if any, named in Exhibit "B", attached to this Agreement and

1 incorporated by this reference. Contractor shall advise and inform City's
2 representative of the work in progress on the Project in sufficient detail so as to
3 assist City's representative in making presentations and in holding meetings on the
4 Project. City shall furnish to Contractor information or materials, if any, described in
5 Exhibit "C", attached to this Agreement and incorporated by this reference, and shall
6 perform any other tasks described in the Exhibit.

7 B. The parties acknowledge that a substantial inducement to City
8 for entering this Agreement was and is the reputation and skill of Contractor's key
9 employee, named in Exhibit "D" attached to this Agreement and incorporated by this
10 reference. City shall have the right to approve any person proposed by Contractor
11 to replace that key employee.

12 4. INDEPENDENT CONTRACTOR. In performing its services,
13 Contractor is and shall act as an independent contractor and not an employee,
14 representative or agent of City. Contractor shall have control of Contractor's work and the
15 manner in which it is performed. Contractor shall be free to contract for similar services to
16 be performed for others during this Agreement; provided, however, that Contractor acts in
17 accordance with Section 9 and Section 11 of this Agreement. Contractor acknowledges
18 and agrees that (a) City will not withhold taxes of any kind from Contractor's compensation;
19 (b) City will not secure workers' compensation or pay unemployment insurance to, for or
20 on Contractor's behalf; and (c) City will not provide and Contractor is not entitled to any of
21 the usual and customary rights, benefits or privileges of City employees. Contractor
22 expressly warrants that neither Contractor nor any of Contractor's employees or agents
23 shall represent themselves to be employees or agents of City.

24 5. INSURANCE.

25 A. As a condition precedent to the effectiveness of this
26 Agreement, Contractor shall procure and maintain, at Contractor's expense for the
27 duration of this Agreement, from insurance companies that are admitted to write
28 insurance in California and have ratings of or equivalent to A:V by A.M. Best

1 Company or from authorized non-admitted insurance companies subject to Section
2 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
3 by A.M. Best Company, the following insurance:

4 i. Commercial general liability insurance (equivalent in
5 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less
6 than \$1,000,000 per each occurrence and \$2,000,000 general aggregate.
7 This coverage shall include but not be limited to broad form contractual
8 liability, cross liability, independent contractors liability, and products and
9 completed operations liability. City, its boards and commissions, and their
10 officials, employees and agents shall be named as additional insureds by
11 endorsement (on City's endorsement form or on an endorsement equivalent
12 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or both CG 20 10
13 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and CG 20 37 07 04),
14 and this insurance shall contain no special limitations on the scope of
15 protection given to City, its boards and commissions, and their officials,
16 employees and agents. This policy shall be endorsed to state that the insurer
17 waives its right of subrogation against City, its boards and commissions, and
18 their officials, employees and agents.

19 ii. Workers' Compensation insurance as required by the
20 California Labor Code and employer's liability insurance in an amount not
21 less than \$1,000,000. This policy shall be endorsed to state that the insurer
22 waives its right of subrogation against City, its boards and commissions, and
23 their officials, employees and agents.

24 iii. Professional liability or errors and omissions insurance
25 in an amount not less than \$1,000,000 per claim.

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

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

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

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

20 E. Contractor shall require that all subconsultants or contractors
21 that Contractor uses in the performance of these services maintain insurance in
22 compliance with this Section unless otherwise agreed in writing by City's Risk
23 Manager or designee.

24 F. Prior to the start of performance, Contractor shall deliver to City
25 certificates of insurance and the endorsements for approval as to sufficiency and
26 form. In addition, Contractor shall, within thirty (30) days prior to expiration of the
27 insurance, furnish to City certificates of insurance and endorsements evidencing
28 renewal of the insurance. City reserves the right to require complete certified copies

1 of all policies of Contractor and Contractor's subconsultants and contractors, at any
2 time. Contractor shall make available to City's Risk Manager or designee all books,
3 records and other information relating to this insurance, during normal business
4 hours.

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

11 H. The procuring or existence of insurance shall not be construed
12 or deemed as a limitation on liability relating to Contractor's performance or as full
13 performance of or compliance with the indemnification provisions of this Agreement.

14 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
15 contemplates the personal services of Contractor and Contractor's employees, and the
16 parties acknowledge that a substantial inducement to City for entering this Agreement was
17 and is the professional reputation and competence of Contractor and Contractor's
18 employees. Contractor shall not assign its rights or delegate its duties under this
19 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
20 of City, except that Contractor may with the prior approval of the City Manager of City,
21 assign any moneys due or to become due Contractor under this Agreement. Any
22 attempted assignment or delegation shall be void, and any assignee or delegate shall
23 acquire no right or interest by reason of an attempted assignment or delegation.
24 Furthermore, Contractor shall not subcontract any portion of its performance without the
25 prior approval of the City Manager or designee, or substitute an approved subconsultant
26 or contractor without approval prior to the substitution. Nothing stated in this Section shall
27 prevent Contractor from employing as many employees as Contractor deems necessary
28 for performance of this Agreement.

1 7. CONFLICT OF INTEREST. Contractor, by executing this Agreement,
2 certifies that, at the time Contractor executes this Agreement and for its duration,
3 Contractor does not and will not perform services for any other client which would create a
4 conflict, whether monetary or otherwise, as between the interests of City and the interests
5 of that other client. Contractor further certifies that Contractor does not now have and shall
6 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
7 other source of income, interest in real property or investment which would be affected in
8 any manner or degree by the performance of Contractor's services hereunder. And,
9 Contractor shall obtain similar certifications from Contractor's employees, subconsultants
10 and contractors.

11 8. MATERIALS. Contractor shall furnish all labor and supervision,
12 supplies, materials, tools, machinery, equipment, appliances, transportation and services
13 necessary to or used in the performance of Contractor's obligations under this Agreement,
14 except as stated in Exhibit "C".

15 9. OWNERSHIP OF DATA. All materials, information and data
16 prepared, developed or assembled by Contractor or furnished to Contractor in connection
17 with this Agreement, including but not limited to documents, estimates, calculations,
18 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
19 models, reports, summaries, drawings, designs, notes, plans, information, material and
20 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
21 and City shall have the unrestricted right to use and disclose the Data in any manner and
22 for any purpose without payment of further compensation to Contractor. Copies of Data
23 may be retained by Contractor but Contractor warrants that Data shall not be made
24 available to any person or entity for use without the prior approval of City. This warranty
25 shall survive termination of this Agreement for five (5) years.

26 10. TERMINATION. Either party shall have the right to terminate this
27 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
28 prior written notice to the other party. In the event of termination under this Section, City

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

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

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

22 13. ADDITIONAL SERVICES. The City has the right at any time during
23 the performance of the services, without invalidating this Agreement, to order extra work
24 beyond that specified in the RFQ or make changes by altering, adding to or deducting from
25 the work. No extra work may be undertaken unless a written order is first given by the City,
26 incorporating any adjustment in the Agreement Sum, or the time to perform this Agreement.
27 Any increase in compensation of ten percent (10%) or less of the Agreement Sum, or in
28 the time to perform of One Hundred Eighty (180) days or less, may be approved by the

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

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

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

23 16. LAW. This Agreement shall be construed in accordance with the laws
24 of the State of California, and the venue for any legal actions brought by any party with
25 respect to this Agreement shall be the County of Los Angeles, State of California for state
26 actions and the Central District of California for any federal actions. Contractor shall cause
27 all work performed in connection with construction of the Project to be performed in
28 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,

1 county or municipal governments or agencies (including, without limitation, all applicable
2 federal and state labor standards, including the prevailing wage provisions of sections 1770
3 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
4 marshal, health officer, building inspector, or other officer of every governmental agency
5 now having or hereafter acquiring jurisdiction.

6 17. PREVAILING WAGES.

7 A. Contractor agrees that all public work (as defined in California
8 Labor Code section 1720) performed pursuant to this Agreement (the "Public
9 Work"), if any, shall comply with the requirements of California Labor Code sections
10 1770 *et seq.* City makes no representation or statement that the Project, or any
11 portion thereof, is or is not a "public work" as defined in California Labor Code
12 section 1720.

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

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

27 19. INDEMNITY.

28 A. Contractor shall indemnify, protect and hold harmless City, its

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

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

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

28 D. The provisions of this Section shall survive the expiration or

1 termination of this Agreement.

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

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

11 22. NONDISCRIMINATION.

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

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

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

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

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

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

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

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

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

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

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

3 24. NOTICES. Any notice or approval required by this Agreement shall
4 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
5 postage prepaid, addressed to Contractor at the address first stated above, and to City at
6 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
7 to the City Engineer at the same address. Notice of change of address shall be given in
8 the same manner as stated for other notices. Notice shall be deemed given on the date
9 deposited in the mail or on the date personal delivery is made, whichever occurs first.

10 25. COVENANT AGAINST CONTINGENT FEES. Contractor warrants
11 that Contractor has not employed or retained any entity or person to solicit or obtain this
12 Agreement and that Contractor has not paid or agreed to pay any entity or person any fee,
13 commission or other monies based on or from the award of this Agreement. If Contractor
14 breaches this warranty, City shall have the right to terminate this Agreement immediately
15 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
16 due under this Agreement or otherwise recover the full amount of the fee, commission or
17 other monies.

18 26. WAIVER. The acceptance of any services or the payment of any
19 money by City shall not operate as a waiver of any provision of this Agreement or of any
20 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
21 Agreement shall not constitute a waiver of any other or subsequent breach of this
22 Agreement.

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

26 28. TAX REPORTING. As required by federal and state law, City is
27 obligated to and will report the payment of compensation to Contractor on Form 1099-Misc.
28 Contractor shall be solely responsible for payment of all federal and state taxes resulting

1 from payments under this Agreement. Contractor shall submit Contractor's Employer
2 Identification Number (EIN), or Contractor's Social Security Number if Contractor does not
3 have an EIN, in writing to City's Accounts Payable, Department of Financial Management.
4 Contractor acknowledges and agrees that City has no obligation to pay Contractor until
5 Contractor provides one of these numbers.

6 29. ADVERTISING. Contractor shall not use the name of City, its officials
7 or employees in any advertising or solicitation for business or as a reference, without the
8 prior approval of the City Manager or designee.

9 30. AUDIT. City shall have the right at all reasonable times during the
10 term of this Agreement and for a period of five (5) years after termination or expiration of
11 this Agreement to examine, audit, inspect, review, extract information from and copy all
12 books, records, accounts and other documents of Contractor relating to this Agreement.

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

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

NITELINES USA, INC., a Georgia corporation

March 16, 2020

By [Signature]
Name H.J. McGeach
Title President

March 16, 2020

By [Signature]
Name H.J. McGeach
Title CEO/COO

"Contractor"

CITY OF LONG BEACH, a municipal corporation

March 24, 2020

By Rebecca G. Gurner
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER

This Agreement is approved as to form on March 24, 2020.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4511

EXHIBIT “A”



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

EXHIBIT 1

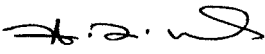
FEE SCHEDULE

[Please attach this form to your rate sheet and upload separately from the SOQ, per Section 4 of this RFQ.]

The City of Long Beach requires that temporary personnel work no more than 960 hours per 12-month period from July 1 through June 30. No individual Contractor temporarily hired pursuant to this RFQ process will be eligible to work more than a total of 1920 hours over two (2) consecutive 12-month periods. Contractor is responsible for tracking temporary personnel hours.

Temporary personnel are not eligible for alternative work schedules that exceed eight (8) hours per day or 40 hours per week.

Temporary Staff	Registered Nurse	Physician	Nurse Practitioner	Physician Assistant	Laboratory Director	Laboratory Assistant	Micro biologist
Bill Range	\$52.53 - \$56.91	\$129.62 - \$142.42	\$77.59 - \$84.05	\$77.77 - \$84.25	\$80.36 - \$87.06	\$25.92 - \$28.08	\$32.40 - \$35.10



 Signed

H.L. McGlockton

 Name of Respondent

6/17/2019

 Date

EXHIBIT “B”

City’s Representative(s):

Traci Fitzharris, Administrative Analyst

(562) 570-4050

EXHIBIT “C”

Materials/Information Furnished: None

EXHIBIT “D”

Consultant’s Key Employee(s):

Shirley Bennett