

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

1 AGREEMENT

2 34109

3 THIS AGREEMENT is made and entered, in duplicate, as of October 15,
4 2015, for reference purposes only, pursuant to a minute order adopted by the City Council
5 of the City of Long Beach at its meeting on July 21, 2015, by and between PACIFICA
6 SERVICES, INC., a California corporation ("Consultant"), with a place of business at 106
7 South Mentor Avenue, Pasadena, California 91106, and the CITY OF LONG BEACH, a
8 municipal corporation ("City").

9 WHEREAS, City requires specialized services requiring unique skills to be
10 performed in connection with as-needed professional compliance monitoring services
11 ("Project"); and

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

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

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

21 1. SCOPE OF WORK OR SERVICES.

22 A. Consultant shall furnish specialized services more particularly
23 described in Exhibit "A", attached to this Agreement and incorporated by this
24 reference, in accordance with the standards of the profession, and City shall pay for
25 these services in the manner described below, not to exceed Eighty Thousand
26 Dollars (\$80,000), at the rates or charges shown in Exhibit "B".

27 B. The City's obligation to pay the sum stated above for any one
28 fiscal year shall be contingent upon the City Council of the City appropriating the

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

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

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

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

28 F. CAUTION: Consultant shall not begin work until this

1 Agreement has been signed by both parties and until Consultant's evidence of
2 insurance has been delivered to and approved by City.

3 2. TERM. The term of this Agreement shall commence at midnight on
4 November 15, 2015, and shall terminate at 11:59 p.m. on November 14, 2018, unless
5 sooner terminated as provided in this Agreement, or unless the services or the Project is
6 completed sooner. The parties have the option to extend the term for two (2) additional
7 one-year periods.

8 3. COORDINATION AND ORGANIZATION.

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

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

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

1 on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of
2 the usual and customary rights, benefits or privileges of City employees. Consultant
3 expressly warrants that neither Consultant nor any of Consultant's employees or agents
4 shall represent themselves to be employees or agents of City.

5 5. INSURANCE.

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

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

28 (b) Workers' Compensation insurance as required by the California

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

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

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

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

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

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

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

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

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

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

23 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
24 contemplates the personal services of Consultant and Consultant's employees, and the
25 parties acknowledge that a substantial inducement to City for entering this Agreement was
26 and is the professional reputation and competence of Consultant and Consultant's
27 employees. Consultant shall not assign its rights or delegate its duties under this
28 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval

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

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

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

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

1 available to any person or entity for use without the prior approval of City. This warranty
2 shall survive termination of this Agreement for five (5) years.

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

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

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

27 13. ADDITIONAL COSTS AND REDESIGN.

28 A. Any costs incurred by City due to Consultant's failure to meet

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

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

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

18 15. LAW. This Agreement shall be construed in accordance with the laws
19 of the State of California, and the venue for any legal actions brought by any party with
20 respect to this Agreement shall be the County of Los Angeles, State of California for state
21 actions and the Central District of California for any federal actions. Consultant shall cause
22 all work performed in connection with construction of the Project to be performed in
23 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
24 county or municipal governments or agencies (including, without limitation, all applicable
25 federal and state labor standards, including the prevailing wage provisions of sections 1770
26 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any
27 fire marshal, health officer, building inspector, or other officer of every governmental
28 agency now having or hereafter acquiring jurisdiction.

1 16. PREVAILING WAGES.

2 A. Consultant agrees that all public work (as defined in California
3 Labor Code section 1720) performed pursuant to this Agreement (the "Public
4 Work"), if any, shall comply with the requirements of California Labor Code sections
5 1770 *et seq.* City makes no representation or statement that the Project, or any
6 portion thereof, is or is not a "public work" as defined in California Labor Code
7 section 1720.

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

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

22 18. INDEMNITY.

23 A. Consultant shall indemnify, protect and hold harmless City, its
24 Boards, Commissions, and their officials, employees and agents ("Indemnified
25 Parties"), from and against any and all liability, claims, demands, damage, loss,
26 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
27 costs and expenses, including attorneys' fees, court costs, expert and witness fees,
28 and other costs and fees of litigation, arising or alleged to have arisen, in whole or

1 in part, out of or in connection with (1) Consultant's breach or failure to comply with
2 any of its obligations contained in this Agreement, including any obligations arising
3 from the Project's compliance with or failure to comply with applicable laws,
4 including all applicable federal and state labor requirements including, without
5 limitation, the requirements of California Labor Code section 1770 *et seq.* or (2)
6 negligent or willful acts, errors, omissions or misrepresentations committed by
7 Consultant, its officers, employees, agents, subcontractors, or anyone under
8 Consultant's control, in the performance of work or services under this Agreement
9 (collectively "Claims" or individually "Claim").

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

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

24 D. The provisions of this Section shall survive the expiration or
25 termination of this Agreement.

26 19. AMBIGUITY. In the event of any conflict or ambiguity between this
27 Agreement and any Exhibit, the provisions of this Agreement shall govern.

28 ///

1 20. NONDISCRIMINATION.

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

12 B. It is the policy of City to encourage the participation of
13 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
14 procurement process, and Consultant agrees to use its best efforts to carry out this
15 policy in its use of subconsultants and contractors to the fullest extent consistent
16 with the efficient performance of this Agreement. Consultant may rely on written
17 representations by subconsultants and contractors regarding their status.
18 Consultant shall report to City in May and in December or, in the case of short-term
19 agreements, prior to invoicing for final payment, the names of all subconsultants
20 and contractors hired by Consultant for this Project and information on whether or
21 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
22 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

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

27 A. During the performance of this Agreement, the Consultant
28 certifies and represents that the Consultant will comply with the EBO. The

1 Consultant agrees to post the following statement in conspicuous places at its place
2 of business available to employees and applicants for employment:

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

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

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

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

17 E. If the City determines that the Consultant has set up or used its
18 contracting entity for the purpose of evading the intent of the EBO, the City may
19 terminate the Agreement on behalf of the City. Violation of this provision may be
20 used as evidence against the Consultant in actions taken pursuant to the provisions
21 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

22 22. NOTICES. Any notice or approval required by this Agreement shall
23 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
24 postage prepaid, addressed to Consultant at the address first stated above, and to City at
25 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
26 to the City Engineer at the same address. Notice of change of address shall be given in
27 the same manner as stated for other notices. Notice shall be deemed given on the date
28 deposited in the mail or on the date personal delivery is made, whichever occurs first.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

23. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

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

26. CONTINUATION. Termination or expiration of this Agreement shall

1 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
2 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

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

11 28. ADVERTISING. Consultant shall not use the name of City, its officials
12 or employees in any advertising or solicitation for business or as a reference, without the
13 prior approval of the City Manager or designee.

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

18 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
19 designed to or entered for the purpose of creating any benefit or right for any person or
20 entity of any kind that is not a party to this Agreement.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

3 PACIFICA SERVICES, INC., a California
4 corporation

5 October 30, 2015

By [Signature]
Name ERNEST M. CAMACHO
Title PRESIDENT

6
7 30 Octob 2, 2015

By [Signature]
Name STEPHEN M. CARPINO
Title EXECUTIVE VICE PRESIDENT

8 "Consultant"

9
10 CITY OF LONG BEACH, a municipal
11 corporation

12 Nov. 30, 2015

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

14 "City" Assistant City Manager

15 This Agreement is approved as to form on Nov. 10, 2015.

17 CHARLES PARKIN, City Attorney

18 By [Signature]
Deputy

19
20
21
22
23
24
25
26
27
28
OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

EXHIBIT “A”

Scope of Work



City of Industry Phase IIB Recycled Water Packages 3 & 4 Pipeline Projects, Upper San Gabriel Valley Municipal Water District – March 2012 to January 2013

Toby implemented LCP monitoring and auditing of contractors Certified Payroll Records, including conducting worker field interviews and resolving prevailing wage violations and worker complaints for the \$4.2M pipe line Packages 3 and 4. Toby represented clients, acted on behalf of and provided monthly Discrepancy Notices, Quarterly ARRA Reports, and Apprenticeship Utilization Reports. Created process and procedures for monthly and quarterly ARRA reporting to U.S. Bureau of Reclamations and State Water Board. Ensured contractor compliance with LCP, Federal Davis Bacon and State Prevailing Wage requirements by providing technical assistance to contractors and issuing weekly compliance status updates.

Jefferson Middle School Sports Field and Fitness Center Project, San Gabriel School District – 2012 to 2013

Toby created PLA and LCP project checklists and thoroughly presented all project labor requirements to contractors at the Pre-Construction meeting. She also provided on-going technical assistance and support to contractors and District staff. Toby organized contractors' submission, maintained and inputted all necessary data required for reports regarding Apprenticeship Utilization, Prevailing Wage Rate Sheet and Local Hire.

Carson Park Master Plan, Carson, CA – 2012 to 2013

Assemble to Joint Administrative Committee as required by the City's PLA Grievance procedure and facilitated at least 2 PLA Grievances. Toby created project Certified Payroll Tracking, Local Hire Data Base, and PLA forms. Toby monitor PLA compliance with all contractors and provided PLA technical assistance to Contractors, City Accessory Agency staff, and Vanir Construction Management team. Toby tracked and reported PLA Local Hire attainment to the City as well as ensures PLA compliance by issuing monthly Discrepancy Notices to the Prime Contractor. Toby worked with the L.A. Building Trades to ensure various local Union representatives understand the new PLA Union Grievance procedures. Toby prevented at least 3 PLA Union Grievances from being filed by providing conflict resolutions to contractors and Union Representatives.

Caltrans-sponsored Outreach Pilot Programs, Los Angeles, CA – January 2009 to July 2009

Successfully created developmental procedures for Caltrans-sponsored outreach pilot programs, in addition to creating and maintaining bimonthly departmental reports for Caltrans managers. Provided excellent technical assistance to project stakeholders to ensure full program compliance.

Exposition Line, Culver City Station Plaza & Farmdale Station – November 2011 to August 2012

Toby performed Labor Compliance and Local Hire monitoring for Expo as well as provide monthly Discrepancy Notices and Local Hire Analysis Reports to Balfour Beatty and Expo Staff. Toby reviewed all contractors Certified Payroll Records and ensured payment of Prevailing Wages to workers by conducting monthly field interviews. Toby assisted Balfour Beatty in exceeding Local Hire attainment by 1% with a cumulative Local Hire Project attainment of 31%.



C. APPROACH AND METHODOLOGY

Pacifica believes in working together with the City of Long Beach, Contractor, and Local Unions. Through this collaborative philosophy, Pacifica becomes an extension of the owner and provides the guidance and technical expertise necessary to establish a successful construction program and ensure compliance with all contracting requirements.

HUD Section 3 Approach

Pacifica's approach to managing HUD Section 3 contractor compliance to the City of Long Beach's public works projects will be to perform the services and responsibilities outline in Section 3 of the RFP. HUD Section 3 Monitoring will be led by Labor Compliance Officer & PLA Administrator Toby Bautista who previously performed similar work on the Long Beach Airport Terminal Improvements Phase 1 project as the day-to-day analyst.

The Pacifica team understands that Prime and Subcontractors must comply with the following two HUD Section 3 Contractor requirements for City of Long Beach public works projects with certain federal funding sources, other designated funding sources, or city mandated projects covered by a CWA/PLA:

- 1) Contract with Section 3 businesses for a minimum of ten percent (10%) of the total dollar amount of all building trades work at the subject project site.
- 2) Hire Section 3 residents for a minimum of thirty percent (30%) of construction total hours or total HUD Section 3 Hours.

In order for Contractors to effectively meet such requirements, the Pacifica team will work with the Contractors as early as the Procurement Phase. Pacifica believes in proactively working with the Contractor at Pre-Bid and Pre-Construction meetings. During these early stages of the project, our team will review HUD Section 3 requirements, applicable forms, required public notices to be published and posted, and reporting procedures in detail with the Contractor. Additionally during the Bid and Award Phase Pacifica will review all documentation regarding Contractor Section 3 efforts in recruiting and

soliciting Section 3 business within the City of Long Beach and overall Los Angeles County.

Through our hands-on approach, our team will create a collaborative environment which encourages the Contractor to reach out to the Pacifica team and the City of Long Beach for any technical assistance regarding HUD Section 3.

RFP Section 3.1 – Documentation Related to Searching for HUD Section 3 Employees.

In response to responsibilities outlined in Sections 3.1, the Pacifica team will first review the existing Section 3 forms found in Attachment B, *Developer/Contractor HUD Section 3 Project Compliance Requirements* of City's PLA with the City's designated Section 3 coordinator. After reviewing the City's existing policies and procures, our team will provide recommendations to improve existing forms or streamline reporting procedures through paperless solutions for review and approval by the City.

Our team will ensure the following forms and submittals are secured from the Prime Contractors and their Sub prior to the start of construction:

- 1) HUD Section 3 Affidavit
- 2) HUD Section 3 Compliance Certificate
- 3) List of Existing Core Employees
- 4) Construction Schedule

During the Construction Phase, our team will collect the Prime Contractor's monthly subcontractor forecast report. With these reports our team will reach out to subcontractors prior to performing work on site and provide them with the Employee Survey Form to be distributed and completed by their employees.

RFP Section 3.2 – HUD Section 3 Employment Documentation

The Employee Survey Form will be collected through the Prime Contractor's weekly submittal. Pacifica will review all Employee Forms for completeness, verification of new hire status, and verification of Section 3 eligibility. The City's Section 3 Coordinator will be provided a summary



report reflecting the status of each Employ Survey Form as well as the metrics regarding Section 3 workers residing within the City of Long Beach. Additionally, Section 3 hours worked will be tracked through Contractors Certified Payroll Records submitted and reported to the City's Section 3 Coordinator.

RFP Section 3.3 – HUD Section 3 Businesses Contact/Hiring Compliance

In response to Section 3.3 we have provided a possible scenario illustrating the challenges and solutions below:

Challenge:

With 25% of construction complete, the HUD Section 3 Monthly Report reflects the Prime Contractor does not meet the Section 3 participation requirements

Solutions:

Our team will utilize the Monthly Forecast Forms to review new subcontractors mobilizing on site. Additionally our team will:

- 1) Request a Corrective Action Plan from the Prime Contractor outlining a 30-60 Plan to increase Section 3 participation.
- 2) Reach out to the new subcontractor forecasted to mobilize on site and review List of Existing Core Employees.
- 3) Contact Local Unions Dispatch for the status of available pool of workers that are local residents and/or Section 3.
- 4) Notify the City's Section 3 Coordinator of Prime Contractor's non-compliance and provide recommendation (if needed) to withhold 10% of Monthly Progress payments as specified in the City's Project Compliance Requirements.
- 5) Meet with the Prime Contractor and Section 3 Coordinator to discuss Corrective Action Plan submitted and path forward.
- 6) Closely monitor any changes in Section 3 Participation in the following month's report.

Federal Davis-Bacon & State Prevailing Wages Approach

Pacifica personnel have extensive experience working on major federally and state financially

assisted public works projects monitoring compliance for Federal Davis Bacon and Related Acts (DBRA) and state prevailing wage requirements. Pacifica intends to apply an open-door, proactive approach to performing these vital compliance monitoring services to the City of Long Beach by collaborative interface with the City, the various trade unions, Contractors, stakeholders, etc. to answer questions and provide monitoring, consultation and technical assistance to satisfy the requirement of DBRA, the California Labor Code and the California Code of Regulations.

Pacifica recognizes that several elements are critical to the effective and successful compliance monitoring services outlined in this RFP. Pacifica's proposed approach and methodology includes key compliance monitoring activities to ensure compliance to Federal and State prevailing wage requirements, as applicable:

- Facilitation of Pre-Construction meetings and dissemination of key documents and other pertinent information
- Preparation and maintenance of a Project Labor Standards Enforcement File
- Ensuring that Contractors are in good standing and are eligible for contract award by reviewing the Services Administration's "List of Parties Excluded from Federal Procurement and Non-Procurement" programs and the Department of Industrial Relation's debarment list
- Verification of apprentice registrations in approved apprenticeship programs recognized by DOL and DIR
- Preparation and submittal of monthly compliance reports to the City throughout the life of each project, detailing each Contractor's status with complying with DBRA and the California prevailing wage requirements
- Technical assistance in the preparation and submission of the PWC-100 form for each project
- Verification of Contractor Registration to comply with the DIR requirements set forth by Senate Bill 854 on City projects, as well as providing technical assistance to Contractors and the City to ensure that Contractors and Subcontractor performing



and awarded work on construction projects with the City are in compliance and are registered with the DIR Contractor Registration database

- Completion of project closeouts in compliance with federal and state regulations
- Review, interpret, and conduct an analysis of any new or updated federal or state regulations that may affect the City's implementation of existing prevailing wage requirements

Pacifica acknowledges that Contractor training will be the driving force in delivering a successful project in compliance with DBRA and California prevailing wage requirements. This proactive approach consists of the following collaborative measures to achieve Contractor compliance:

- Development of fact sheets and frequently asked questions to assist Contractors in their contractual obligations to fulfill the federal and state prevailing wage requirements. These documents will be made accessible on the City's website and at pre-construction meetings, Contractor training seminars, community outreach events, and Contractor meet and greet events.
- Direct accessibility to Pacifica personnel. Technical assistance will be made available to Contractors that require further guidance and technical assistance. Pacifica believes that the role of a compliance monitoring administrator is to educate the Contractor to achieve a shared goal – the successful completion of a project in strict compliance with federal and state labor requirements.
- Development and facilitation of Contractor Labor Compliance Training Seminars. In the spirit of joint collaboration, Pacifica intends to develop and hold a series of training seminars on a wide variety of Labor Compliance subject matter, such as the Contractor Registration set forth by SB 854, required submissions, accurate Certified Payroll Record reporting requirements and maintenance, as deemed necessary.

DBE Participation Approach

Pacifica personnel have successfully provided DBE monitoring services for large construction public works projects and intends to implement a collaborative, proactive approach for these vital compliance monitoring services to the City of Long Beach. The key to successfully meeting established DBE goals are proactive measures to ensure the Contractor's understanding and commitment to meeting and exceeding these important goals.

Pacifica intends to apply an open-door approach by mean of collaborative interface with Contractors to address any questions in a timely and effective manner and to provide this monitoring, consultation and technical assistance to ensure the DBE requirements are met in accordance to Title 49 CFR Part 26.

Pacifica recognizes that several elements are critical to the effective and successful DBE compliance monitoring services outlined in this RFP. Pacifica's proposed approach and methodology includes key compliance monitoring activities to ensure compliance to Title 49 CFR Part 26:

- Development of a tracking mechanism to monitor DBE utilization throughout the life of the project.
- Collection and review of monthly DBE Utilization Reports submitted by Prime Contractors/Consultants. Compliance measures include the tracking of timely submittals, under-utilization of DBEs, ensuring that only eligible DBEs are credited towards the goal, the verification of payments made to DBEs, and monitoring the Prime for compliance with Prompt Payment Provisions.
- Conduct evaluations of Contractor's Requests to Add, Requests for Substitution or Termination, and other ad-hoc requests and provide recommendations for action to the City.
- Preparation and submittal of monthly DBE compliance reports to the City throughout the life of each project, detailing each Contractor's current DBE commitment, utilization, and attainment, as well as the results of any GFE evaluation.



- Preparation of Discrepancy Notifications to detail Contractor infractions that require immediate attention and resolution for the City's issuance, as necessary.
- Conduct a review of the final DBE Utilization Report submitted by the Prime Contractor/Consultant for contract closeout in compliance with all federal and contractual reporting obligations. Record and report final DBE attainment percentage to the City.

DBE Annual Goal Setting (If Applicable) and Project Base Goal Setting Approaches

Pacifica is prepared to assist the City in its annual goal setting requirements, if applicable, by collecting applicable information from various databases in compliance with Title 49 CFR Part 26 and to provide assistance to the City in its completion of the Annual Exhibit 9-B DBE Form.

In regards to project base goal setting, Pacifica shall collect applicable information from various DBE databases, such as the California Unified Certification Program (CUCP), to effectively evaluate DBEs located in the City's local markets that are ready, willing, and available to determine an appropriate goal for the project. Pacifica is committed to working closely with the City to evaluate the applicability of DBE goals for City projects and to complete the Exhibit 9-D "DBE Contract Goal Methodology" as deemed appropriate.

DBE and Prevailing Compliance training Workshops for Contractor's Approach

Pacifica acknowledges that Contractor training is essential for the successful delivery of a project in compliance with DBE regulations under Title 49 CFR Part 26. Pacifica's proactive approach and methodology consists of proactive, collaborative training measures to ensure Contractor compliance, as follows:

- Development and facilitation of DBE Training Workshops for large Contractors, DBE Prime Contractors, and DBE Subcontractors interested in pursuing work with the City of Long Beach. Pacifica shall develop and hold a series of training

seminars on a wide variety of DBE topics, such as DBE Program elements, definitions, submittal requirements, searching for DBEs, steps to obtain a DBE certification, conducting and documenting GFEs, complying with prevailing wage requirements, etc.

- Development of PowerPoint presentation, fact sheets and frequently asked questions handouts for dissemination at DBE Training Workshops to assist Contractors in their contractual obligations to fulfill the federal and state regulations applicable to contracts subject to the DBE Program, including the race-conscious DBE Program requirements for FHWA-assisted contracts.
- Direct accessibility to Pacifica personnel. Technical assistance will be made available to Contractors that require further guidance and technical assistance beyond the DBE Training Workshops. Pacifica believes that ongoing Contractor DBE technical assistance is a necessity as compliance efforts take place throughout the life of the project. As part of Pacifica's proactive, collaborative approach to DBE compliance monitoring, providing Contractors a means to ask questions and receive responses in a time manner will significantly remediate any existing issues and prevent issues from occurring in the first place.

City-Wide CWA/PLA Approach

Our assembled team includes experienced PLA Administrators. The following is an executive summary of their individual experiences in with on projects covered CWAs or PLAs.

EXPERIENCE	
PLA – City of Long Beach	Toby Bautista
PLA – City of Carson	
PLA – City of El Monte	
PLA – LACCD	
PLA – San Gabriel Unified School District	
PSA – Upper San Gabriel Valley Municipal Water District	
PLA – City of El Monte	Eileen Ta
CBA – California High-Speed Rail	
PLA – LACCD	



CWA/PLA Administration

With Ms. Bautista and Ms. Ta experience provides a cost effective approach to CWA/PLA Administration which focuses on the several key components:

- Contractor Education
- Core Employee Utilization
- Worker Fringe Benefits
- Union Grievance Resolution
- Management of Labor Relations with Contractors and Local Unions
- Local Hire Initiatives

By focusing these key components, our team is able to mitigate the likelihood of union grievances escalating to Step 3 Arbitration and promote efforts in increasing Local Hire, Section 3, and SBE attainments.

Contractor Education

During the Bid & Award Phase our team will present all CWA/PLA requirements at the Pre-Bid Meeting and provide technical assistance regarding CWA/PLA contract language. Additionally, our team will provide the selected Prime Contractor with a checklist outlining the PLA requirements, CD of all applicable forms, and CWA/PLA resource folder at the Pre-Construction Meeting. As the PLA Administrator, Pacifica will use existing relationships with Local Unions and Contractors to assist with achieving Local Hire Goals and ensure Contractor compliance with Core Employee Utilization.

Worker Fringe Benefits

CWA/PLAs require all worker fringe benefits to be paid to the appropriate union trust fund. In order to prevent any Union Grievances arising from delinquent payment of monthly worker Fringe Benefit Payments, our team invites all Local Union Business Representatives to attend Pre-Construction Meetings. During the Pre-Construction meeting, the Prime Contractor and Subcontractors are given to opportunity to connect with Local Union Business Representatives. Additionally, Ms. Bautista and Ms. Ta will follow-up with contractors to ensure all necessary union forms and paperwork are completed prior to on-site mobilization.

Core Employee Utilization

Pacifica recognizes the importance of utilizing Apprentices and local union workers on public

works project. Our team will provide Contractors with the CWA/PLA Craft request form highlighting the PLA goals and Requirements for Local Hire, Section 3, New Hires, and SBE participation for the City of Long Beach. Non-Union Contractors failing to meet the Core Employee Requirements will be required to provide documentation showing efforts made to Local Union dispatch to request Local residents.

Community Development & Local Hire Initiatives

The City of Long Beach's PLA found online states outlines the following goals:

- 1) Tier 1 – 10% of Total Hours Worked are Section 3 & Local Residents
- 2) Tier 2 – 30% of Total Hours Worked are Local Residents
- 3) Tier 3 – Los Angeles County Residents
- 4) 15% SBE Participation

The Pacifica team will calculate Community Development & Local Hire attainments on a monthly basis by using data provided on Contractor weekly Certified Payroll Records submitted. Monthly Attainment Reports will be provided to the City's designated point of contact and distributed to the on-site Construction Management team and Prime Contractor. In order to increase the Prime Contractors overall Local Hire, Section 3, New Hire, and Apprenticeship efforts, the Pacifica team will provide the Prime Contractor a detailed breakdown of subcontractor's efforts toward each goal.

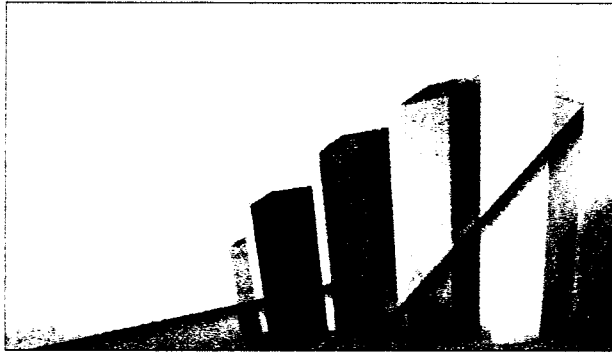
Real-Time Reporting

Our team also provides the optional services for real-time reporting of Contractor Local Hire, Section 3, and Apprentice ratios by utilizing third party software such as B2GNow and LCP Tracker. LCPTracker provides electronic submittal of Contractor Certified Payroll Records and Fringe Benefit Forms. B2GNow verifies Contractor Payments regarding DBE reporting and SBE utilization. Upon written request by the City of Long Beach, Pacifica can provide quotes on a project by project basis for implementation and utilization of LCPTracker and/or B2GNow. **Our proposal's separate Fee Schedule does not include costs for LCPTracker or B2GNow.**

EXHIBIT “B”

Rates or Charges

Fee Schedule



In accordance with the City of Long Beach's Request for Compliance Monitoring Services, Pacifica provides the following fee schedule for this project.

The schedule of hourly fees below includes rates for proposed personnel. These rates include full burden costs and are expected to remain fixed for a period of at least 12 months from contract execution.

Hourly rates are negotiable pending specific requirement considerations.

Pacifica Services, Inc.

Team Member	Proposed Position	Hourly Rate
Toby Bautista	Labor Compliance Officer & PLA Administrator	\$85
Eileen Ta	Business Development Manager	\$95
Felisia Chan	Senior Labor Compliance Auditor	\$90

Note: Hourly Rates are subject to 3.5% increase annually.

Reimbursable Costs: As needed and approved by City of Long Beach staff, direct expenses attributed to incidental materials and services, such as report reproductions, plan set printing, parking fees, specific software, etc., will be billed at cost plus 10% mark-up. Does not include materials provided for Contractor DBE and Prevailing Wage Compliance Training Workshops. Mileage is from Pacifica Corporate office to work site.

Mileage rate = \$0.55

Overtime Rates: In the event of overtime hours or worker field interviews conducted for construction work performed after 5:00 pm, the rate charged will be 1.5 times the Hourly Rate specified above.

Additional Services

Service	Description	NTE Annual Cost
Materials & Printing	Resource materials (i.e. folders & packets) provided at DBE and Prevailing Wage Compliance Training Workshops for Contractors (Annual Cost).	\$5,000

EXHIBIT “C”

City’s Representative:

Jason MacDonald, Purchasing and Business
Services Manager

(562) 570-6663

EXHIBIT “D”

Materials/Information Furnished: None