

AGREEMENT

**35786**

THIS AGREEMENT is made and entered, in duplicate, as of December 2, 2020, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on November 17, 2020, by and between PERCEPTIVE ENTERPRISES, INC., a California corporation ("Consultant"), with a place of business at 844 Colorado Blvd., Suite 204, Los Angeles, California 90041, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with labor compliance monitoring services ("Project"); and

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

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

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

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, in an annual amount of One Hundred Thousand Dollars (\$100,000), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the necessary funds for such payment by the City in each fiscal year during the term of

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

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

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

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

27 F. CAUTION: Consultant shall not begin work until this  
28 Agreement has been signed by both parties and until Consultant's evidence of

1 insurance has been delivered to and approved by City.

2 2. TERM. The term of this Agreement shall commence at midnight on  
3 December 1, 2020, and shall terminate at 11:59 p.m. on November 30, 2022, unless  
4 sooner terminated as provided in this Agreement, or unless the services or the Project is  
5 completed sooner. The term may be extended for three (3) additional one-year periods, at  
6 the discretion of the City Manager.

7 3. COORDINATION AND ORGANIZATION.

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

16 B. The parties acknowledge that a substantial inducement to City  
17 for entering this Agreement was and is the reputation and skill of Consultant's key  
18 employee, named in Exhibit "E" attached to this Agreement and incorporated by this  
19 reference. City shall have the right to approve any person proposed by Consultant  
20 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 i. Commercial general liability insurance (equivalent in  
14 scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less  
15 than One Million Dollars (\$1,000,000.00) per each occurrence and Two  
16 Million Dollars (\$2,000,000.00) general aggregate. This coverage shall  
17 include but not be limited to broad form contractual liability, cross liability,  
18 independent contractors liability, and products and completed operations  
19 liability. City, its boards and commissions, and their officials, employees and  
20 agents shall be named as additional insureds by endorsement (on City's  
21 endorsement form or on an endorsement equivalent in scope to ISO form CG  
22 20 10 11 85 or CG 20 26 11 85 or both CG 20 10 07 04 and CG 20 37 07 04  
23 or both CG 20 33 07 04 and CG 20 37 07 04), and this insurance shall contain  
24 no special limitations on the scope of protection given to City, its boards and  
25 commissions, and their officials, employees and agents. This policy shall be  
26 endorsed to state that the insurer waives its right of subrogation against City,  
27 its boards and commissions, and their officials, employees and agents.

28 ii. Workers' Compensation insurance as required by the

1 California Labor Code and employer's liability insurance in an amount not  
2 less than One Million Dollars (\$1,000,000.00). This policy shall be endorsed  
3 to state that the insurer waives its right of subrogation against City, its boards  
4 and commissions, and their officials, employees and agents.

5 iii. Professional liability or errors and omissions insurance  
6 in an amount not less than One Million Dollars (\$1,000,000.00) per claim.

7 iv. Commercial automobile liability insurance (equivalent in  
8 scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in  
9 an amount not less than Five Hundred Thousand Dollars (\$500,000.00)  
10 combined single limit per accident.

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

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

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

1 the date this Agreement expires or is terminated.

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

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

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

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

24 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement  
25 contemplates the personal services of Consultant and Consultant's employees, and the  
26 parties acknowledge that a substantial inducement to City for entering this Agreement was  
27 and is the professional reputation and competence of Consultant and Consultant's  
28 employees. Consultant shall not assign its rights or delegate its duties under this

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

11 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,  
12 certifies that, at the time Consultant executes this Agreement and for its duration,  
13 Consultant does not and will not perform services for any other client which would create  
14 a conflict, whether monetary or otherwise, as between the interests of City and the interests  
15 of that other client. Consultant further certifies that Consultant does not now have and shall  
16 not acquire any interest, direct or indirect, in the area covered by this Agreement or any  
17 other source of income, interest in real property or investment which would be affected in  
18 any manner or degree by the performance of Consultant's services hereunder. And,  
19 Consultant shall obtain similar certifications from Consultant's employees, subconsultants  
20 and contractors.

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

25 9. OWNERSHIP OF DATA. All materials, information and data  
26 prepared, developed or assembled by Consultant or furnished to Consultant in connection  
27 with this Agreement, including but not limited to documents, estimates, calculations,  
28 studies, maps, graphs, charts, computer disks, computer source documentation, samples,

1 models, reports, summaries, drawings, designs, notes, plans, information, material and  
2 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,  
3 in a format identified by City, and City shall have the unrestricted right to use and disclose  
4 the Data in any manner and for any purpose without payment of further compensation to  
5 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that  
6 Data shall not be made available to any person or entity for use without the prior approval  
7 of City. This warranty shall survive termination of this Agreement for five (5) years.

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

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

26           12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for  
27 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates  
28 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available



1 without breach of this Agreement by Consultant; or (c) a third party who has a right to  
2 disclose does so to Consultant without restrictions on further disclosure; or (d) must be  
3 disclosed pursuant to subpoena or court order.

4 13. ADDITIONAL COSTS AND REDESIGN.

5 A. Any costs incurred by City due to Consultant's failure to meet  
6 the standards required by the scope of work or Consultant's failure to perform fully  
7 the tasks described in the scope of work which, in either case, causes City to request  
8 that Consultant perform again all or part of the Scope of Work shall be at the sole  
9 cost of Consultant and City shall not pay any additional compensation to Consultant  
10 for its re-performance.

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

20 14. 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 15. 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. Consultant 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 16. PREVAILING WAGES.

7 A. Consultant 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, Consultant 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 17. 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 18. INDEMNITY.

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

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

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

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

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

1 termination of this Agreement.

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

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

12 21. NONDISCRIMINATION.

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

23 B. It is the policy of City to encourage the participation of  
24 Disadvantaged, Minority and Women-Owned Business Enterprises in City's  
25 procurement process, and Consultant agrees to use its best efforts to carry out this  
26 policy in its use of subconsultants and contractors to the fullest extent consistent  
27 with the efficient performance of this Agreement. Consultant may rely on written  
28 representations by subconsultants and contractors regarding their status.

1 Consultant shall report to City in May and in December or, in the case of short-term  
2 agreements, prior to invoicing for final payment, the names of all subconsultants  
3 and contractors hired by Consultant for this Project and information on whether or  
4 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as  
5 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

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

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

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

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

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

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

28 E. If the City determines that the Consultant has set up or used its

1 contracting entity for the purpose of evading the intent of the EBO, the City may  
2 terminate the Agreement on behalf of the City. Violation of this provision may be  
3 used as evidence against the Consultant in actions taken pursuant to the provisions  
4 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

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

12 24. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

26 25. COVENANT AGAINST CONTINGENT FEES. Consultant warrants  
27 that Consultant has not employed or retained any entity or person to solicit or obtain this  
28 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,

1 commission or other monies based on or from the award of this Agreement. If Consultant  
2 breaches this warranty, City shall have the right to terminate this Agreement immediately  
3 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments  
4 due under this Agreement or otherwise recover the full amount of the fee, commission or  
5 other monies.

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

11           27. CONTINUATION. Termination or expiration of this Agreement shall  
12 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,  
13 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

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

22           29. ADVERTISING. Consultant shall not use the name of City, its officials  
23 or employees in any advertising or solicitation for business or as a reference, without the  
24 prior approval of the City Manager or designee.

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

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

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.

PERCEPTIVE ENTERPRISES, INC., a California corporation

\_\_\_\_\_, 2020 By J. Adams  
Name Joseph Adams  
Title President

\_\_\_\_\_, 2020 By Cathy Adams  
Name Cathy Adams  
Title Corporate Secretary

"Consultant"

CITY OF LONG BEACH, a municipal corporation

January 13, <sup>2021</sup>/<sub>2020</sub> By Ronda J. Satrom

City Manager  
EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER

"City"

This Agreement is approved as to form on January 11, 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 90802-4664



# EXHIBIT “A”

## Scope of Work

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OFFICE OF THE CITY ATTORNEY  
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City of Long Beach  
Purchasing Division  
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### **3. SCOPE OF WORK**

The City of Long Beach, Department of Financial Management, Business Services Bureau desires to engage Consultants to provide on-call labor compliance monitoring and related professional services to support the operations of its Labor Compliance Division.

#### **3.1 General – These services include:**

- 3.1.1. Administrative and investigative services to monitor contractor payroll records using the LCPTracker system (or other system as the City sees fit);
- 3.1.2. Conducting field verification services, ensuring apprenticeship compliance, assisting with enforcement, setting DBE goals, monitoring DBE and SBE goal attainment;
- 3.1.3. Monitoring HUD Section 3 requirements;
- 3.1.4. Preparing reports and meeting deadlines with regards to the requirements for various project funding sources and local, State and Federal labor programs.
- 3.1.5. The Consultant(s) will work primarily with the City Labor Compliance Division staff but will also be required to work and coordinate with each Project team when assigned to perform labor compliance monitoring for a specific project. Consultant(s) will be required to gather information from the prime contractors, all tiers of subcontractors, workers/employees, and various internal and external sources to provide labor compliance monitoring services.
- 3.1.6. The City Labor Compliance Division staff will initiate each on-call service request by providing a Consultant Request Form which contains project specific. The City expects to receive from the Consultant(s) a project-specific cost proposal that includes a not to exceed dollar amount for the duration of the project, as well as the plan for compliance monitoring and oversight for that specific project within 5 business days of notification of the project. The selected Consultant(s) shall not respond to any requests for on-call services that originate outside of the Labor Compliance Division Staff.
- 3.1.7. Once the Consultant(s) has been assigned to monitor a project, the Consultant's responsibilities and tasks shall include, but are not limited, to:
  - a) Obtain applicable state and federal wage classification decisions as required.
  - b) Verify the contractor and subcontractor eligibilities to contract with Federal and State agencies.



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- c) Pre-Construction Meeting – Attend pre-construction meetings and present local, State and Federal labor compliance requirements to the contractor and subcontractor(s); provide a copy of related documents to the contractor; require signature of the contractor that they have been briefed of their requirements.
  - d) Certified Payroll – Review/Audit payroll, fringe benefit records and certified wage submissions for completeness and accuracy. Ensure that employees including apprentices/trainees are paid weekly and in accordance with applicable prevailing wage or Davis-Bacon wage determination specific to that project.
  - e) Review the ratio of apprentices/trainees that are working on the projects for conformance with regulations.
  - f) Gather documentation that apprentices and trainees are registered with an approved apprenticeship program.
  - g) Site Visits – Conduct site visits and interviews. Employee interviews are intended to be private from their employer. Each employee should be informed that the information given is confidential, and that his/her identity will not be disclosed without the employee's written permission.
    - i. Monitor workforce utilization for labor compliance through regular employee interviews and reconcile certified payrolls, at a ratio and frequency required by applicable labor program regulations.
    - ii. Document site interviews on appropriate forms.
    - iii. Ensure that Davis-Bacon and other applicable labor/wage posters are on site in conspicuous places and protected from weather.
    - iv. Ensure contractor is not in violation of Copeland "Anti-Kickback" Act.
- 3.1.8. Compliance – Notify City Project Manager, City Labor Compliance staff, and Prime Contractor monthly in writing of any labor discrepancies or suspected violations and define corrective actions to be taken, including restitution payments; follow up with contractor to resolve discrepancies. Consultant(s) may be requested to attend project status meetings.
- 3.1.9. Documentation – All labor compliance related recordkeeping and file maintenance shall be the responsibility of the consultant. However, all records and files shall be available to the City at all times. Any files not loaded onto



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LCPTTracker project files shall be delivered to the City electronically upon completion of each individual project. Consultant(s) shall:

- a) Process and maintain documents for each project;
- b) Submit monthly Labor Compliance reports for each project;
- c) Prepare a final report for each project stating contractor payroll compliance and conformance to all other labor program requirements. All project related documents not on LCPTTracker shall be provided electronically to the City via USB flash drive.
- d) Worker Complaints – Consultant(s) shall document all labor compliance related complaints received. All complaints are to be taken seriously and must be investigated with findings documents in the labor compliance files for the project. Any investigation resulting in the determination of non-compliance by the prime or any tier subcontractor must be resolved in consultation with the City, through enforcement actions appropriate for the specific violation and applicable labor program rules and regulations.

3.1.10. Labor Compliance Tracking System – Consultant(s) shall implement the use of LCPTTracker (or any subsequent City tracking system utilized by the City) to track the submittal of all labor compliance forms/documents from each contractor.

3.1.11. As needed Labor Compliance Consulting – Consultant(s) shall provide guidance to City staff and contractors with regards to updates or changes in labor laws and recommend modifications to solicitations/contract templates/requirements as needed to maintain compliance. Provide guidance to the City with regard to enforcement actions such as recommendations to withhold or recommendations for reporting to the Division of Labor Standards Enforcement (DLSE) review.

3.1.12. Technical Support – Consultant(s) shall provide limited as-needed technical support to City staff and contractors as necessary and appropriate with regards to the City's compliance monitoring software.

3.1.13. Invoicing

- a) Consultant(s) shall invoice each project individually, on a monthly basis. Invoice will be submitted by the tenth (10<sup>th</sup>) of the month and include a breakdown of employee positions, names, rates, and hours works. A detailed summary of labor compliance activities shall be included as supporting documentation for the hours stated.



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- b) Invoices shall include the project name and number, Purchase Order number, "not to exceed" amount stated on the cost proposal, cumulative amount charged to date for the project, and the monthly amount being charged for that invoice.
- c) Final invoice for a project shall be marked "Final Invoice"

#### 3.1.14. Deliverables

- a) DBE Consultant shall calculate DBE goals for procurements (as applicable) to City Labor Compliance staff, and review proposals for goal attainment or Good Faith Efforts.
- b) Individual Project Cost Proposals to City Labor Compliance staff.
- c) Monthly Project Specific Status Report / Discrepancy Report of all pending issues and the status of those issues, to City Labor Compliance staff, PM/CM team, and Prime Contractor, in a format specified by the City.
- d) Worksite visits and interviews will be conducted in accordance with the rules, laws and regulations for the labor programs assigned to the individual project.
- e) Collection and submittal of any labor compliance data to support reports to applicable regulatory agencies (DBE reports to CALTRANS, Section 3 reports to HUD, etc.)
- f) Annual report (based on fiscal year October-September) for the City Labor Compliance Division which includes the projects monitored, which are active, which have been closed, which have been reported to DLSE, and any other pertinent information requested by the City.

**3.2 HUD Section 3 Monitoring Requirements** – Section 3 of the Housing and Urban Development Act of 1968 fosters local economic development, neighborhood economic improvement and individual self-sufficiency. For HUD Section 3 applicable projects, Consultant(s) shall compile Section 3 reports and documentation and review for completeness and good faith efforts. Consultants will also track information in support of the City's annual HUD Section 3 Performance Evaluation and Registry System (SPEARS) Report, in a format that will be provided by the City. Consultant(s) shall monitor projects to ensure that HUD Section 3 hiring and requirements for the duration of the project adhere to 23 CFR Part 135 and other HUD Section 3 associated regulations. The Consultant(s) may be requested to attend meetings with City staff during audits of the City's HUD Section 3 program.



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The Consultant(s) shall collect documentation from contractor(s) demonstrating their progress toward fulfilling the City's HUD Section 3 contractual requirements. The following documents shall be obtained by the Consultant from the contractor(s):

- 3.2.1. Documentation of the contractor's intent and efforts to comply with HUD Section 3 requirements and goals.
- 3.2.2. Workforce projections for all tiers of contractors.
- 3.2.3. Construction schedule.
- 3.2.4. A list of all tiers of contractor's current employees.
- 3.2.5. Proof of public notices announcing HUD Section 3 resident employments and HUD Section 3 business contracting opportunities at the project jobsite.

The Consultant(s) shall collect (from the contractor) monthly HUD Section 3 hire documents that report each HUD Section 3 employee's name, employer, date hired, employee address, family size, annual income, HUD Section 3 status and hours worked on the project. The Consultant(s) shall also collect from the contractor(s) each month documentation showing the progress towards fulfilling the City's HUD Section 3 Policy and will document the contractor's efforts and track all HUD Section 3 worker utilization.

- 3.3 **Davis-Bacon Monitoring Requirements** – The Consultant(s) shall monitor contractor proper use of Federal Wage Determinations as well as contractor compliance with Davis-Bacon and Related Acts on all federally funded or federally assisted projects. The Consultant(s) must assist the City in maintaining a policy of enforcing the highest wage between published Federal Wage Determinations and California State Prevailing Wage Determinations, as determined by the California Department of Industrial Relations, available from <https://www.dir.ca.gov/public-works/prevailing-wage.html>. The Consultant(s) shall obtain the proper Federal Wage Determinations for Federally Funded Projects (issued by the U.S. Department of Labor under the Davis- Bacon and related Acts) from <https://beta.sam.gov/>. The Consultant must utilize the information published by the Wage and Hour Division of the U.S. Department of Labor to determine the proper prevailing wage rates to be paid on federally-funded or assisted construction projects. In addition, the Consultant shall ensure that the City's responsibility to apply the proper Federal wage determination(s) is/are implemented on federally-funded/assisted construction contracts (See 29 CFR 1.5 and 1.6(b)). Each City Department may have a unique protocol for the federally funded project due to specific fund sources (Community Development Block Grants, California Department of Transportation (Caltrans) funds, Homeland Security Grants, Federal Aviation Administration grants, etc.) which the consultants must become familiar with. Consultant(s) will be notified by the Labor Compliance division of these circumstances as required.



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**3.4 Disadvantaged Business Enterprise Participation Monitoring Requirements –**

The City is both a direct recipient and sub-recipient of Federal Department of Transportation funds. Consultant(s) shall assign a DBE goal to applicable procurements, review proposals for responsiveness, and monitor contracts for DBE Utilization in accordance with Title 49 CFR Part 26 and all other applicable DBE regulations. The Consultant(s) may be requested to attend meetings with City staff during project updates or audits of the City DBE program. The Consultant(s) shall:

- 3.4.1. Collect and review monthly DBE Utilization Reports submitted by prime contractors/consultants; track DBE utilization throughout the life of the contract.
- 3.4.2. Follow up with contractors and/or the City's Project Management/Construction Management (PM/CM) staff regarding delinquent/inadequate DBE Utilization Reports and/or under-utilization of DBEs.
- 3.4.3. Verify payments made to DBEs and ensure that the Prime Contractor and subcontractors are in compliance with the Prompt Payment Provisions.
- 3.4.4. Notify City immediately if contractor/consultant is willfully non-compliant with DBE utilization requirements and/or DBE Utilization Report submittal requirements.
- 3.4.5. Work with the City's PM/CM staff to evaluate DBE subcontractor substitution requests; evaluate GFE's submitted as proof of contractor's attempt to substitute a DBE with another DBE.
- 3.4.6. Review final report of DBE utilization submitted by prime contractor at contract closeout; record and report final DBE attainment percentage.
- 3.4.7. DBE Project Specific Goal Setting and Annual Goal Setting (if applicable):

- a) Collect applicable information from various DBE databases to determine an appropriate goal.

Work with the City's project staff to evaluate the applicability of the goals per project.

- b) Complete the Exhibit 9-D "DBE Contract Goal Methodology" from the Local Assistance Procedures Manual (LAPM) for federally-funded construction projects.

# EXHIBIT "B"

## Rates or Charges


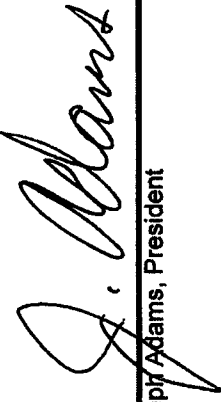
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**CITY OF LONG BEACH**  
**Request for Proposals No. FM20-022 for Compliance Monitoring Services**

**COST PROPOSAL**

PEI Role	Billing Rate
Principle-in-Charge	\$132.00
Compliance Analyst(s)	\$90.00
	
 Joseph Adams, President	

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# EXHIBIT “C”

City’s Representative:

Melissa Pyun

(562) 570-6037

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# EXHIBIT “D”

Materials/Information Furnished: None

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# EXHIBIT "E"

Consultant's Key Employee:

Joseph Adams  
(323) 254-5000

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