

## PROFESSIONAL SERVICES AGREEMENT

**THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement")** is effective as of this 12th day of June, 2017, by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **The Labor Compliance Managers** ("Consultant"), collectively referred to as the "Parties."

### **WITNESSETH THAT:**

**WHEREAS**, the City desires to **contract with The Labor Compliance Managers ("Consultant") for labor standards enforcement services for all City's labor standards ordinances in accordance with Scope of Work (Exhibit A); and**

**WHEREAS**, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and,

**WHEREAS**, the City has determined that the Consultant is qualified by training and experience to render such services; and,

**WHEREAS**, the Consultant desires to provide such services; and,

**WHEREAS**, the public interest will be served by this Agreement; and,

**NOW, THEREFORE**, the Parties hereto do mutually agree as follows:

### **I. SCOPE OF SERVICES AND TERMINATION DATE**

#### **A. Project Description**

**A complete Project Description is described in ("Scope of Work, "Proposal," etc.), attached as Exhibit A.**

#### **B. Services**

The services to be completed under this Agreement ("Services") are:

**described in Exhibit A**

#### **C. Schedule and Completion Date:**

The services to be provided by Consultant under this Agreement shall commence on **June 12, 2017** and terminate on **or about June 30, 2018**.

FOR CITY USE ONLY			
Contract #:		CIP #:	
Reso. #:		EPW #:	

## II. WORK CHANGES

- A. The City reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a reasonable time, to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.
- B. Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of the City and the Consultant.
- C. The City Manager has authority to execute without further action of the Emeryville City Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section III.B below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$45,000 must be approved by resolution of the Emeryville City Council.

## III. COMPENSATION AND METHOD OF PAYMENT

- A. City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. The City shall pay the Consultant within forty-five (45) days after approval of the invoice by City staff.
- B. The total amount paid under this Agreement as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED AND FIFTY THOUSAND THREE HUNDRED AND THIRTY SIX DOLLARS (\$150,336)** except as outlined in Section II.C., above. The compensation for Services performed shall be computed based upon **as set forth in Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications,

facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

#### **IV. COVENANTS OF CONSULTANT**

##### **A. Assignment of Agreement**

The Consultant covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the City. As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them and the City shall have no obligation to them.

##### **B. Responsibility of Consultant and Indemnification of City**

It is the intent of the parties that the language of this Paragraph complies fully with the requirements of section 2782.8 of the California Civil Code as enacted by AB 573. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Consultant or sub consultants as well as any claim by any employee, agent, Consultant or independent contractor hired or employed by Consultant that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and the costs of investigation, to the extent arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Consultant, any sub consultant, anyone directly or indirectly employed by them or anyone that they control, whether or not there is alleged to be concurrent negligence on the part of the City, but, to the extent required by law, excluding liability caused by the conduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

**C. Independent Contractor**

The Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of the City. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

**D. Insurance**

1. Requirements: The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. If requested, Consultant shall provide the City with copies of all insurance policies. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.
2. Minimum Limits of Insurance: Consultant shall maintain limits no less than:
  - a. Commercial General Liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and, if required by City, products and completed operations coverage for the term of the policy.
  - b. Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000).
  - c. Professional Liability of One Million Dollars (\$1,000,000) providing coverage on a claims made basis for errors, omissions or malpractice. Professional liability insurance must

be continued for at least 5 years after termination or final payment under the Agreement, whichever is later.

- d. Workers' Compensation limits as required by the laws of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

No Workers' Compensation insurance shall be required if Consultant completes the following certification:

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.

\_\_\_\_\_ (Consultant's initials)

- 3. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and are subject to approval by the City.
- 4. Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:

- a. General Liability and Automobile Liability Coverage.

- i. Consultant shall name the City of Emeryville, its officials, employees, agents and volunteers as additional insureds in its Commercial General Liability and Automobile Liability policies. If Consultant submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG 20 10 11 85 form (or more recent) and/or CA 20 48 – Designated Insured Form (for business auto insurance); The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers, except where limited by State laws.

When a certificate says, "certificate issued to" this does not mean the same as *additional insured* and is not acceptable.

- ii. Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any

insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.
- iv. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
- vi. The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
- vii. All endorsements to policies shall be executed by an authorized representative of the insurer.

b. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

c. All Coverages

- i. Each insurance policy required by this clause shall be endorsed to state that City will be provided thirty (30) days written notice of cancellation or material change in the policy language or terms.

5. Acceptability of Insurers: Insurance is to be placed with insurers with an A.M. Best's rating of no less than A: VII.

6. Verification of Coverage: Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this Agreement prior to the start of work. The

certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

7. Subcontractors: Consultant shall either include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor demonstrating that subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage required by this Agreement, including but not limited to naming the City, its officials, employees, agents and volunteers as additional insureds.
8. Claims-Made Policies. Consultant shall extend any claims-made insurance policy for at least 5 years after termination or final payment under the Agreement, whichever is later.

**E. Records, Reports and Audits**

1. Records
  - a. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
  - b. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

2. Reports and Information: Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.
3. Audits and Inspections: At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

**F. Conflicts of Interest**

The Consultant covenants and declares that, other than this Agreement, it has no holdings or interests within the City of Emeryville, nor business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Consultant or its principals, agents or employees acquire such a holding, interest or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Consultant will immediately notify the City of such holding, interest or agreement in writing.

**G. Confidentiality**

The Consultant agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

**H. Discrimination Prohibited**

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability.

**I. Licenses, Certifications and Permits**

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

**J. Key Personnel**

April Shabazz, Project Manager and all of the individuals listed in Exhibit A are necessary for the successful prosecution of the work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team. Consultant recognizes that the composition of this team was instrumental in the City's decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

**K. Authority to Contract**

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

**L. Ownership of Work**

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant

agrees to execute any additional documents that may be necessary to evidence such assignment.

**M. Living Wage**

If this Agreement provides for compensation to Consultant of \$25,000 or more within a single fiscal year for providing services to the City, then Consultant shall comply with the requirements of the City's Living Wage Ordinance set forth in Chapter 31 of Title 5 of the Emeryville Municipal Code, unless (i) Consultant is a governmental entity, (ii) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the City's laws.

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Consultant who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08. Consultant shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Consultant for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Consultant shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.44 per hour (as of July 1, 2015, subject to increase annually on July 1<sup>st</sup> to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

**N. Prevailing Wages**

To the extent the services to be provided by Consultant pursuant to this Agreement constitutes "public work" as defined in Labor Code Section 1720, Consultant shall pay and shall ensure that all sub consultants or subcontractors pay all persons providing labor to perform the work under this Agreement applicable prevailing wage rates for the work to be performed as determined in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code sections 1770, 1773, et. seq., and otherwise comply with all provisions of this Section IV.N. A copy of the applicable Wage Determination is on file in the offices of the City.

Consultant is required to comply with the following provisions and to insure that all subcontracts include the following provisions. If, for some reason, these provisions are not included in subcontracts, they shall nevertheless apply:

1. Hours of Labor: Eight hours' labor constitutes a legal day's work. Consultant shall forfeit, as penalty, Twenty-Five Dollars (\$25) for each worker employed in the performance of the Agreement by Consultant or by any sub consultant under him for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the provisions of the California Labor Code and in particular sections 1810 to 1815 thereof, inclusive, except that work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted under compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay, as provided in said section 1815.
2. Labor Non-Discrimination: Consultant shall not discriminate against any employee who is employed on the work because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, sexual orientation, gender identity, or age of such persons, except as provided in section 12940 of the Government Code.
3. Prevailing Wages: Consultant shall comply with California Labor Code sections 1770 to 1780, inclusive. In accordance with section 1775, Consultant shall forfeit as a penalty an amount determined by the Labor Commissioner, not to exceed Fifty Dollars (\$50), for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such

worker is employed for any work done under the Agreement by him or by any sub consultant under him in violation of the provisions of the Labor Code, and in particular, Labor Code sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Consultant.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county in which the work is to be done have been determined by the Director of the California Department of Industrial Relations and can be obtained on-line at <http://www.dir.ca.gov>. It is mandatory for Consultant and any subcontractor to pay not less than the specified rates to laborers and workers employed by them in the execution of this Agreement.

Consultant shall comply with the provisions enacted by AB 854 that require Consultant and any subcontractor be registered with the State Department of Industrial Relations (DIR) pursuant to Labor Code section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Consultant shall post job site notices, pursuant to Title 8 California Code of Regulations Section 16451.

Consultant shall make travel and subsistence payments to each worker needed to execute the work in accordance with the requirements of section 1773.8.

4. Payroll Records: Consultant shall be responsible for the compliance with Labor Code section 1776 by his sub consultants.
  - a. Each Consultant and sub consultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
  - b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- ii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- iii. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, sub consultant and the entity through which the request was made. The public shall not be given access to such records at the principal office of Consultant.
- c. The certified payroll records shall be on forms provided by the division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- d. Each Consultant shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- e. Any copy of records made available for inspection as copies and furnished upon request to the public or City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant shall not be marked or obliterated.
- f. In the event of noncompliance with the requirement of this section, Consultant shall have ten (10) days in which to

comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with this section. Should noncompliance still be evident after such ten (10) day period, Consultant shall, as a penalty to the State or City, forfeit Twenty-Five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.

The penalties specified in subdivision (g) of Labor Code section 1776 for noncompliance with the provisions of said section 1776 may be deducted from any monies due or which may become due to Consultant.

Consultant and each sub consultant shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.

5. Apprentices: Consultant shall fully comply with the requirements of sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with section 1777.5, Consultant shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. Consultant shall require each sub consultant who will perform work or labor or render service to Consultant in or about the construction of the work to comply fully with sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.
6. Workers' Compensation: Pursuant to the requirements of section 1860 of the California Labor Code, Consultant will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Agreement, Consultant certifies the following:

"I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

7. Event of Default: Failure by Consultant to comply with any provision of this Section shall constitute a default of this Agreement and shall be grounds for termination as provided in this Agreement.

**V. TERMINATION**

- A. The City shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.
- E. Consultant's Right To Terminate. Consultant shall have the right to terminate this agreement, in writing, following material breach by the City, if breach of contract has not been corrected within sixty (60) days from the date of the City's receipt of a written statement from Consultant specifying its breach of its duties under this agreement.
- F. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

**VI. NO PERSONAL LIABILITY**

No member, official or employee of the City shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement.

**VII. ENTIRE AGREEMENT**

This Agreement constitutes the complete agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

**VIII. SUCCESSORS AND ASSIGNS**

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

**IX. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

**X. SEVERABILITY**

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the extent possible.

**XI. BUSINESS LICENSE**

Prior to commencement of the services to be provided hereunder, Consultant shall apply to the City of Emeryville Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

**XII. NOTICES**

**A. Communications Relating to Daily Activities**

All communications relating to the day-to-day activities of the work shall be exchanged between April Shabazz, Management Analyst for the City and Lindley Robertson

**B. Official Notices**

All other notices, writings or correspondence as required by this Agreement shall be directed to the City and the Consultant, respectively, as follows:

**CITY OF EMERYVILLE**

April Shabazz  
Management Analyst  
1333 Park Avenue  
Emeryville, California 94608  
Phone No. (510) 596-4316  
Fax No. (510) 596-4389  
E-Mail: [ashabazz@emeryville.org](mailto:ashabazz@emeryville.org)

**CONSULTANT**

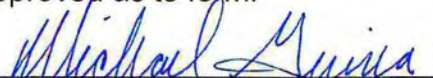
The Labor Compliance Managers  
Lindley Robertson  
Owner & Executive Director  
1900 The Alameda, Suite 620  
San Jose, CA 95126  
Phone: (408) 418-3325  
Email: [lin.tlcm@gmail.com](mailto:lin.tlcm@gmail.com)

**XIII. WAIVER OF AGREEMENT**

The City's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

**IN WITNESS WHEREOF** the City and the Consultant have executed this Agreement, which shall become effective as of the date the City Manager executes this Agreement on behalf of the City.

Approved as to form:

  
Michael A. Guina, City Attorney

**CITY OF EMERYVILLE**

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Carolyn Lehr, City Manager

**CONSULTANT**

Dated: 5/16/, 2017

By:  \_\_\_\_\_

Its: Owner \_\_\_\_\_

# The Labor Compliance Managers (TLCM)

March 14, 2017

April Shabazz  
Management Analyst  
City of Emeryville  
1333 Park Ave  
Emeryville, CA 94608-3517

Re: Qualifications to provide labor compliance enforcement services to the City of Emeryville

## Executive Summary

TLCM is an SBE, DBE and WBE that consists of a diverse group of multilingual male and female professionals. Each member of our team has extensive experience enforcing local, State and Federal regulatory procedures that protect worker rights. We will be able to deliver the following services to the City of Emeryville:

- Collaborate with City staff to monitor compliance (including by with intake calls);
- Enforce and administer local regulations, including providing technical assistance to several businesses when needed;
- Maintain proper tracking and accounting records for all activities including project outcomes;
- Document information received and provide the City with progress updates;
- Communicate effectively with constituents in English, Spanish, and Chinese (Mandarin as well as Cantonese).
- In summary, enforce the City's Minimum Wage Ordinance, Paid Sick Leave, Measure C, as well as the Fair Workweek Ordinance which will become effective July 1, 2017.

### 1. Team Members

Resumes of our team members that will likely be involved in serving the City of Emeryville are attached to this proposal. They include:

- **Lin Robertson**, the Principal of TLCM and team leader for this project, is fluent in English and Spanish. Lin will be responsible for all deliverables as well as support staff performances.
- **Shirley Trevino** formerly a Senior Deputy Labor Commissioner with the DIR's Division of Labor Standards Enforcement as well as Senior Labor Compliance Officer for the City & County of San Francisco where similar ordinances are currently being enforced, is also fluent in Spanish.
- **Jordan Chow**, a Labor Compliance Monitor & Field Agent, is fluent in English, Mandarin and Cantonese. Jordan is able to audit records submitted by employers electronically or in paper format, as directed by the City of Emeryville submittal requirements.

## 2. Consultations

Provide one-on-one consultations with workers in low-income, immigrant, and limited English proficient communities regarding local labor law violations and investigate potential claims for enforcement purposes.

### 3. Coordination and Reporting

- a) Lin Robertson will serve as the primary contact person that will coordinate deliverables, maintain regular contact with the City of Emeryville regarding deliverables and other Contract-related matters, and ensure compliance with the contract.
- b) Provide monthly electronic reports on the number workers reached, the number of consultations completed, and the enforcement outcomes when labor compliance violations were found.
- c) Provide any supplemental information regarding coordination and reporting upon request by the City of Emeryville.

#### 4. Service Fees

TLCM can provide oversight and enforcement services for an hourly rate of \$145/hour. A 10% discount is offered for payments received within 15 days from invoicing, in which case the hourly rate would drop to \$130.50/hour for all billable hours during a monthly service period. Year-long contracts subject to annual renewals and achieving specific performance benchmarks will also receive the discounted rate of \$130.50/hour.

All payments should be made to:

**The Labor Compliance Managers**  
(Tax I.D. Number = 86-1143922)

And forwarded to:

Lindley Robertson  
The Labor Compliance Managers  
1900 The Alameda, Suite 620  
San Jose, CA 95126

Please feel free to contact Lin Robertson at (408) 418-3325 or (408) 516-7238 if you have questions about the contents of this document.

Yours truly,

Lindley (Lin) Robertson  
Owner & Executive Director

Attachment: Team Resumes (Additional 5 Pages)

[www.thelaborcompliancemanagers.com](http://www.thelaborcompliancemanagers.com)

# The Labor Compliance Managers

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**LINDLEY ROBERTSON, MPA**  
Owner & Executive Director  
The Labor Compliance Managers  
Phone (408) 516-7238 or [lin.tlcm@gmail.com](mailto:lin.tlcm@gmail.com)  
[www.thelaborcompliancemanagers.com](http://www.thelaborcompliancemanagers.com)

## Relevant Experience

### Owner of the Labor Compliance Managers (TLCM) – Doing Business Since May 25, 2005

As an SBE, DBE, MBE and WBE, implement contract compliance procedures on public work projects subject to Federal Davis-Bacon, California State labor compliance, and other regulatory requirements. Oversee contract administration, direct project site inspections; audit contractor records; document audit findings and report results to project stakeholders as well as applicable local, State and/or Federal agencies; and work with legal counsel to prepare documentation for settlement meetings. Submit monthly, semi-annual and annual reports to Federal, State, and local agencies as needed. Provide trainings to staff of local government agencies and contractors, to upgrade overall compliance performance. Coordinate community forums that benefit project constituents. Continually research best practices to enhance services rendered.

Clients served since 2005 include:

- San Francisco Unified School District (Local Bond & State Bond Funded)
- San Francisco Bay Area Rapid Transit (State & Federally Funded Projects)
- San Francisco Public Utilities Commission (Federally Funded PLA Projects)
- County of Santa Clara (Hospital Demolition & Solar Bond Projects)
- County of Monterey (Multiple Public Works Redevelopment of Fort Ord)
- CURES – Growers Coalition in Central Valley (Multiple Prop 84 Projects)
- Monterey Bay Aquarium (Prop 84 Water Bond Project)
- AIMCO (San Francisco Housing Rehabilitation Project Oversight Projects)
- Mid-Peninsula Housing Corp. (Multiple Federally Funded Projects)
- AMCAL (Federally Funded Hayward BART Housing Project)
- Marina Community Partners (Multiple Development Projects at Fort Ord)
- City of King (Federal and Prop 84 State Water Bond Projects)
- City of Ukiah (Multiple Prop 84 State Water Bond Projects)
- Sonoma County Ecology Center (Multiple Prop 84 Water Bond Projects)
- Pittsburg Unified School District (Multiple PLA Projects)
- Live Oak School District (Multiple Local & State Bond Funded Projects)
- Franklin McKinley School District (Multiple Public Works)
- North Monterey County Unified School District (Multiple Public Works)
- Windsor Unified School District (Multiple Public Works)
- Children's Museum of Sonoma County (Prop 84 Water Bond Projects)

Training conferences as  
instructor or coordinator:

Fresno Training Institute (LCP Seminars for DIR – 2007-2008)  
HUD & DOL – Multiple Davis Bacon & Section 3 Trainings (2004 thru 2016)

### Contract Compliance Specialist - City of San Jose Public Works Dept. (2001 to 2004)

Monitor Housing, Redevelopment, Community Development Block Grant (CDBG), Water Pollution Control Plant, and Public Works Bond Construction contracts to ensure

compliance with Federal and State public contracting laws. Determine and issue craft classifications on construction contracts pursuant to Federal and State labor regulations. Train and assist City with proposal/bid/quote preparation to ensure compliance with funding policy regulations; MBE, WBE and DBE requirements; as well as non-discrimination laws. Continually provide project updates to management.

## Client References

**San Francisco Unified School District (SFUSD)** – We continually update procedures as needed to effectively manage the SFUSD's Labor Compliance Program. Our consulting contract which was initiated in October of 2006 has been renewed yearly and is still ongoing. We use Elation Systems to generate periodic reports to the District to show how well contractors are performing in the area of compliance. We also compare data attained on project site locations (inspections and worker interviews) to confirm the accuracy of contractor records being submitted online. Verification of what we have been doing for the District since 2006 can be attained from:

Joseph Grazioli  
Former Chief Financial Officer  
San Francisco Unified School District (SFUSD)  
(415) 971-6510 or [joegrazsf@aol.com](mailto:joegrazsf@aol.com)

**San Francisco Public Utilities Commission (SFPUC)** – Our agency currently also provides Davis Bacon Consulting Services as a Sub-Consultant to Parsons on projects that are funded by the EPA. We use Elation Systems to generate periodic reports to the District to show how well contractors are performing in the area of compliance. We also compare data attained on project site locations (inspections and worker interviews) to confirm the accuracy of contractor records being submitted online. Verification of what we have been doing for the SFPUC for the last 3 years can be attained from:

Todd Kyger  
Analyst  
SFPUC Workforce & Economic Program Services Bureau - Infrastructure Division  
(415) 554-3412 or [TKyger@sfwater.org](mailto:TKyger@sfwater.org)

**San Francisco Bay Area Rapid Transit (BART)** – Our agency was hired to provide labor compliance oversight services, including on projects that were subject to Federal Davis-Bacon regulations, for the Office of Civil Rights. During the three (3) years we have been retained, we completed project audits and monitored projects online using Elation Systems, as well as manually when contractors were only required to submit paper records to BART. We remain on-call when BART staff needs our support to confirm contractors are in compliance. Verification of what we have been doing for BART for the last 3 years can be attained from:

Ardis Graham  
Labor Compliance Manager - Office of Civil Rights  
San Francisco Bay Area Rapid Transit District (BART)  
(510) 464-6195 or [agraham@BART.gov](mailto:agraham@BART.gov)

**City of King** implemented the King's Station Apartments Project for which our agency completed all (Sub) Contract Administration Tasks and Labor Compliance Monitoring Services on the King's Station Apartments Project that is subject to Davis Bacon, Section 3, MBE, WBE, NEPA, OSHA and other Federal compliance requirements. Our agency created a project Set-Up & Completion procedures manuals and continues to audit the project annually to verify that

project loan repayments are being done by the Developer as required by the California Department of Housing & Community Development (HCD). Verification of what we have been doing for the City of King for the last 4 years can be attained from:

Steven Adams  
City Manager  
City of King  
(831) 385-3281 or [mpowers@kingcity.com](mailto:mpowers@kingcity.com)

**County of Monterey** implemented horizontal infrastructure projects requiring compliance with a court order that projects comply with prevailing wage payment requirements as part of a settlement between the Building Trades and the Marina Community Partners (consisting of local agencies and developers). We introduced the County to Elation Systems to monitor contractors assigned to the horizontal projects and continue to report their performance as it relates to prevailing wage compliance. The County also asked us to audit other labor compliance procedures being implemented on various vertical housing projects by a developer (Benchmark Communities). We conduct site visits not only on the horizontal project sites to verify that what contractors are reporting in Elation Systems is correct, but also go to the business location of the labor compliance consultant hired by Benchmark Communities to ensure they are following the required State prevailing wage enforcement procedures. Verification of what we have been doing for the County of Monterey for the last 4 years can be attained from:

G.H 'Nick' Nichols, P.E.  
Special Projects Engineer  
Land Use and Community Development Division  
Monterey County Resource Management Agency  
(831) 755-5386 or [NicholsN@co.monterey.ca.us](mailto:NicholsN@co.monterey.ca.us)

**Coalition for Urban & Rural Environmental Stewardship (CURES)** received Prop 84 Bond Funding from California's Waterboard to assist Farmers in the Central Valley to upgrade their irrigation systems in multiple counties. We wrote their labor compliance procedures manual which was ratified by the Department of Industrial Relations and monitored each individual project for a period of 3 years, beginning in 2012. Consulting services included providing continual training to farmers and/or contractors with no previous public works experience to ensure they were in compliance with the various State agencies involved in their projects. To confirm, feel free to call:

Tamara Watson  
Projects Coordinator  
Coalition for Urban & Rural Environmental Stewardship  
(530) 913-7037 or [tamarawatson.cures@gmail.com](mailto:tamarawatson.cures@gmail.com)

## **Educational Background**

San Jose State University:	MPA Degree (2005) – Thesis: Performance Management.
University of Hawaii:	Graduate level courses in English & Technical Writing (1994).
Stetson University:	Bachelors in Psychology (1983).
Additional Skills:	Multi-Lingual Investigator and Auditor; Expert in Davis Bacon and California Labor Code; Executive Director of TLMC operations in Northern California.

## The Labor Compliance Managers

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### **Shirley Trevino**

General Manager & Senior Compliance Auditor

Phone: (408) 607-1560

Email: [tizoc36@aol.com](mailto:tizoc36@aol.com)

<b>Relevant Experience</b>
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**Qualifications:**

Shirley has been a member of The Labor Compliance Managers since 2015. She retired after almost 15 years of service with the City & County of San Francisco in the Office of Labor Standards Enforcement.

Prior to working in San Francisco, Shirley worked in multiple roles at the Department of Industrial Relations for 20 years, including in the capacity of Senior Deputy Labor Commissioner. Prior to her tenure at the DIR, Shirley functioned as an investigator for the ALRB where she excelled as a human rights advocate that was able to successfully balance her observations in the field with information presented by landowner employers required to provide agricultural workers fair wages. Today, her community service includes working voluntarily with especially Hispanic youth at risk, potential candidates for (Pre)Apprenticeship opportunities in today's growing economy.

As General Manager, Shirley is responsible for enforcement procedures to best serve our clients with expert levels of professionalism. She is committed to public service and the delivery of tangible results as a team leader.

**Education:**

Santa Clara University, BA in Humanities with a Minor in Spanish, Graduated with Honors in 1972.

**Note:**

References can be furnished upon Request

# The Labor Compliance Managers

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Jordan Chow

(925) 297-7175 or [jordan.tlcm@gmail.com](mailto:jordan.tlcm@gmail.com)

## Résumé

### Related Experience

**Labor Compliance Monitor, Chinese Translator & Field Agent**

**September 2008 - Present**

**Translate** (from English to Chinese and vice versa) Notices to Employees, letters to specific employees regarding their employers who are under investigation for potential labor law violations, and outreach hand-out documents that are provide to workers on the job sites or forwarded to them in Chinese mailouts.

**Interview** Chinese workers to ensure they were aware of what they were entitled to in wages and benefits.

**Educate** targeted communities about what they are entitled in wages and benefits.

**Monitor** projects to ensure employers are in compliance with local, State and Federal labor laws.

**Audit** employer records being submitted electronically or in paper format to verify labor compliance. Also provide technical support to employers using software programs to submit records to local agencies.

**Inspect** project sites or business locations in conjunction with conducting worker interviews on-site.

**Advocate** for exploited workers and help them gain restitution pursuant to labor law standards.

### Education

**B.S., Health Science**

**December 2015**

San José State University, San José, CA. Health Science Major GPA: 3.9

**Dean's Scholars Award**

**Fall 2014 & Spring 2015**

Conferred to undergraduate students who have maintained a 3.65-or-higher GPA in at least two consecutive semesters

### **Notable Coursework:**

Health Policy, Health Program Planning, Epidemiology, Biostatistics, Medical Ethics, Human Anatomy, Human Physiology, Human Biology, Abnormal Psychology

### Complementary Experience

**Concert/House Manager**

**September 2013 – December 2015**

*San José State University School of Music & Dance*

- Managed ticket sales online and at the ticket booth
- Ushered, operated stage lights, and aided in set changes
- Checked concert programs for errors and typos

**Teaching Assistant for an undergraduate Health Science course**

**Fall 2015**

**(HS 162: Health Care Organization & Administration)**

- Acted as a resource for students in class and via e-mail
- Took proactive approaches to help every lecture run smoothly (e.g. made and distributed copies of lecture slides; tested electronic devices prior to actual classroom use; collaborated with the university's technological solutions team to become familiar with new lecture hall electronics, and to prepare for [potential] disruptions due to software and security updates)

### Additional Assets

Adept at using Elation Systems, fluent in Chinese, and can also converse through American Sign Language.

# The Labor Compliance Managers

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## Janice N Taylor

Office Management, A/R, and Payroll Administration

[janice.tlcm@gmail.com](mailto:janice.tlcm@gmail.com)

(510) 610-7030

### Education and Certifications

Heald College, Roseville, CA

Diploma in Medical Insurance Billing & Coding

### Abilities and Skills

- |                                   |                            |                             |
|-----------------------------------|----------------------------|-----------------------------|
| ✓ Medical Terminology             | ✓ Microsoft Suite Programs | ✓ Health Care Reimbursement |
| ✓ ICD-9, ICD-10, CPT, HCPCS Codes | ✓ Provation                | ✓ HIPAA Certified           |
| ✓ Medical Insurance               | ✓ Advantix                 | ✓ KP-Health Connect         |
| ✓ Type 45 WPM                     | ✓ Medical Software         | ✓ Insyst                    |
| ✓ Centricity                      | ✓ Claims Submission        | ✓ Ecura                     |
| ✓ Medical Office Manager          | ✓ Citrix                   |                             |

### Professional Experience

The Labor Compliance Managers

**Office Manager**

March 2015-Present

- Maintains Billing Procedures
- Efficiently Processes Payroll
- Maintain Employee Records & Files

East Bay Endoscopy / Sutter Health

January 2011-September 2014

**Patient Account Rep. / Unit Coordinator**

- Patient Registration/ Patient Interviews
- Reviewed & Prepared claims
- Insurance Verification, Billing, and Collections
- Analyzed MediCal Billing Issues
- Monitored Untimely Accounts

Kaiser Permanente San Francisco, CA

September 2009 – March 2010

**Financial Administrator**

- Implementation of Quality Control Voicemail Data Sheet.
- Analyzed and process bills generated by KPHC or ARBIS.
- Analyzed patient medical records to identify all billable items when applicable.
- Worked cooperatively with other billers.
- Maintained statistical and billing records.

Alameda County Behavioral Health Care Services, Oakland, CA

May 2009 – August 2009

**Billing Clerk**

- Contacted providers about updating credentialing and contract obligations.
- Efficiently batched claim forms and inputted them into Insyst data system for processing.
- Accurately reviewed chart documentation for federal mandated audits.
- Thoroughly checked patient eligibility for Medicare and Medi-Cal (TARS).
- Corrected claims to be sent out for payment when needed.
- Served as a Patient Services Technician in Financial Services (Case Management).

Taylor Made Beauty Studio, Castro Valley, CA  
**Managing Director-Owner**

August 2001 – Present

- Close and prepare monthly financial statements and audit reports. Perform monthly account reconciliations and monitor general ledger transactions.
- Accurately verify client billing information to ensure payments are processed accurately.
- Efficiently perform payroll processing and successfully manage Accounts Receivable and Accounts Payable base.
- Deliver excellence in customer service by building client relationships in a professional manner.

# The Labor Compliance Managers

May 10, 2017

April Shabazz  
Management Analyst  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608-3517

Re: Service Fee Proposal for Labor Enforcement Services

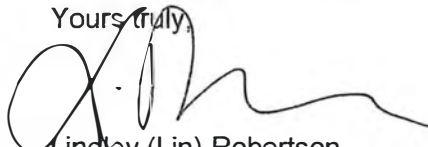
Dear April,

Below is a summary of fee estimates for enforcement services. While I will be leading our team and responding to Spanish speakers together with Ms. Trevino, Jordan Chow will be on hand to communicate with your Chinese constituents. Janice Taylor will track performance procedures to ensure that you receive monthly reports detailing how benchmark goals are being met. She will also be on hand to assist you directly. TLMCM will be on hand to meet with City staff, community members, as well as other stakeholders whenever needed.

City of Emeryville Annual Local Compliance Enforcement Tasks on & off Location	The Labor Compliance Managers (TLMCM)							
	Staff Name and or Classification	Lin Robertson (Spanish)	Shirley Trevino (Spanish)	Jordan Chow (Chinese)	Janice Taylor (Fair Workweek)	Average Total Hrs/Month	Average Fees Per Month	Estimated Costs for 12 Months
	Actual Base Hourly Rate	\$ 130.50	\$ 130.50	\$ 130.50	\$ 130.50			
Responding to Intake Calls in English, Spanish or Chinese	Hours	8	8	5	8	29	\$ 3,784.50	\$ 45,414.00
Tracking of Enforcement Procedures	Hours	0	8	0	10	18	\$ 2,349.00	\$ 28,188.00
Completing Monthly Reports to the City of Emeryville	Hours	5	0	0	0	5	\$ 652.50	\$ 7,830.00
Comprehensive Audits to Verify Required Restitution & Penalties, including of Minimum Wage Payment Performances from 2015 through 2018	Hours	15	10	3	5	33	\$ 4,306.50	\$ 51,678.00
Attending Stakeholder Meetings and Community Forums & General Communications with City	Hours	3	3	2	3	11	\$ 1,435.50	\$ 17,226.00
<b>Grand Total Estimates</b>						<b>96</b>	<b>\$ 12,528.00</b>	<b>\$ 150,336.00</b>

Please feel free to contact me at (408) 516-7238 if you have any questions or need additional information from The Labor Compliance Managers.

Yours truly,

  
Lindley (Lin) Robertson  
Owner & Executive Director

[www.thelaborcompliancemanagers.com](http://www.thelaborcompliancemanagers.com)