

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

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

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

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

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

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

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

8 3. COORDINATION AND ORGANIZATION.

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

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

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

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

5 5. INSURANCE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

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

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

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16. PREVAILING WAGES.

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

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

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

18. INDEMNITY.

A. Consultant shall indemnify, protect and hold harmless City, its 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, including attorneys' fees, court costs, expert and witness fees, 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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1 20. NONDISCRIMINATION.

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

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

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

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

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

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

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

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

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

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

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

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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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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

_____, 2015

By Joseph Adams
Name J. Adams
Title President

_____, 2015

By Cathy Adams
Name Cathy Adams
Title Corporate Secretary

"Consultant"

CITY OF LONG BEACH, a municipal corporation

Nov. 30, 2015

By T. Bull
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City" Assistant City Manager

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

CHARLES PARKIN, City Attorney

By Charles Parkin
Deputy

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

EXHIBIT “A”

Scope of Work



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

3. SCOPE OF PROJECT

HUD SECTION 3 MONITORING REQUIREMENTS

The Consultant shall monitor certain City of Long Beach Contractor(s) and Subcontractor(s) to ensure that best efforts are utilized to comply with HUD Section 3 hiring and requirements, and ensure that qualified HUD Section 3 residents are hired for a minimum of thirty percent (30%) of total new hire construction work hours or total HUD Section 3 new hires, depending on the project, in accordance with 24 CFR Part 135. The Consultant shall also monitor the Contractor(s) to ensure it utilizes its best efforts to hire or contract with HUD Section 3 businesses, for a minimum of ten percent (10%) of the total dollar amount of all building trades work financed by or with certain federal dollars or other designated funds, or city mandated projects.

3.1 Documentation Related to Searching for HUD Section 3 Employees

The Consultant shall collect from Contractor(s) documentation demonstrating the Contractor's progress toward fulfilling the City's HUD Section 3 contractual requirements. The following reports shall be obtained by the Consultant from the Contractor(s) and submitted to the City's Section

3 Coordinator prior to the start of work by Contractor(s):

- a) Documentation of the Contractor's intent and efforts to comply with HUD Section 3 requirements and goals.
- b) Workforce Projections for the Contractor and all its Subcontractors
- c) Construction Schedule
- d) A list of the Contractor's current employees and lists of current employees of all Subcontractors.
- e) Proof of public notices announcing HUD Section 3 resident employment and HUD Section 3 business contracting opportunities at the project jobsite.

3.2 HUD Section 3 Employment Documentation

The Consultant 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.

3.3 HUD Section 3 Businesses Contact/Hiring Compliance

The Consultant shall collect from Contractor(s), each month, documentation demonstrating the Contractor(s) progress toward fulfilling the City's HUD Section 3 policy. Failure of the



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

Contractor(s) to provide documentation to the consultant could result in a 10% retainage in a progress payment until all required documentation is received.

- a) The Consultant shall collect and document Contractor(s) efforts to identify contract opportunities to facilitate participation by HUD Section 3 businesses.
- b) The Consultant shall collect and document Contractor(s) efforts to contact business outreach agencies to assist in recruiting HUD Section 3 business enterprises.
- c) The Consultant shall collect and document Contractor(s) efforts to post public notices announcing HUD Section 3 business contracting opportunities at the project jobsite.
- d) The Consultant shall collect and document Contractor(s) efforts to advertise for subcontracting opportunities in local newspaper outlets.
- e) The Consultant shall collect and document Contractor(s) efforts to solicit written bids from HUD Section 3 businesses desiring to participate in this project.
- f) The Consultant shall collect and document Contractor(s) efforts to follow up with initial solicitations of interested HUD Section 3 businesses. A copy of telephone logs shall document this effort.
- g) The Consultant shall collect and document Contractor(s) effort to conduct a pre-bid conference to assist HUD Section 3 business enterprises in completing bid documents for subcontracts.
- h) The Consultant shall collect and document Contractor(s) efforts to assist all potential Subcontractors needing assistance in obtaining bonding, line of credit, or financing.

Davis Bacon Monitoring Requirements

The Consultant shall monitor the contractors' proper use of Federal Wage Determinations as well as the contractors' compliance with Davis- Bacon and Related Acts on all federally funded projects. The Consultant must assist the City in maintaining a policy of enforcing the highest wage as between published Federal Wage Determinations and California State Prevailing Wage Determinations, as determined by the California Department of Industrial Relations, available from <http://www.dir.ca.gov>.

The Consultant 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 <http://www.access.gpo.gov/davisbacon/>. 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



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determination(s) is/are implemented on federally-funded construction contracts(s) (See 29 CFR 1.5 and 1.6(b)).

Each City Department may have a unique protocol, with which the consultant must become familiar with prior to the initiation of work. These issues shall be brought to the Consultant's attention by the City's HUD Section 3 Coordinator. For example, the Public Works Department utilizes the Caltrans forms for filing purposes which are found at <http://www.dot.ca.gov/hq/LocalPrograms/public.htm>. Whenever in doubt, the Consultant shall seek clarification from the City's HUD Section 3 Coordinator.

- a) The Consultant shall document the Contractor's attendance at the pre-construction conference.
- b) The Consultant shall prepare the appropriate section of the Project Labor Standards Enforcement File (related to payroll data) and shall maintain files for all the phases of the project.
- c) The Consultant shall ensure that the Contractor and Subcontractors shall be provided with the comprehensive packet detailing the Davis-Bacon Requirements and wage posters during the pre-construction meeting.
- d) The Consultant shall supply the necessary Wage Compliance forms to the Contractor(s) and City staff during pre-construction conference.
- e) A copy of the minutes shall be placed in the Project Labor Standard enforcements file, as required by Davis-Bacon regulations.
- f) The Consultant shall again, check each Contractor's eligibility for contract award by reviewing the Services Administration's "List of Parties Excluded from Federal Procurement and Non-Procurement Programs" and the Department of Industrial Relation's debarment list.
- g) The Consultant shall verify that all apprentices have been properly registered (or certified) in an apprenticeship program registered with the Bureau of Apprenticeship and Training, or with a State Apprenticeship Program recognized by the Bureau.
- h) The Consultant shall verify that all Apprenticeships in possession of a formal certification were registered in an approved program. Verification shall be made with the United States Department of Labor, Employment and Training Administration.
- i) Consultant shall provide the City with a letter, on letterhead, stating the Contractor's ability to, or failure to, comply with the Davis-Bacon requirements, on a monthly basis, during the life of the Project. The letter shall also state that the Consultant has complied with, and has met, all federal and state requirements.



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State Prevailing Wage Monitoring Requirements

Basic monitoring, consultation, and technical assistance are requested to satisfy requirements of the California Labor Code and the California Code of Regulations.

All laborers and mechanics employed by Contractor(s) or Subcontractor(s) in the performance of certain construction work financed in whole or in part with federal, state or redevelopment assistance shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon and Related acts, as amended, or in accordance with California Prevailing Wage requirements as determined by the California Department of Industrial Relations.

- a) The Consultant shall assist the City in the submission of the PWC-100 form online for each project.
- a) The Consultant shall provide technical assistance to the Contractors and the City with regards to the State of California Department of Industrial Relations' Contractor Registration database to ensure that the Contractors performing on Construction Projects awarded on or after April 1, 2015 are registered, as set forth by Senate Bill 854.
- a) The Consultant shall utilize the State of California Department of Industrial Relations' Contractor Registration database to comply with the requirements of the City to only use registered contractors and subcontractors as set forth by Senate Bill 854.
- a) The Consultant shall document the Contractor's attendance at the pre-construction conference.
- b) The Consultant shall prepare the appropriate section of the Project Labor Standards Enforcement File (related to payroll data) and shall maintain files for all the phases of the project.
- c) The Consultant shall ensure that the Contractor and Subcontractors shall be provided with the comprehensive packet detailing the Prevailing wage Requirements and wage posters during the pre-construction meeting:
- d) The Consultant shall supply the necessary Wage Compliance forms to the Contractor(s) and City staff during pre-construction conference.
- e) A copy of the minutes shall be placed in the Project Labor Standard enforcements file, as required by the City.
- f) The Consultant shall again, check each Contractor's eligibility for contract award by reviewing the Services Administration's "List of Parties Excluded from Federal Procurement and Non-Procurement Programs," and the Department of Industrial Relations debarment list.



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- g) The Consultant shall verify that all apprentices have been properly registered (or certified) in an apprenticeship program registered with the Bureau of Apprenticeship and Training, or with a State Apprenticeship Program recognized by the Bureau.
- h) The Consultant shall verify that all Apprenticeships in possession of a formal certification were registered in an approved program at the time that work was performed. Verification shall be made with documents issued by the State of California Department of Industrial Relations, Division of Apprenticeship Standards.
- i) Consultant shall provide the City with a letter, on letterhead, stating the Contractor's ability to, or failure to, comply with the prevailing wage requirements, on a monthly basis, during the life of the Project. The letter must also state that Consultant has complied with, and has met, all federal and state requirements.

Disadvantaged Business Enterprise Participation Monitoring Requirements

Monitor Contracts for DBE Utilization

- a) Collect and review monthly DBE Utilization Reports submitted by prime contractors/consultants; track DBE utilization throughout the life of the contract.
- b) Follow up with contractors and/or the City's Construction Management (CM) staff regarding delinquent/inadequate DBE Utilization Reports and/or under-utilization of DBEs.
- c) Verify payments made to DBEs and ensure that the Prime is in compliance with the Prompt Payment Provisions.
- d) Notify City if contractor/consultant is willfully non-compliant with DBE utilization requirements and/or DBE Utilization Report submittal requirements.
- e) Work with the City's 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.
- f) Review final report of DBE utilization submitted by prime contractor at contract closeout; record and report final DBE attainment percentage.

Disadvantaged Business Enterprise Annual Goal Setting (if applicable) and project base goal setting

Annual Goal Setting

- a) Collect applicable information from various databases to be in compliance with Title 49 CFR, part 26.
- b) Assist the City in completing the Annual Exhibit 9-B DBE Form



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Contract-Specific Goal Setting

- a) Collect applicable information from various DBE databases to determine an appropriate goal
- b) Work with the City's project staff to evaluate the applicability of the goals per project
- c) Complete the Exhibit 9-D "DBE Contract Goal Methodology" for federally-funded construction projects greater than \$2 million and consultant contracts greater than \$500,000

Conduct DBE and Prevailing Wage Compliance Training Workshops for Contractors

Workshop invitees will include large contractors, DBE prime contractors, and DBE subcontractors interested in bidding on City projects. The workshops can be held at a City of Long Beach Facility. Each workshop will be 3-4 hours in duration, and will include a PowerPoint presentation, handouts, and valuable information on critical aspects of contract compliance with State and Federal regulations applicable to contracts subject to the DBE Program, including the new, race-conscious DBE Program requirements for FHWA-assisted contracts.

Training topics shall include:

- A. DBE Program elements, definitions, and documentation submittal requirements
- B. How to locate/search for DBEs to meet DBE contract goals
- C. How to obtain DBE certification
- D. How to conduct and document a Good Faith Efforts
- E. How to comply with prevailing wage requirements

City-wide Community Workforce Agreement/ Project Labor Agreement Monitoring

The City of Long Beach is in the process of negotiations to establish a City-wide Community Workforce Agreement which is commonly known as a Project Labor Agreement. At the point in which this agreement is established and approved for application on Construction Projects, the Consultant shall monitor the documents submitted by the Contractors and subcontractors and track the progress towards reaching the goals set forth within. In addition, the Consultant shall produce monthly reports to the City throughout the life of each project.

EXHIBIT “B”

Rates or Charges

CITY OF LONG BEACH
 REQUEST FOR PROPOSALS NO. FM15-084

COMPLIANCE MONITORING SERVICES

PEI Role	Billing Rate	# of Hours	Total Billing
Principle-in-Charge	\$120.00	240	\$28,800.00
Compliance Analyst(s)	\$90.00	1880	\$169,200.00
Not-to-Exceed Amount **			\$198,000.00

** Actual amount may be less dependent upon number of construction projects and training workshops assigned.



Perceptive Enterprises, Inc.
 expert client solutions

Joseph Adams, President

EXHIBIT “C”

City’s Representative:

Jason MacDonald, Purchasing and Business
Services Manager

(562) 570-6663

EXHIBIT “D”

Materials/Information Furnished: None