

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

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

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

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

1 F. CAUTION: Consultant shall not begin work until this
2 Agreement has been signed by both parties and until Consultant's evidence of
3 insurance has been delivered to and approved by the City.

4 2. TERM. The term of this Agreement shall commence at midnight on
5 January 5, 2015, and shall terminate at 11:59 p.m. on January 4, 2016, unless sooner
6 terminated as provided in this Agreement, or unless the services or the Project is
7 completed sooner. The parties have the option to extend the term for one additional one
8 year term.

9 3. COORDINATION AND ORGANIZATION.

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

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

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

1 Consultant's compensation, b) City will not secure workers' compensation or pay
2 unemployment insurance to, for or on Consultant's behalf, and c) City will not provide and
3 Consultant is not entitled to any of the usual and customary rights, benefits or privileges
4 of City employees. Consultant expressly warrants that neither Consultant nor any of
5 Consultant's employees or agents shall represent themselves to be employees or agents
6 of City.

7 5. INSURANCE.

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

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

1 against City, its boards and commissions, and their officials, employees
2 and agents.

3 (b) Workers' Compensation insurance as required by the California
4 Labor Code and employer's liability insurance in an amount not less than
5 \$1,000,000. This policy shall be endorsed to state that the insurer waives
6 its right of subrogation against City, its boards and commissions, and their
7 officials, employees and agents.

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

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

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

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

26 D. If this coverage is written on a "claims made" basis, it must
27 provide for an extended reporting period of not less than one hundred eighty (180)
28 days, commencing on the date this Agreement expires or is terminated, unless

1 Consultant guarantees that Consultant will provide to the City evidence of
2 uninterrupted, continuing coverage for a period of not less than three (3) years,
3 commencing on the date this Agreement expires or is terminated.

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

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

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

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

27 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
28 contemplates the personal services of Consultant and Consultant's employees, and the

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

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

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

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

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

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

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

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

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

4 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

23 15. LAW. This Agreement shall be governed by and construed pursuant
24 to the laws of the State of California (except those provisions of California law pertaining
25 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and
26 regulations of and obtain all permits, licenses, and certificates required by all federal,
27 state and local governmental authorities.

28 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,

1 constitutes the entire understanding between the parties and supersedes all other
2 agreements, oral or written, with respect to the subject matter in this Agreement.

3 17. INDEMNITY. Consultant shall, with respect to services performed in
4 connection with this Agreement, indemnify and hold harmless City, its Boards,
5 Commissions, and their officials, employees and agents (collectively in this Section,
6 "City") from and against any and all liability, claims, demands, damage, loss, causes of
7 action, proceedings, penalties, costs and expenses (including attorney's fees, court
8 costs, and expert and witness fees) (collectively "Claims" or individually "Claim"). Claims
9 include allegations and include by way of example but are not limited to: Claims for
10 property damage, personal injury or death arising in whole or in part from any negligent
11 act or omission of Consultant, its officers, employees, agents, sub consultants or anyone
12 under Consultant's control (collectively "Indemnitor"); willful misconduct;
13 misrepresentation; and Claims by any employee of Indemnitor relating in any way to
14 worker's compensation. Independent of the duty to indemnify and as a free standing duty
15 on the part of Consultant, Consultant shall defend City and shall continue this defense
16 until the Claim is resolved, whether by settlement, judgment or otherwise. No finding or
17 judgment of negligence, fault, breach or the like on the part of Indemnitor shall be
18 required for the duty to defend to arise. Consultant shall notify City of any claim within
19 ten (10) days. Likewise, City shall notify Consultant of any Claim, shall tender the
20 defense of the Claim to Consultant, and shall assist Consultant, as may be reasonably
21 requested, in the defense.

22 18. AMBIGUITY. In the event of any conflict or ambiguity between this
23 Agreement and any Exhibit, the provisions of this Agreement shall govern.

24 19. NONDISCRIMINATION.

25 A. In connection with performance of this Agreement and subject
26 to applicable rules and regulations, Consultant shall not discriminate against any
27 employee or applicant for employment because of race, religion, national origin,
28 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or

1 disability. Consultant shall ensure that applicants are employed, and that
2 employees are treated during their employment, without regard to these bases.
3 These actions shall include, but not be limited to, the following: employment,
4 upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or
5 termination, rates of pay or other forms of compensation, and selection for training,
6 including apprenticeship.

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

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

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

27 "During the performance of a contract with the City of Long Beach,
28 the Consultant will provide equal benefits to employees with spouses and its

1 employees with domestic partners. Additional information about the City of
2 Long Beach's Equal Benefits Ordinance may be obtained from the City of
3 Long Beach Business Services Division at 562-570-6200."

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

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

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

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

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

27 22. COPYRIGHTS AND PATENT RIGHTS.

28 A. Consultant shall place the following copyright protection on all

1 Data: © City of Long Beach, California ____, inserting the appropriate year.

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

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

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

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

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

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

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

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

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

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

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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.

HELLMUTH, OBATA & KASSABAUM, INC., a Missouri corporation

_____, 2015

By 
Name Harold Russell Drinkwater
Title Managing Partner

_____, 2015

By 
Name STEVEN D. MORTON
Title SUP

"Consultant"

CITY OF LONG BEACH, a municipal corporation

March 13, 2015

By 
City Manager
Assistant City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

"City"

This Agreement is approved as to form on March 9,

2015.

CHARLES PARKIN, City Attorney

By 
Deputy

EXHIBIT “A”

Scope of Work



Consulting Service Proposal

With North America Terms and Conditions

*Long Beach Civic Center Complex –
HOK Planning Services*

City of Long Beach



August 1, 2014

[Ms. Amy Bodek]
[AICP, Director]
[Long Beach Development Services]
[333 W. Ocean Blvd.]
[Long Beach, CA 90802]

Re: CONSULTING SERVICE PROPOSAL WITH NORTH AMERICA TERMS AND CONDITIONS
Project: [Long Beach Civic Center - HOK Planning Services]

Dear Ms. A. Bodek:

Thank you for the opportunity to submit this Consulting Service Proposal with Standard Terms and Conditions. This document confirms recent discussions between our representatives concerning the services HOK will perform for the Project, the compensation you will pay and the terms governing our relationship. With your signature below, this document will form a contract ("**Agreement**") between your company, [CITY OF LONG BEACH] located at [333 W. Ocean Blvd., Long Beach, CA 90802] (referred to as "**Client**") and [HOK, INC.] located at [9530 Jefferson Blvd, Culver City, CA 90232] (referred to as "**HOK**").

This Agreement incorporates by reference **Exhibit-A, Compensation, Services & Schedule** dated August 1, 2014 and **Exhibit-B, North America Terms and Conditions** dated October 2010. Following execution of this Agreement, HOK will perform the Services described in Exhibit-A and Client will pay the Compensation described in Exhibit-A. The terms stated in Exhibit-B will govern the performance of Services, payment of Compensation, and all other matters between our organizations related to the Project.

This Proposal is valid for only thirty (30) days from the date above. Please indicate your acceptance of the foregoing by your signature below and return to my attention a signed copy of this Agreement.

Sincerely,

[SIGNATORY NAME, TITLE]

Enclosures: Exhibit-A, Compensation, Services & Schedule
Exhibit-B, North America Terms and Conditions
Exhibit-C, Employees, Roles, Hourly Billing Rates

Accepted for Client:

By: _____
(Signature)
Amy Bodek, AICP, Director

(Printed Name and Title)

EXHIBIT-A COMPENSATION, SERVICES & SCHEDULE

Dated: August 1, 2014

A1.0 PROJECT INFORMATION

A1.1 "Project Information" means the information stated in this Article and forms the basis of the Services, Compensation and Schedule stated in this Exhibit. If the Project Information is modified, the Services, Schedule and/or Compensation will be adjusted as necessary to accommodate the change.

A1.2 "Project" is described as:

HOK has been requested by the City of Long Beach to provide professional consulting services for the proposed Civic Center Public Private Partnership (P3) project. As the City's consultant, HOK will assist the City with the entitlements process for the work focused on the City's Public Library, Port HQ and the City Hall Administration Building, as the Proposer submits their designs for review and approvals.

A1.3 "Project Site" means the physical location of the Project as follows:

Long Beach Civic Center City Hall, 333 W. Ocean Blvd, Long Beach, CA 90802

A1.4 "Subconsultants" are the following third-parties retained by HOK to perform a portion of the Basic Services under this Agreement:

| <u>Discipline:</u> | <u>Subconsultant:</u> |
|--------------------|-----------------------|
| N/A | N/A |

A2.0 COMPENSATION

A2.1 "Basic Compensation" is the fee Client will pay HOK for performing Basic Services as follows (*select one*):

- The stipulated sum of: see below (see below) distributed on a monthly basis in accordance with the following schedule:
- On an hourly basis in accordance with the Hourly Billing Rates stated in Section A2.3; up to the maximum sum of: one hundred eighty seven thousand eight hundred eighty eight and none (\$187,888.00).

A2.2 "Additional Compensation" is the additional fee Client will pay HOK for performing Additional Services described under Section A3.2A3-2. Additional Compensation will be mutually agreed to in writing by HOK and Client. In the absence of mutual agreement, Additional Compensation for HOK is determined by multiplying the number of hours required to perform Additional Services, multiplied by the applicable Hourly Billing Rates stated in Section A2.3. Additional Compensation for a Subconsultant is determined by multiplying the number of hours required to perform Additional Services, multiplied by the applicable hourly rate stated in the contract between HOK and the Subconsultant.

A2.3 "Hourly Billing Rates" are the billing rates for HOK personnel stated below and the billing rates specified in HOK's contracts with its Subconsultants. Hourly Billing Rates are adjusted annually in accordance with HOK's normal review practices.

| <u>Billable Employee:</u> | <u>Hourly Billing Rate:</u> |
|---------------------------|-----------------------------|
| See attached | see attached |

A2.4 "Reimbursable Expenses" are paid in addition to Compensation at the rate of one and ten-one hundredths (1.10100) times the actual cost of Reimbursable Expenses. Reimbursable Expenses include any expense reasonably incurred by HOK and/or its Subconsultants in performance of this Agreement. Reimbursable Expenses include, but are not limited to, the following:

- .1 Expense of travel in connection with the Project including economy class airfare, hotel accommodations, meals, ground transportation and other reasonable expenses;
- .2 Expense of reproduction, transmission, postage and handling of Drawings, Specifications and other documents; and
- .3 Any other fee, cost or expense reasonably incurred by HOK and/or its Subconsultants in the performance Services under this Agreement.

A3.0 SERVICES

A3.1 "Basic Services" consist of those described below and include the Basic Services of the Subconsultants identified in Section A1.4.

1. HOK is providing professional consulting services for the proposed Civic Center Public Private Partnership (P3) project. As the City's consultant, HOK will assist the City with the entitlements process as the Proposer submits their design for review and approvals.
2. Planner to assist City staff with the entitlement process for the Long Beach Civic Center project focused on the City's Public Library, Port HQ and the City Hall Administration Building.
3. This proposal assumes one (1) pre-application meeting with follow-up coordination, review of initially submitted Site Plan Submittal with follow-up coordination, and one (1) review of the Final Site Plan Submittal in preparation for the Planning Commission Hearing. Any re-submittals of the Site Plan Review, which indicate a significant deviation from the original design concept, through no fault of HOK, beyond what is indicated in this proposal is considered additional scope.
4. The proposal assumes assistance with the coordination of comments associated with the CEQA process as it relates to the design.
5. All review comments shall be issued in written format and as mark-ups on drawings (if as applicable).
- 4.6. The total allowance for meetings in Long Beach, CA is sixteen (16) with a duration of one to two days. All eight (8) milestone events itemized in Section 4.0 SCHEDULE are assumed to be in Long Beach, CA. Coordination of Site Plan Review comments shall be conducted in person, as required.

5.7. Planning Professionals - Roles and Responsibilities

- 6.8. **Senior Planner** – Review bidder submitted proposals and evaluate against existing planning requirements and policies established by the City of Long Beach. Coordinate and liaise with City representatives to review and comment on the bidder submission with regard to its compliance with all applicable governance. Serve on an 'as need' basis between milestone events to maintain project related correspondence, requests and activities. Scale up to a nearly 'full time' status as appropriate to prepare, execute and document work related to the milestone events and the approvals process.
- 7.9. **Principal Planner** – Review the work of Senior Planner as needed to assure City's objectives are met by the Senior Planner and the Bidder's submittal. Final verification and quality review of Senior Planner's work and deliverables. Lead presenter and participant representing the City as needed in public forum and internal meetings.
- 8.10. **Principal Architect** – Review and comment for the architecture design and construction aspects of the Bidder's submission documents. Co-presenter and participant representing the City as needed in public forum and internal meetings.

A3.2 "Additional Services" are services HOK and/or its Subconsultants are qualified to perform, but are not specifically identified as Basic Services or Excluded Services in this Exhibit. HOK will perform Additional Services if requested by the Client or if otherwise required for the Project. Upon recognizing the need to perform the following Additional Services, HOK will notify Client with reasonable promptness and explain the facts and circumstances giving rise to the need. Additional Services include, but are not limited to, the following:

- .1 Services required to revise Drawings, Specifications or other documents necessitated by:
 - .1 A change in the Project Information, previous instructions of the Client or approvals given by the Client;
 - .2 The enactment or revision of codes, laws or regulations subsequent to commencement of Services under this Agreement;
 - .3 Client's failure to provide timely decisions, approvals or information; or
 - .4 A material change in the Project including, but not limited to, size, quality, complexity, the schedule or budget.
- .2 Providing services of design consultants other than the Basic Services performed by the Subconsultants identified in the Project Information.
- .3 Providing services designated in other parts of this Agreement as Additional Services
- .4 If Basic Services are not completed within the time period stated in Exhibit-A, through no fault of HOK, Basic Compensation will be adjusted as necessary to compensate HOK and its Subconsultants for the additional time required to complete Basic Services.

A3.3 **"Excluded Services"** are not required of HOK or its Subconsultants, unless otherwise agreed to in writing by HOK and Client. Excluded Services consist of any service outside of HOK's expertise and/or not ordinarily furnished in accordance with generally accepted practices of other design professionals performing services similar to those under this Agreement. Excluded Services include, but are not limited to, the following:

- .1 Services related to the detection, removal, disposal or otherwise rendering harmless Hazardous Materials.
- .2 Geotechnical engineering and soil analysis.
- .3 Cost estimating, quantity surveying and other similar services.
- .4 Design Services to design, create and/or produce drawings, specifications, reports, calculations, and renderings, etc. intended for the construction of the Proposer's design.

A4.0 **SCHEDULE**

"Schedule" is the time period(s) for performing the Basic Services as follows:

- The identified hours for HOK Planner to assist the City with the Proposer's Pre-application meetings through the Planning Commission, and Council Hearing.
- The current project schedule is approximately sixteen (16) months with an end date of December 2015.
- Eight (8) Milestone events and dates assumed:
 - Preferred Bidder Due Diligence
 - Pre-application meeting with Bidder
 - Site Plan Submittal Review
 - Completion of Site Plan Submittal Review
 - CEQA & SD Submittal Review
 - 50% DD Submittal Review
 - Planning Commission Meeting
 - City Council Hearing

[END OF EXHIBIT – A]

EXHIBIT-B

NORTH AMERICA TERMS AND CONDITIONS

Dated: October - 2010

B1.0 AGREEMENT

B1.1 This Agreement constitutes the entire contract between HOK and Client for consulting services and supersedes all prior and contemporaneous communications, representations and contracts, oral and written, with respect to its subject matter. Client warrants to HOK that in entering this Agreement, it is not relying on any earlier representations made by or on behalf of HOK.

B2.0 SERVICES

B2.1 "Services" refers to all Basic and Additional Services as follows:

- .1 Basic Services. HOK will perform the Basic Services described in Exhibit-A.
- .2 Additional Services. HOK will perform the Additional Services described in Exhibit-A if requested by the Client or if otherwise required for completion of the Project.
- .3 Excluded Services. HOK has no obligation to perform any Excluded Services described in Exhibit-A, unless otherwise agreed to in writing by HOK and Client.

B2.2 Standard of Care. HOK has a duty to perform Services with reasonable standards of care, skill and diligence ordinarily required of other professionals performing the same or similar services on projects of similar size and complexity.

B3.0 COMPENSATION

B3.1 "Compensation" refers to all Basic and Additional Compensation as follows:

- .1 Basic Compensation. For performance of Basic Services, Client pays HOK the Basic Compensation stated in Exhibit-A.
- .2 Additional Compensation. For performance of Additional Services, Client pays HOK the Additional Compensation stated in Exhibit-A.
- .3 Reimbursable Expenses. In addition to Compensation, Client pays all Reimbursable Expenses described in Exhibit-A.

B4.0 SCHEDULE

B4.1 "Schedule" refers to the time period stated in Exhibit-A for performance of the Services. HOK will perform the Services in accordance with the Schedule described in Exhibit-A or, in the absence of a Schedule, within a reasonable time period. The Schedule will not be exceeded by HOK or Client, except for reasonable cause and the time periods stated in the Schedule. The Schedule will extend automatically to accommodate any delay caused by Force Majeure and/or any circumstance beyond the reasonable control of a party.

B5.0 PAYMENTS

- B5.1 Presentation and Review of Invoices. Invoices for Compensation and Reimbursable Expenses are presented monthly and include amounts incurred by HOK and its Subconsultants in the previous month. Client will review the invoices promptly and notify HOK in writing of any inaccuracies. If an inaccuracy is discovered and notice is provided to HOK, Client will pay on time the full amount of the invoice not in dispute within the time period stated below. If HOK does not receive a notice of inaccuracies within ten (10) days following the date of the invoice, an Invoice is deemed accurate and the amount stated in the invoice is deemed payable to HOK in full. Payments due HOK and unpaid under this Agreement accrue a late penalty at the rate of twelve percent (12%) per annum or the highest legal rate, whichever is lower. Late penalties accrue on the first (1st) day following the date payment is due and continues until payment is received in full.
- B5.2 Time Period for Payment. Client has a duty to pay all invoices within thirty (30) days following the date of the invoice.
- B5.3 Wire Transfer. All payments will be by wire transfer. HOK will include instructions for wire transfer with its first invoice or by subsequent correspondence.
- B5.4 Taxes. Except for tax on income imposed by tax authorities with jurisdiction over the HOK office entering into this Agreement, all Compensation and Reimbursable Expenses are net of other taxes including, by way of example

and not limitation, all value added, withholding, service, sales and use, and other similar taxes. All payments to be made by Client under this Agreement will be increased by the addition of applicable value added, withholding, service, sales and use, and other similar taxes, if any.

Withholding Payments. No deductions will be made from Compensation or Reimbursable Expenses on account of claims of penalty, liquidated damages, taxes, or errors or omissions in performance of Services by HOK and its Subconsultants.

B6.0 SUBCONSULTANTS

B6.1 Unless specifically stated to the contrary in Exhibit-A, the services of third party design professionals ("Subconsultants") is not included in HOK's Services or Compensation. If HOK and Client agree in writing that HOK will retain any Subconsultants under this Agreement, Client will pay HOK Additional Compensation at the rate of one and ten one hundredths (1.10) times the actual fees charged by such Subconsultants.

B7.0 CHANGE

B7.1 Modification of the terms and conditions of this Agreement will occur only by written instrument signed by both HOK and Client. No subsequent agreement between HOK and Client is binding on either party unless reduced in writing and signed by both parties' authorized representatives.

B8.0 CLIENT RESPONSIBILITIES

B8.1 Client Requirements. Client will provide full services, data, decisions, directions, approvals and other information required by HOK for performance of the Services including, but not limited to, information related to Client's requirements, needs, goals, objectives, schedule, budget, financial expectations, constraints, limitations, performance criteria, standards, expectations, relationships, flexibility, expandability, systems, personnel, processes, site and other relevant criteria.

B8.2 Existing Facility Analysis. If the Services involve analysis of existing facilities, Client will provide as-built/ record drawings, floor plans, diagrams, lay-outs, specifications and other documentation relevant to such facility. Client has a duty to notify HOK of any conditions beyond those which are apparent by non-intrusive observations of the existing facility. HOK has no obligation to perform destructive testing or investigate concealed or unknown conditions.

B8.3 Land Use Analysis. If the Services involve land use analysis, Client will furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, as well as a written legal description of the site. The surveys and legal information include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey will be referenced to a Project benchmark. Client will provide all such services, data, decisions, directions, approvals and other information at no cost to HOK and in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Services.

B8.4 Sufficiency of Information. HOK is entitled to rely on the accuracy and completeness of all services, data, decisions, directions, approvals and other information furnished by Client under this Agreement. Client has a duty to notify HOK in writing if it becomes aware of any inaccuracy in the information furnished to HOK during performance of the Services.

B8.5 Client's Other Consultants. Client will furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by HOK.

B8.6 Meeting Facilities. Client will provide appropriate facilities for meeting and conferring with Client and Client's personnel to the extent required to complete the Services.

B9.0 DELIVERABLES

B9.1 The drawings, specifications and other documents prepared by HOK under this Agreement ("Deliverables") are instruments of service for use solely with respect to the purpose for which they are prepared. HOK is the author of the Deliverables and retains all common law, statutory and other reserved rights, including all copyrights thereto. The Client may retain copies, including reproducible copies, of the Deliverables for information and reference. The Deliverables will not be used by the Client or others for purposes unrelated to this Agreement without HOK's prior written consent. In the event of any unauthorized reuse of the Deliverables by or through the Client, the Client will indemnify, defend, and hold HOK harmless from any and all claims, causes, damages, losses, liability and expenses, including but not limited to attorney's fees arising out of said use. Client will give prompt written notice to HOK if Client becomes aware of any deficiency in the Deliverables.

B10.0 TERMINATION AND SUSPENSION

- B10.1 Termination. Either party may terminate this Agreement on the seventh (7th) calendar day following written notice of termination for cause or for convenience. Client will pay Compensation and Reimbursable Expense incurred on or before the effective date of termination plus reasonable costs incurred by HOK as a result of termination. HOK will submit a final invoice through the effective date of termination which Client will pay in accordance with this Agreement.
- B10.2 Suspension for Non-payment. Failure by Client to make payments as required by this Agreement is substantial nonperformance and cause for either termination or suspension. If Client fails to timely pay HOK amounts due, HOK may upon thirty (30) days prior written notice to Client suspend performance of services under this Agreement. Suspension automatically takes effect on the thirty first (31st) day following the date of notice required by this Section. HOK may terminate this Agreement if a suspension under this Section exceeds ninety (90) consecutive days.
- B10.3 Payment upon Termination or Suspension. Client must pay all Compensation and Reimbursable Expenses incurred prior to the date of termination or suspension. If the Project is suspended, Compensation will be equitably adjusted to provide for reasonable fees, costs and expenses incurred in the interruption and resumption of Services when the Project is resumed. HOK has no obligation to recommence Services following suspension until each account with Client is brought current.

B11.0 DISPUTE RESOLUTION

- B11.1 The following definitions apply: (1) "**Applicable Law**" means the laws of the state/province and country with jurisdiction over the HOK office designated in the preamble to this Agreement; (2) "**Dispute**" means any controversy, claim, cause of action, demand or other dispute arising out of or relating to this Agreement or the Project; (3) "**Forum**" means the American Arbitration Association ; (4) "**Rules**" mean the construction industry rules of the Forum, current on the earliest date notice of a Dispute is given or received by a party; and (5) "**Venue**" means the city, state/province and country of the HOK office designated in the preamble to this Agreement.
- B11.2 Applicable Law, Venue & Jurisdiction. Applicable Law controls the interpretation and performance of this Agreement, exclusive of any conflict of law provisions. Venue is the place where all mediation, arbitration, litigation and other dispute resolution proceedings under this Agreement will occur and the courts of this location have exclusive jurisdiction over any litigation proceedings related to this Agreement. HOK and Client mutually submit to personal jurisdiction of such courts.
- B11.3 Disputes. Any controversy, claim, cause of action, demand or other dispute arising out of or relating to this Agreement (collectively "**Disputes**") must be referred to voluntary, nonbinding mediation to be conducted by a mutually acceptable mediator as a condition precedent to arbitration or litigation in accordance with this Article.
- B11.4 Arbitration. Disputes which are not resolved through mediation and the total amount in controversy between HOK and Client (exclusive of attorneys' fees) is equal to or less than USD 100,000 are finally resolved by arbitration administered by the Arbitration Forum in accordance with the Rules, except to the extent otherwise provided in this Agreement. A demand for arbitration must be filed in writing with the other party and with the Arbitration Forum and made within a reasonable time after the events, conditions or circumstances giving rise to the Dispute occur; provided, however, in no event will the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations. HOK and Client will mutually agree to an arbitrator within ten (10) days following a party's demand for arbitration or, if the parties are unable to agree within such time period, the Arbitration Forum will appoint an arbitrator in accordance with the Rules. Arbitration proceedings will commence no more than thirty (30) days from the date the arbitrator is appointed. No arbitration arising out of or relating to this Agreement will include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent of HOK and Client. The award rendered by the arbitrator is final, and judgment may be entered upon it in accordance with the prevailing arbitration law governing enforcement of arbitrational awards in any court having jurisdiction over the assets of a party. Every agreement to arbitrate is specifically enforceable in accordance with Applicable Law in any court having jurisdiction over the party against whom enforcement is sought.
- B11.5 Litigation. Disputes which are not resolved through mediation and the total amount in controversy between HOK and Client (exclusive of attorneys' fees) is greater than USD 100,000 are finally resolved by litigation in any federal, state or provincial court of competent jurisdiction residing in the Venue. HOK and Client mutually submit to personal jurisdiction of such courts.
- B11.6 Agreed Remedies. Client and HOK mutually agree to waive all rights against each other for consequential and indirect damages of every kind resulting from the performance or non-performance of this Agreement or related in any way to the Project. Consequential damages include, by way of example and not limitation, damages resulting from loss of use, profit, financing, future business, rent and reputation; hold over costs;

and other speculative damages not directly caused by the negligence or breach of contract of a party to this Agreement. Subject to this waiver, HOK's total aggregate liability to Client for any and all damages resulting from this Agreement and the Project will never exceed the lesser of: (1) the aggregate compensation paid to HOK on the date the events giving rise to the claim for damages occur; or (2) the maximum sum of One Million United States Dollars (USD 1,000,000).

B12.0 MISCELLANEOUS

- B12.1 Mutually Binding. Client and HOK, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Client nor HOK may assign this Agreement without the written consent of the other.
- B12.2 Severability. If any provision or part of a provision of this Agreement is determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable law or court order, such determination will not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of this Agreement, which remain in full force and effect as if the unenforceable provision or part were deleted.
- B12.3 No Waiver. The failure of either party to insist, in any one or more instances, on the performance of any obligation or right under this Agreement does not constitute a waiver or relinquishment of such obligation or right with respect to future performance.
- B12.4 Disclosure of Interest. HOK Product Design, LLC ("HOK-PD"), an affiliate of HOK, has participated in the design of certain products that may be recommended by HOK during performance of this Agreement. HOK may specify a product design by HOK-PD that provides value to the Project. HOK, and in some instances, its employees, may receive a design royalty or other indirect benefit from another source. Client is solely responsible for deciding whether to use such product or request an alternative. **ALL EXPRESS OR IMPLIED WARRANTIES RELATED TO ANY PRODUCT SPECIFIED BY HOK OR DESIGNED BY HOK-PD ARE DISCLAIMED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS OF PURPOSE.**
- B12.5 Notices & Representatives. Notices are sufficient if in writing and delivered by hand, email or by regular mail to the authorized representative of the other party; notices sent by regular mail will also be transmitted by facsimile or email at the time of mailing. Unless otherwise designated in writing, the signatories to this Agreement are the parties' authorized representative for all purposes.
- B12.6 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which is deemed an original. When proving this Agreement, it is only necessary to produce the counterpart signed by the party against whom such proof is presented.

[END OF EXHIBIT - B]

EXHIBIT “B”

Rates or Charges

HOK PERSONNEL HOURLY RATES

| Position | Hourly Rate |
|---------------------------------|-------------|
| Design Director | \$305.00 |
| Sr. Landscape Designer | 229.00 |
| Project Manager | 173.00 |
| Intermediate Landscape Designer | 130.00 |
| Principal-in-Charge | 335.00 |
| Intermediate Planner | 130.00 |

EXHIBIT “C”

City’s Representative:

Director of Development Services or Designee

EXHIBIT “D”

Materials/Information Furnished: None