

AGREEMENT

34123

THIS AGREEMENT is made and entered, in duplicate, as of October 15, 2015, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on July 21, 2015, by and between CONTRACTOR COMPLIANCE AND MONITORING, INC., a California corporation ("Consultant"), with a place of business at 635 Mariners Island Blvd., #200, San Mateo, California 94404, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with as-needed professional 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, not to exceed Eighty Thousand Dollars (\$80,000), 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

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 additional one-
7 year terms.

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, Deborah Wilder. City shall have the right to approve any person
20 proposed 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

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

5. INSURANCE.

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

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

(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.

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20. NONDISCRIMINATION.

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

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

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

A. During the performance of this Agreement, the Consultant 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.

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.

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

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.

CONTRACTOR COMPLIANCE AND
MONITORING, INC., a California
corporation

November 2, 2015

By Deborah E G Wilder
Name Deborah E G Wilder
Title President

November 3, 2015

By Mark R. Ayres
Name MARK R. AYRES
Title Controller

"Consultant"

CITY OF LONG BEACH, a municipal
corporation

Dec. 7, 2015

By T. B. M.
City Manager
Assistant City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

"City"

This Agreement is approved as to form on 11-18, 2015.

CHARLES PARKIN, City Attorney

By Charles Parkin
Deputy

EXHIBIT “A”

Scope of Work

Heather Faulkner -Analyst: Heather comes to CCMI with a background in accounting and working with a family construction business. She has been with CCMI since 2007 and possesses an excellent skill set when dealing with large projects with multiple contractors over long periods of times. Her detail in reviewing and identifying potential issues is exceptional. She recently completed many months of audits for a project for the City of Camarillo where she helped identify misleading documentation filed by a prime contractor and subcontractor which resulted in the recovery and payment of over \$75,000 in wages to workers and over \$85,000 in penalties to the City. She also works on several housing projects for which both California and Federal prevailing wage requirements must be met including CDGB, local hire, SBE and DBE requirements. She has an AA from Provo Community College.

Christina Sanchez-Onsite Monitoring: Christina conducts the onsite interviews of employees, and verifies the posting of all Labor Compliance requirements for various project sites throughout California. Christina is well versed in construction requirements and is conscious of safety as well as the need to keep a project moving. Her interviews are targeted and calculated to minimize disruption to the construction project. Christina is also fluent in Spanish.

Additional staff will be assigned as necessary.

CCMI prefers to permanently assign its staff to work with a specific client so that both the Client and CCMI establish a relationship of trust and accountability. Deborah Wilder always remains available for additional consultation, complex issues or Administrative hearing matters.

3. Labor Compliance Program Scope of Work

Contractor Compliance and Monitoring, Inc. have represented or provided service to over 100 public agencies (school districts, water districts, colleges, the University of California, counties, cities and special districts throughout the state) and scores of contractors. CCMI's entire staff has significant expertise in the field of prevailing wage, certified payroll and apprenticeship requirements. CCMI's experience includes labor compliance on projects requiring California prevailing wage, Prop 84 funding (with additional LCP requirements) and federally funded projects requiring compliance with the Davis Bacon Act, HUD and related Acts. Listed below are the services which CCMI can provide:

California Prevailing Wage

1. Provide LCP compliance under the requirements of the California Labor Code.
2. Review of contract and bid documents to ensure proper prevailing wage language included (as requested). Draft additional language as needed.
3. Assist City with completion of PWC-100 form. (now required for all public works and maintenance projects over \$1,000).

4. Verification of all contractors and subcontractors on DIR's public works contractor registry in compliance with SB 854.
5. Conduct a Preconstruction Conference meeting and provide training, postings, forms and information of LCP requirements including providing handout materials for all contractors and subcontractors. This includes documentation of all contractors attending such meeting and maintaining such notes/minutes of the meeting in the project file.
6. Verify contractor's eligibility to work by checking the contracting status with the California Department of Industrial Relations' (dir.ca.gov) debarment list.
7. Provide a phone line and e-mail contact where contractors and subcontractors can contact CCMI for clarification on prevailing wage, certified payrolls, apprenticeship and compliance issues.
8. License check and confirmation with California Contractor's State License Board of current and active license status, as well as worker's compensation coverage of all contractors and all listed subcontractors.
9. Review and comparison of work classifications with California prevailing wage to ensure the contractor is paying the correct prevailing wage rate.
10. Monitoring of all Apprenticeship Requirements. Verification of apprenticeship status for all apprentices. Collection and review of all DAS-140 and DAS-142 forms. Review of applicable apprenticeship ratios employed, correct wages paid, training contributions (CAC2 forms). Verification that apprentices are properly supervised and employed in approved ratios as required by California apprenticeship regulations.
11. Monthly audit of certified payrolls forms. This includes obtaining the applicable prevailing wage determinations for each project. Certified Payrolls are generally delivered by the Contractor to CCMI for review and audit. Auditing the payrolls includes: checking proper trade classifications, checking for overtime, weekend, holiday or shift work, checking for ** increases, reviewing fringe benefit contributions and verifying that amortization is correct (when used) and review of training contributions made. When appropriate, travel and subsistence is also reviewed. CCMI is also familiar with electronic payroll delivery systems such as LCPtracker, Elations, etc. For large projects, CCMI prefers using an electronic delivery system to better manage the project.
12. Monthly jobsite audits and random interviews of workers (to determine veracity of certified payroll information, compliance with anti-kickback, equal employment opportunity requirements, jobsite posting requirements, etc.). (onsite interviews only required for Prop 84 and federally funded projects)

13. Verification of posting on the projects on a regular basis.(required for Prop 84 and DB projects)
14. Monthly request for verification of payment by requesting each contractor and subcontractor on the project provide proof of payment (cancelled check and wage statement or direct deposit and wage statement) for an employee selected (by CCMI) on a random basis from the certified payrolls.(required by Prop 84 funding).
15. Additional detailed audit of contractors through review of cancelled checks, time cards, and related records (as needed).
16. Monthly report to the Client on CCMI letterhead regarding compliance of contractors and subcontractors audited. A report is generated for each contractor/subcontractor audited and details compliance as well as deficiencies and the request to the contractor/subcontractor for additional compliance/documentation. To the extent that a contractor is either not in compliance and/or additional paperwork is needed for review, the general contractor is also contacted by CCMI.

CCMI's goal is not to stop or slow down any construction project and it is not our intent to withhold contractor's funds without justification. We pride ourselves in our fast turnaround time in notifying contractors by phone, e-mail or fax of potential problems and working quickly to resolve these issues.

17. Communication of potential violations to the Client with recommended action. In the event that potential paperwork or compliance issues cannot be resolved quickly, the Client will be notified and a recommendation will be made to the Client to retain a certain portion of the scheduled progress payment until the issue is resolved.
18. Communications with Contractors. CCMI will work with all contractors and subcontractors with the goal of amicable agreement on resolving issues related to violations, penalties and compliance. All meeting and calls with contractors will be documented in the project folder maintained by CCMI.
19. Third Party Requests for documents. A project with a high profile oftentimes draws the attention of certain local watchdog groups who frequently request copies of certified payrolls and related "Public Documents". CCMI will provide the appropriate redacted copies (employees names, addresses and social security numbers are not given to the general public) of certified payroll and related LCP documentation to any third party who makes an appropriate request.
20. Final close of project including imposition of penalties and reports to Labor Commissioner; issuing Notices to Withhold and other close out documentation.

Davis Bacon Compliance: In addition to the items stated above, CCMI is prepared to offer the following additional services on projects with federal funding:

1. Monitor contractor compliance with Davis Bacon and Related Acts
2. Provide required language and prevailing wage documentation to the Client for prevailing wage compliance. 29 CFR Part 5.5 REQUIRES that certain mandated prevailing wage language be included in the bid specifications and contract whenever federal Davis-Bacon requirements apply to a project.
3. Pull applicable Davis Bacon Wage determination and provide to Client. A hard copy of the applicable federal wage determination is required to be included in the bid specifications and the contract. A mere reference to the wage determination and MOD number or to the website www.wdol.gov is insufficient to meet this requirement and can result in the Client being subject to additional costs. Ten days prior to bid, such wage rates will be verified to determine if increases have been issued requiring the Client to issue an updated addendum.
4. Inclusion of all federal postings, forms and documentation in the preconstruction materials distributed to contractors/subcontractors. Additional training at the preconstruction conference will cover all federally mandated requirements and forms.
5. Assist the Client, as required, in requesting additional federal wage determinations through the conformance process.
6. Verify contractor's eligibility to work by checking the contracting status on the Federal Excluded Parties list (www.sams.gov). Once subcontractors are identified, also verify the eligibility of all subcontractors.
7. Review and comparison of California wage classifications with Davis-Bacon wage classifications to ensure the contractor is paying the correct prevailing wage rate.
8. Verification that all apprentices also have an active BAT (U.S. Department of Labor, Bureau of Apprenticeship Training) certificate. (US DOL does not have a reciprocal agreement with California's Division of Apprenticeship Standards, so all workers on a project with mixed funding (local, state and federal) must meet both California and federal apprenticeship requirements.
9. Complying with other federally mandated paperwork relating to federal funding sources, i.e. HUD, HOME, CDBG, Section 3 or local hiring requirements.
10. Filing of HUD required semi-annual reports
11. Preparation and attendance at any federal prevailing wage audit which may be conducted by any federal agency.

DBE Participation and Monitoring:

1. Collect and review monthly DBE Utilization reported submitted by prime contractor and track DBE participation throughout the life of the contract.
2. Follow up with Contractors and/or the City's Construction Management staff regarding delinquent/inadequate DBE Utilization Reports and/or underutilization of DBEs.
3. Verify payments made to DBEs and ensure that the prime contractor is in compliance with prompt payment provisions as set forth in the Public Contract Code.
4. Notify City of any willful noncompliance with DBE requirements and/or DBE Utilization Reports by contractors/subcontractors. This information will be included in CCMI's monthly report to the City along with all other prevailing wage and compliance issues.
5. CCMI is familiar with California's Subcontractor Listing Law and the requirements for subcontractor substitution, when notices must be sent and the proper procedure for substitution of a DBE contractor
6. Review final report of DBE utilization at contract closeout and provide final report and summary of SDBE participation as part of project closeout.

DBE Goal Setting (when applicable):

1. Collect applicable information from various databases in compliance with 49 CFR Part 26 and to assist the City is setting an appropriate DBE goal.
2. Assist the City with its Annual 9-B DBE Form.
3. Work with City Staff to evaluate the applicability and practicality of goals on a per project basis.
4. Prepare Exhibit 9-D DBE Contract Goal Methodology for federal funded construction projects greater than \$2 million (and consultant contracts greater than \$500,000) for the City's review and submission.

DBE and Prevailing Wage Compliance Training:

CCMI is prepared to offer individual webinar or in person training on the topics of DBE outreach compliance and/or prevailing wage compliance including but not limited to:

1. DBE program elements, definitions and required documentation.
2. How to search and locate a list of applicable DBEs

3. What conduct meets the threshold of “good faith efforts” when attempting to meet DBE compliance; including sample documentation and resources.
4. Discussion of obtaining DBE certification and various resources relating to such certification.
5. Compliance with California prevailing wage requirements including the ability to locate the proper wage determination, increases, shifts, holiday, holiday, scope of work and all related forms.
6. Review of apprentice requirements including DAS-140 and DAS-142 requirements for projects over \$30,000.
7. Discuss obligation to submit training contribution to third party program or CAC.
8. Penalties for non-compliance and Best Practices for full compliance.
9. Provide additional training on contractor obligations under SB 854 such as: registration of contractors/subcontractors, new regulations to be promulgated in 2015, as well as current information on the DIR’s requirement to submit certified payrolls electronically through the eCPR system.
10. Provide training and assistance relating to Davis Bacon compliance including interpretation of Federal wage determination and cross referencing that with California prevailing wage requirements.
11. Review the conformance process when the Davis Bacon Wage Determination (DBWD) does not recognize a classification or wage rate promulgated by the State of California.
12. Review Federal apprentice requirements where different than California requirements.
13. Additional assistance relating to HUD compliance and instruction for proper documentation of various required forms.
14. Promote “best practices” for all compliance.

PLA Monitoring

CCMI is familiar with Project Labor Agreements and similar agreements as well as the provisions relating to hiring, workforce stabilization, hiring hall and apprenticeship requirements, etc. As each PLA is negotiated separately with the public entity, CCMI is familiar with various terms in various jurisdictions and will be fully prepared to assist in implementing those requirements, including the success of the PLA on a project by project basis to determine whether such agreement is meeting the goals and expected outcome of the City

CCMI prides itself in taking a proactive, educational/team approach in working with Clients and contractors before problems arise. Wilder's extensive experience in this area over the last 30 years has given her particular insight into spotting potential problems early during project construction. CCMI is committed to implementing and enforcing a program that is fair to all contractors, but one which requires strict adherence to the requirements of prevailing wage and Labor Compliance. Our breadth of experience and expertise cannot be matched by any other LCP firm in the State.

Proposition 84 Funded Projects

The City of Long Beach does not have a Labor Compliance Program approved for the purpose of utilizing Prop 84 funding. In the event the City was to obtain such funding, CCMI is well versed in assisting over 40 public agencies secure their approved LCP. This includes sample applications, sample resolution and complete administrative manual to assist in expediting the approval process. The items listed above in the scope of work are sufficient to meet the Prop 84 monitoring requirements. However, there is an additional requirement of an annual report which must be submitted not later than August 31st of each year covering the applicable labor compliance activities from the prior fiscal year. CCMI is familiar with these reports and can prepare such reports for review and submission by the City.

4. Experience/References

CCMI has worked on hundreds of projects in the last 5 years. We have assisted our clients with State and/or federal prevailing wage requirements. We have successfully assisted our clients in over two dozen federal agency audits.

San Mateo County Housing Authority

Project Description: 8-10 projects (All Davis-Bacon, CDBG and HOME fund projects)

Status of Project: 2010-current

Construction Costs: \$5,000 - \$200,000

Technical Environment: CCMI provides ongoing education to contractors through preconstruction meetings as well as full California and Davis Bacon compliance monitoring for applicable projects to the agency. Additional tracking of Section 3 compliance and other mandated reports are prepared by CCMI staff, including CDGB and HOME documentation.

Staffing: Katherine Martins, Christina Sanchez (jobwalks)

Reference: Debbie McIntyre, Administrative Services Manager
San Mateo County Housing & Community Development
262 Harbor Blvd., Bldg. A
Belmont, CA 94002
Phone: 650-508-6768
Fax: 650-802-3373
Email: dmcintyre@smchousing.org

City of South Lake Tahoe

Project Description: 1 project (Affordable housing projects including federal HOME funding)
2 projects (not affordable housing -California and Davis Bacon wage requirements)

Status of Project: 2013-current

Construction Costs: \$16,867,747.00- Housing Project; \$1,000,000-\$10,000,000 other CA/DB projects

Technical Environment: CCMI provides ongoing education to contractors through preconstruction meetings as well as full California and Davis Bacon compliance monitoring for applicable projects to the agency. Additional tracking of Section 3 compliance and other mandated reports are prepared by CCMI staff. The Affordable Housing project included a HOME audit.

Staffing: Katherine Martins, Christina Sanchez (jobwalks)

Reference: Lori Marino
1052 Tata Lane
South Lake Tahoe, CA 96150
Phone: (530) 542-6021
Fax: (530) 541-7524
lmario@cityofslt.us

University of California, Santa Barbara:

Project Description: 5 projects (State and Davis Bacon projects)

Status of Project: 2008-current

Construction Cost: \$2-40 million

Technical: CCMI performs all tasks associated with California and federal prevailing wage projects, including updating contract language, preconstruction conference, review of certified payrolls, reports, verification of restitution, imposition of penalties by the University. Even though the University took most of its LCP monitoring in house in 2012, CCMI still remains a resource available in the University. Most recently, 2013-2015 CCMI was called in to assist the University with a CA/Davis Bacon project where the prime contractor (and several subcontractors) had failed to pay the applicable prevailing wage rate, several had gone out of business and issues relating to liability and penalties had to be resolved with the surety. This included an extensive audit of company records and interviews with workers.

Staffing: Jessica Finau and Yvonne Nickles

Reference: Dan Steed
Design & Construction Services
University of California, Santa Barbara
Santa Barbara, CA 93106-1030
Tel: 805-893-6141 Fax: 805-893-7721
daniel.steed@dcs.ucsb.edu

EXHIBIT “B”

Rates or Charges

Preliminary Fee Proposal/Cost and Price Summary

Flat Fee Alternative:

A flat fee, all inclusive price, can be provided on selected projects. We would require specific information about the project including contract amount, duration, number of anticipated contractors/subcontractors and any special funding requirement. We then identify a specific Scope of Work for the project and propose a single flat fee which is paid in equal monthly installments throughout the project covering all services.

The flat fee option does not include administrative hearings or audits conducted by a State or Federal agency (which would be billed on an hourly basis).

Hourly Fee : CCMI provides services based on an hourly billing basis:

\$120.00 per hour	Managers
\$95.00 per hour	Analysts
\$85.00 per hour	Technicians
\$300.00	Flat fee for jobsite interviews (includes all travel time and mileage)
\$300 per hour	Principal (Deborah Wilder).

CCMI does not perform legal work. Any legal work can be performed by Deborah Wilder through her Law Firm at the rate of \$400 per hour.

While CCMI's rates are competitive, they may not always be the least expensive on hourly basis. We ask you to consider that our breadth of experience actually makes us the more economical choice. Our experience allows us to quickly resolve issues or spot potential problem.

For example: 1 hour @ CCMI's rate of \$85 = \$85

1.25 hours @ competitor's rate of \$75 = \$93.75

So, a lesser hourly rate does not necessarily mean a lesser amount billed to the City.

Use of LCPtracker: CCMI recommends the use of LCPtracker for the delivery of all certified payrolls electronically. CCMI has a preferred billing rate with LCPtracker and will pass on those saving to the City. Or, the City can contract directly with LCPtracker for its services. CCMI has found that the use of LCPtracker makes our services even more efficient so that the cost of the LCPtracker system is about an 80% offset by the efficiency in time experienced by our staff. For example:

LCPtracker charges \$1,000 a month for electronic payroll services. The use of the system usually saves the Pubic Agency about \$800 in reduced staff time over collecting and reviewing hard copy certified payrolls. LCPtracker also provides the Agency and CCMI with 24/7 access to all labor compliance documents and provides an environmentally friendly handling of documents and storage of those documents for the project.

EXHIBIT “C”

City’s Representative:

Jason MacDonald, Purchasing and Business
Services Manager

(562) 570-6663

EXHIBIT “D”

Materials/Information Furnished: None