

1 under this Agreement provided, however, that access to City documents, records,
2 and the like, if needed by Consultant, shall be available only during City's normal
3 business hours.

4 C. City shall pay Consultant monthly following receipt from
5 Consultant and approval by City of invoices showing the services performed and
6 the name of the Project. Consultant shall certify on the invoices that Consultant
7 has performed the services in full conformance with this Agreement and is entitled
8 to receive payment. Each invoice shall be accompanied by a progress report
9 indicating the progress to date of services performed and covered by the invoice,
10 including a brief statement of any Project problems and potential causes of delay
11 in performance, and listing those services that are projected for performance by
12 Consultant during the next invoice cycle.

13 2. TERM. The term of this Agreement shall commence on March 1,
14 2014, and shall terminate on February 28, 2015, unless sooner terminated as provided in
15 this Agreement, or unless the services to be performed under this Agreement or the
16 Project is completed sooner.

17 3. COORDINATION AND ORGANIZATION. Consultant shall
18 coordinate performance under this Agreement with City's representative and shall advise
19 and inform City's representative of the work in progress on the Project in sufficient detail
20 so as to assist City's representative in making presentations and in holding meetings for
21 the exchange of information. For purposes of this Agreement, the City's key employee is
22 Amy Bodek.

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

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

8 5. INSURANCE. Consultant shall procure and maintain at Consultant's
9 expense for the duration of this Agreement from an insurance company that is admitted
10 to write insurance in California or that has a rating of or equivalent to A:VIII by A.M. Best
11 Company the following insurance:

12 (a) Commercial general liability insurance or self-insurance equivalent in
13 scope to ISO CG 00 01 11 85 naming the City, the City of Long Beach, its boards,
14 officials, employees, and agents as additional insureds from and against claims,
15 demands, causes of action, expenses, costs, or liability for injury to or death of persons,
16 or damage to or loss of property arising out of or in any manner connected with
17 Consultant's operations or performance under this Agreement in an amount not less than
18 One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000)
19 general aggregate.

20 (b) Professional Liability or Errors and Omissions Liability in an amount
21 not less than \$1,000,000 per claim if you are providing accounting, actuarial,
22 architectural, auditing, brokerage, computer programming, consulting, counseling,
23 daycare, engineering, environmental, landscape architectural, legal, medical, nursing,
24 pastoral, surveying, real estate, soils engineering, or other licensed professional services.

25 (c) Workers' Compensation insurance as required by the Labor Code of
26 the State of California.

27 Any self-insurance program or self-insured retention must be separately
28 approved in writing by City and shall protect City, the City of Long Beach, its boards,

1 officials, employees and agents in the same manner and to the same extent as they
2 would have been protected had the policy or policies not contained retention provisions.
3 Each insurance policy shall be endorsed to state that coverage shall not be suspended,
4 voided or canceled by either party except after thirty (30) days' prior written notice to City
5 (ten (10) days only for nonpayment of premium), and shall be primary and not
6 contributing to any other insurance or self-insurance maintained by City.

7 Consultant shall deliver to City certificates of insurance and original
8 endorsements for approval as to sufficiency and form prior to the start of performance
9 under this Agreement. The certificate and endorsements for each insurance policy shall
10 contain the original signature of a person authorized by that insurer to bind coverage on
11 its behalf. "Claims made" policies of insurance are not acceptable except for professional
12 liability or errors and omissions liability insurance unless the City Risk Manager
13 determines that "occurrence" policies are not available in the market for the risk being
14 insured. If a "claims made" policy is accepted, it must provide for an extended reporting
15 period of not less than one hundred eighty (180) days. Such insurance as required by
16 this Agreement shall not be deemed to limit Consultant's liability relating to performance
17 under this Agreement. City reserves the right to require complete certified copies of all
18 these policies at any time. Any modification or waiver of the insurance requirements in
19 this Agreement shall only be made with the approval of the City Risk Manager.

20 Consultant shall require any subconsultants which Consultant may use in
21 the performance of the services under this Agreement (which do not act as a general
22 contractor for the Project) to maintain insurance in compliance with the applicable
23 provisions of this Section. City's Risk Manager shall consider subconsultants' written
24 requests for modification of the insurance requirements based on the scope of work to be
25 performed.

26 As a condition to the effectiveness of this Agreement, Consultant shall
27 deliver to City certificates of insurance and all applicable endorsements for approval as to
28 sufficiency and form, including insurance required of Consultant's subconsultants. The

1 certificates and endorsements for each insurance policy shall contain the original
2 signature of a person authorized by that insurer to bind coverage on its behalf.
3 Consultant shall, at least thirty (30) days within expiration of each of such policies, furnish
4 City with evidence of renewals of the insurance required herein. City reserves the right to
5 require complete certified copies of all insurance required herein at any time.

6 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
7 contemplates the personal services of Consultant and Consultant's employees, and the
8 parties acknowledge that a substantial inducement to City for entering into this
9 Agreement was and is the professional reputation and competence of Consultant and
10 Consultant's employees. Consultant shall not assign its rights or delegate its duties
11 under this Agreement, or any interest in this Agreement, or any portion it, without the
12 prior approval of City, except that Consultant may with the prior approval of the City,
13 assign any monies due or to become due the Consultant under this Agreement. Any
14 attempted assignment or delegation shall be void, and any assignee or delegate shall
15 acquire no right or interest by reason of such attempted assignment or delegation.
16 Nothing stated in this Section 6 shall prevent Consultant from employing as many
17 employees as Consultant deems necessary for performance of this Agreement.

18 7. CONFLICT OF INTEREST. Consultant, by executing this
19 Agreement, certifies and shall obtain similar certifications from Consultant's employees
20 and approved subcontractors that, at the time Consultant executes this Agreement and
21 for its duration, Consultant does not and will not perform services for any other client
22 which would create a conflict, whether monetary or otherwise, as between the interests of
23 City and the interests of such other client.

24 8. MATERIALS. Consultant shall furnish all labor and supervision,
25 supplies, material, tools, machinery, equipment, appliances, transportation, and services
26 necessary to or used in the performance of Consultant's obligations under this
27 Agreement.

28 9. OWNERSHIP OF DATA. All materials, information and data

1 prepared, developed, or assembled by Consultant or furnished to Consultant in
2 connection with this Agreement, including but not limited to documents, estimates,
3 calculations, studies, maps, graphs, charts, computer disks, computer source
4 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,
5 information, material, and memorandum ("Data") shall be the exclusive property of City.
6 Data shall be given to City, and City shall have the unrestricted right to use and disclose
7 the Data in any manner and for any purpose without payment of further compensation to
8 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
9 Data shall not be made available to any person or entity for use without the prior approval
10 of City. This warranty shall survive termination of this Agreement for five (5) years.
11 Consultant's obligation with regard to the provision of Data to City shall not apply to Data
12 (a) prepared by design professionals other than Consultant, or (b) use of a program such
13 as Word or other word-processing or graphic program purchased or leased by Consultant
14 under license from another source. City shall obtain its own computer programs if
15 required to use the Data to read or reproduce Data provided by Consultant or its
16 subcontractors. Any reuse or modification by City of any such documents for purposes
17 other than this Agreement without Consultant's prior approval shall be at the City's sole
18 risk and liability. Consultant may, however, use final products of this contract for
19 marketing purposes.

20 10. TERMINATION. Each party shall have the right to terminate this
21 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days'
22 prior notice to the other party. In the event of termination under this Section, City shall
23 pay Consultant for services satisfactorily performed and costs incurred up to the effective
24 date of termination for which Consultant has not been previously paid. The procedures
25 for payment in Section 1.C. with regard to invoices shall apply. On the effective date of
26 termination, Consultant shall deliver to City all Data developed or accumulated in the
27 performance of this Agreement, whether in draft or final form, or in process.

28 11. CONFIDENTIALITY. Consultant shall keep the Data confidential

1 and shall not disclose the Data or use the Data directly or indirectly other than in the
2 course of services provided hereunder during the term of this Agreement and for five (5)
3 years following expiration or termination of this Agreement without the consent of City. In
4 addition, Consultant shall keep confidential all information, whether written, oral, or visual,
5 obtained by any means whatsoever in the course of Consultant's performance hereunder
6 for the same period of time. Consultant shall not disclose any or all of the Data to any
7 third party, nor use it for Consultant's own benefit or the benefit of others except for the
8 purpose of this Agreement.

9 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
10 a breach of confidentiality with respect to Data that:

- 11 A. Consultant demonstrates Consultant knew prior to the time
12 City disclosed it; or
13 B. Is or becomes publicly available without breach of this
14 Agreement by Consultant; or
15 C. A third party who has a right to disclose does so to Consultant
16 without restrictions on further disclosure; or
17 D. Must be disclosed pursuant to subpoena or court order.

18 13. AMENDMENT. This Agreement, including all exhibits, shall not be
19 amended, nor any provision or breach hereof waived, except in writing signed by the
20 parties which expressly refers to this Agreement.

21 14. GOVERNING LAW. This Agreement shall be governed by and
22 construed pursuant to the laws of the State of California (except those provisions of
23 California law pertaining to conflicts of laws).

24 15. ENTIRE AGREEMENT. This Agreement, including all exhibits,
25 constitutes the entire understanding between the parties and supersedes all other
26 agreements, oral or written, with respect to the subject matter herein.

27 16. INDEMNITY.

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

1 Boards, Commissions, and their officials, employees and agents ("Indemnified
2 Parties"), from and against any and all liability, claims, demands, damage, loss,
3 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
4 costs and expenses, including attorneys' fees, court costs, expert and witness
5 fees, and other costs and fees of litigation, arising or alleged to have arisen, in
6 whole or in part, out of or in connection with (1) Consultant's breach or failure to
7 comply with any of its obligations contained in this contract, or (2) negligent or
8 willful acts, errors, omissions or misrepresentations committed by Consultant, its
9 officers, employees, agents, subcontractors, or anyone under Consultant's control,
10 in the performance of work or services under this contract (collectively "Claims" or
11 individually "Claim").

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

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

26 D. The provisions of this Section shall survive the expiration or
27 termination of this contract.

28 17. AMBIGUITY. In the event of any conflict or ambiguity between this

1 Agreement and any exhibit, the provisions of this Agreement shall govern.

2 18. COSTS. If there is any legal proceeding between the parties to
3 enforce or interpret this Agreement or to protect or establish any rights or remedies
4 hereunder, the prevailing party shall be entitled to its costs and expenses, including
5 reasonable attorneys' fees.

6 19. NONDISCRIMINATION.

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

17 B. It is the policy of City to encourage the participation of
18 Disadvantaged, Minority and Women-owned Business Enterprises in City's
19 procurement process, and Consultant agrees to use its best efforts to carry out
20 this policy in the award of all approved subcontracts to the fullest extent consistent
21 with the efficient performance of this Agreement. Consultant may rely on written
22 representations by subcontractors regarding their status.

23 C. Compliance with the Americans with Disabilities Act of 1990
24 shall be the sole responsibility of Consultant, and Consultant shall defend and hold
25 the City harmless from any expense or liability arising from Consultant's non-
26 compliance therewith.

27 20. REPORTING. Each March and September, or in the case of short-
28 term contracts, prior to application for final payment, Consultant agrees to submit

1 information relating to Consultant's and Consultant's subcontractors' status as to
2 Minority-Owned Business Enterprises ("MBE"), Women-Owned Business Enterprises
3 ("WBE") and Disadvantaged Business Enterprises ("DBE"), as defined in Section 8 of the
4 Small Business Act (15 U.S.C. § 637).

5 21. NOTICES. Any notice or approval required under this Agreement by
6 either party shall be in writing and personally delivered or deposited in the U.S. Postal
7 Service, first class, postage prepaid, addressed to Consultant at the address first stated
8 above, and to the City at 333 West Ocean Boulevard, 3rd Floor, Long Beach, California
9 90802. Notice of change of address shall be given in the same manner as stated in this
10 Agreement for other notices. Notice shall be deemed given on the date deposited in the
11 mail or on the date personal service is obtained, whichever first occurs.

12 22. COPYRIGHTS AND PATENT RIGHTS.

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

15 B. City reserves the exclusive right to seek and obtain a patent
16 or copyright registration on any Data or other result arising from Consultant's
17 performance of this Agreement.

18 C. Consultant warrants that to the best of its knowledge and
19 belief the Data does not violate or infringe any patent, copyright, trade secret or
20 other proprietary right of any other party. Consultant agrees to and shall protect,
21 defend, indemnify and hold City, the City of Long Beach, its officials and
22 employees harmless from any and all claims, demands, damages, loss, liability,
23 causes of action, costs or expenses (including reasonable attorneys' fees) whether
24 or not reduced to judgment, arising from any breach or alleged breach of this
25 warranty. Consultant's warranty and agreement to indemnify City with regard to
26 the violation or infringement of any patent, copyright, trade secret or other
27 proprietary right regarding the use of Data shall not apply to Data (a) prepared by
28 design professionals other than Consultant, or (b) use of a program such as Word

1 or other word-processing or graphic program purchased or leased by Consultant
2 under license from another source. City shall obtain its own computer programs if
3 required to use the Data to read or reproduce Data provided by Consultant or its
4 subcontractors.

5 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
6 that Consultant has not employed or retained any entity or person to solicit or obtain this
7 Agreement and that Consultant has not paid or agreed to pay any entity or person any
8 fee, commission, or other monies based on or from the award of this Agreement. If
9 Consultant breaches this warranty, City shall have the right to terminate this Agreement
10 immediately notwithstanding the provisions of Section 10 hereof or, in its discretion, to
11 deduct from payments due under this Agreement or otherwise recover the full amount of
12 such fee, commission, or other monies.

13 24. WAIVER. The acceptance of any services or the payment of any
14 money by City shall not operate as a waiver of any provision of this Agreement, or of any
15 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
16 Agreement shall not constitute a waiver of any other or subsequent breach of this
17 Agreement.

18 25. CONTINUATION. Termination or expiration of this Agreement shall
19 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
20 17, 19, 23, and 29 prior to termination or expiration of this Agreement, and shall not
21 extinguish any warranties hereunder.

22 26. TAX REPORTING. As required by federal and state law, City is
23 obligated to and will report the payment of compensation to Consultant on Form 1099-
24 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
25 resulting from payments under this Agreement. Consultant's Employer Identification
26 Number is [REDACTED] Consultant acknowledges and agrees that City has no obligation
27 to pay Consultant under this Agreement until Consultant provides the above-mentioned
28 number.

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

1 27. ADVERTISING. Consultant shall not use the name of City, the City
2 of Long Beach, its officials or employees in any advertising or solicitation for business,
3 nor as a reference, without the prior approval of the City.

4 28. AUDIT. City shall have the right at all reasonable times during the
5 term of this Agreement and for a period of five (5) years after termination or expiration of
6 this Agreement to examine, audit, inspect, review, extract information from, and copy all
7 books, records, accounts, and other documents of Consultant relating to the projects
8 performed by Consultant pursuant to this Agreement.

9 29. NO PECULIAR RISK. Consultant acknowledges and agrees that the
10 services to be performed under this Agreement do not constitute a peculiar risk of bodily
11 harm and that no special precautions are required to perform the services.

12 30. THIRD PARTY BENEFICIARY. This Agreement is intended by the
13 parties to benefit themselves only and is not in any way intended or designed to or
14 entered for the purpose of creating any benefit or right for any person or entity of any kind
15 that is not a party to this Agreement.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above

June 10, 2014

HOWARD CDM, a California corporation
By [Signature]
Name Martin D. Howard
Title President/CEO

_____, 2014

By _____
Name _____
Title _____

"Consultant"

G. Z. G., 2014

CITY OF LONG BEACH, a municipal corporation
By [Signature] **Assistant City Manager**
City Manager

"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Agreement is approved as to form on June 12, 2014.

CHARLES PARKIN, City Attorney
By [Signature]
Deputy

EXHIBIT A

SCOPE AND COORDINATION OF SERVICES

Commercial Improvement Construction and Building Rehabilitation Services

1. All construction and related work relating to and consisting primarily of interior renovations in accordance with plans and specifications approved by the Redevelopment Agency of the City of Long Beach, which may include the following:
 - A. Demolition and removal of existing building materials to allow the installation of façade and related improvements.
 - B. All necessary work to refinish the building facades, including patching, installation of plaster coat, painting, tile work and/or other finishing that may be necessary.
 - C. Installation of new and/or repair of doors and windows.
 - D. Installation of flatwork, handicap access ramps and related hardware.
 - E. Installation of concrete, masonry and other related materials for planter areas and other site work.
 - F. Installation of landscaping and irrigation systems where applicable.
 - G. Installation of new lighting, signs and related items.
 - H. Installation of electrical wiring for lighting, signs, data as needed.
 - I. Installation of other building appurtenances and modifications as part of the overall improvements.
2. All landlord and tenant improvements to support local businesses and related work in accordance with plans and specifications approved by the Long Beach Department of Development Services or the Department of Public Works, which may include the following:
 - A. Interior and tenant improvements.
 - B. Historical building and disability access retrofits.
 - C. Cost estimating.
 - D. Construction project management.
3. Grant proceeds may cover the cost of plan check and building permits.



Exhibit B

**Professional Service Basic Hourly Rates
Effective January 1, 2014**

Principal	\$235.00
Senior Development Manager	\$200.00
Development/Project Manager	\$170.00
Estimator	\$110.00
Assistant Development/Project Manager	\$135.00
Project Accountant	\$ 70.00
Project Coordinator	\$ 60.00
Clerical/Administrative	\$ 50.00

Reimbursable's including reproduction charges, delivery charges, etc., will be billed at 1.2 times cost and are not included in the above rates or in service estimates, quotations, or contracts.