

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

AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of February 7, 2014, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on January 21, 2014, by and between CUSHMAN & WAKEFIELD OF CALIFORNIA, INC., a California corporation ("Consultant"), with a place of business at 3780 Kilroy Airport Way, Suite 100, Long Beach, California 90806, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with as-needed real estate broker services ("Project"); and

WHEREAS, City has selected Consultant in accordance with City's administrative procedures and City has determined that Consultant and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Consultant perform these specialized services, and Consultant is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Consultant shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in the manner described below, not to exceed Fifty Thousand Dollars (\$50,000), at the rates or charges shown in Exhibit "B".

B. Consultant may select the time and place of performance for these services; provided, however, that access to City documents, records and the

1 like, if needed by Consultant, shall be available only during City's normal business
2 hours and provided that milestones for performance, if any, are met.

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

17 D. Consultant represents that Consultant has obtained all
18 necessary information on conditions and circumstances that may affect its
19 performance and has conducted site visits, if necessary.

20 E. CAUTION: Consultant shall not begin work until this
21 Agreement has been signed by both parties and until Consultant's evidence of
22 insurance has been delivered to and approved by City.

23 2. TERM. The term of this Agreement shall commence at midnight on
24 February 1, 2014, and shall terminate at 11:59 p.m. on January 31, 2017, unless sooner
25 terminated as provided in this Agreement, or unless the services or the Project is
26 completed sooner.

27 3. COORDINATION AND ORGANIZATION.

28 A. Consultant shall coordinate its performance with City's

1 representative, if any, named in Exhibit "C", attached to this Agreement and
2 incorporated by this reference. Consultant shall advise and inform City's
3 representative of the work in progress on the Project in sufficient detail so as to
4 assist City's representative in making presentations and in holding meetings on
5 the Project. City shall furnish to Consultant information or materials, if any,
6 described in Exhibit "D", attached to this Agreement and incorporated by this
7 reference, and shall perform any other tasks described in the Exhibit.

8 B. The parties acknowledge that a substantial inducement to City
9 for entering this Agreement was and is the reputation and skill of Consultant's key
10 employee, Robert S. Garey. City shall have the right to approve any person
11 proposed by Consultant to replace that key employee.

12 4. INDEPENDENT CONTRACTOR. In performing its services,
13 Consultant is and shall act as an independent contractor and not an employee,
14 representative or agent of City. Consultant shall have control of Consultant's work and
15 the manner in which it is performed. Consultant shall be free to contract for similar
16 services to be performed for others during this Agreement; provided, however, that
17 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.
18 Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from
19 Consultant's compensation; (b) City will not secure workers' compensation or pay
20 unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide
21 and Consultant is not entitled to any of the usual and customary rights, benefits or
22 privileges of City employees. Consultant expressly warrants that neither Consultant nor
23 any of Consultant's employees or agents shall represent themselves to be employees or
24 agents of City.

25 5. INSURANCE.

26 A. As a condition precedent to the effectiveness of this
27 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
28 duration of this Agreement, from insurance companies that are admitted to write

1 insurance in California and have ratings of or equivalent to A:V by A.M. Best
2 Company or from authorized non-admitted insurance companies subject to
3 Section 1763 of the California Insurance Code and that have ratings of or
4 equivalent to A:VIII by A.M. Best Company, the following insurance:

5 (a) Commercial general liability insurance (equivalent in scope to
6 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
7 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
8 coverage shall include but not be limited to broad form contractual liability,
9 cross liability, independent contractors liability, and products and
10 completed operations liability. City, its boards and commissions, and their
11 officials, employees and agents shall be named as additional insureds by
12 endorsement (on City's endorsement form or on an endorsement
13 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or
14 both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and
15 CG 20 37 07 04), and this insurance shall contain no special limitations on
16 the scope of protection given to City, its boards and commissions, and
17 their officials, employees and agents. This policy shall be endorsed to
18 state that the insurer waives its right of subrogation against City, its boards
19 and commissions, and their officials, employees and agents.

20 (b) Workers' Compensation insurance as required by the California
21 Labor Code and employer's liability insurance in an amount not less than
22 \$1,000,000. This policy shall be endorsed to state that the insurer waives
23 its right of subrogation against City, its boards and commissions, and their
24 officials, employees and agents.

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

27 (d) Commercial automobile liability insurance (equivalent in scope
28 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an

1 amount not less than \$500,000 combined single limit per accident.

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

7 C. Each insurance policy shall be endorsed to state that
8 coverage shall not be reduced, non-renewed or canceled except after thirty (30)
9 days prior written notice to City, shall be primary and not contributing to any other
10 insurance or self-insurance maintained by City, and shall be endorsed to state that
11 coverage maintained by City shall be excess to and shall not contribute to
12 insurance or self-insurance maintained by Consultant. Consultant shall notify City
13 in writing within five (5) days after any insurance has been voided by the insurer or
14 cancelled by the insured.

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

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

25 F. Prior to the start of performance, Consultant shall deliver to
26 City certificates of insurance and the endorsements for approval as to sufficiency
27 and form. In addition, Consultant shall, within thirty (30) days prior to expiration of
28 the insurance, furnish to City certificates of insurance and endorsements

1 evidencing renewal of the insurance. City reserves the right to require complete
2 certified copies of all policies of Consultant and Consultant's subconsultants and
3 contractors, at any time. Consultant shall make available to City's Risk Manager
4 or designee all books, records and other information relating to this insurance,
5 during normal business hours.

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

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

16 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
17 contemplates the personal services of Consultant and Consultant's employees, and the
18 parties acknowledge that a substantial inducement to City for entering this Agreement
19 was and is the professional reputation and competence of Consultant and Consultant's
20 employees. Consultant shall not assign its rights or delegate its duties under this
21 Agreement, or any interest in this Agreement, or any portion of it, without the prior
22 approval of City, except that Consultant may with the prior approval of the City Manager
23 of City, assign any moneys due or to become due Consultant under this Agreement. Any
24 attempted assignment or delegation shall be void, and any assignee or delegate shall
25 acquire no right or interest by reason of an attempted assignment or delegation.
26 Furthermore, Consultant shall not subcontract any portion of its performance without the
27 prior approval of the City Manager or designee, or substitute an approved subconsultant
28 or contractor without approval prior to the substitution. Nothing stated in this Section

1 shall prevent Consultant from employing as many employees as Consultant deems
2 necessary for performance of this Agreement.

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

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

13 9. OWNERSHIP OF DATA. All materials, information and data
14 prepared, developed or assembled by Consultant or furnished to Consultant in
15 connection with this Agreement, including but not limited to documents, estimates,
16 calculations, studies, maps, graphs, charts, computer disks, computer source
17 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,
18 information, material and memorandum ("Data") shall be the exclusive property of City.
19 Data shall be given to City, and City shall have the unrestricted right to use and disclose
20 the Data in any manner and for any purpose without payment of further compensation to
21 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
22 Data shall not be made available to any person or entity for use without the prior approval
23 of City. This warranty shall survive termination of this Agreement for five (5) years.

24 10. TERMINATION. Either party shall have the right to terminate this
25 Agreement for any reason or no reason at any time by giving thirty (30) calendar days
26 prior notice to the other party. In the event of termination under this Section, City shall
27 pay Consultant for services satisfactorily performed and costs incurred up to the effective
28 date of termination for which Consultant has not been previously paid. The procedures

1 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of
2 termination, Consultant shall deliver to City all Data developed or accumulated in the
3 performance of this Agreement, whether in draft or final form, or in process. And,
4 Consultant acknowledges and agrees that City's obligation to make final payment is
5 conditioned on Consultant's delivery of the Data to City.

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

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

21 13. ADDITIONAL COSTS AND REDESIGN.

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

28 B. If the Project involves construction and the scope of work

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

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

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

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

1 Code section 1720.

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

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

16 18. INDEMNITY.

17 A. Consultant shall indemnify, protect and hold harmless City, its
18 Boards, Commissions, and their officials, employees and agents ("Indemnified
19 Parties"), from and against any and all liability, claims, demands, damage, loss,
20 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
21 costs and expenses, including attorneys' fees, court costs, expert and witness
22 fees, and other costs and fees of litigation, arising or alleged to have arisen, in
23 whole or in part, out of or in connection with (1) Consultant's breach or failure to
24 comply with any of its obligations contained in this Agreement, including any
25 obligations arising from the Project's compliance with or failure to comply with
26 applicable laws, including all applicable federal and state labor requirements
27 including, without limitation, the requirements of California Labor Code section
28 1770 *et seq.* or (2) negligent or willful acts, errors, omissions or misrepresentations

1 committed by Consultant, its officers, employees, agents, subcontractors, or
2 anyone under Consultant's control, in the performance of work or services under
3 this Agreement (collectively "Claims" or individually "Claim").

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

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

18 D. The provisions of this Section shall survive the expiration or
19 termination of this Agreement.

20 19. AMBIGUITY. In the event of any conflict or ambiguity between this
21 Agreement and any Exhibit, the provisions of this Agreement shall govern.

22 20. NONDISCRIMINATION.

23 A. In connection with performance of this Agreement and subject
24 to applicable rules and regulations, Consultant shall not discriminate against any
25 employee or applicant for employment because of race, religion, national origin,
26 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
27 disability. Consultant shall ensure that applicants are employed, and that
28 employees are treated during their employment, without regard to these bases.

1 These actions shall include, but not be limited to, the following: employment,
2 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
3 termination; rates of pay or other forms of compensation; and selection for training,
4 including apprenticeship.

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

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

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

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

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

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

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

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

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

26 23. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

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

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

28 27. TAX REPORTING. As required by federal and state law, City is

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

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

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

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

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

CUSHMAN & WAKEFIELD OF CALIFORNIA, INC., a California corporation

4-16, 2014

By [Signature]
Name James R. McFadden
Title Sr. Mgr. Director

4/11, 2014

By [Signature]
Name Edward Castro
Title Senior Counsel & Asst Secy.

"Consultant"

CITY OF LONG BEACH, a municipal corporation

G. Z. G., 2014

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 April 17, 2014.

CHARLES PARKIN, City Attorney

By [Signature] for Linda Vu
Deputy

EXHIBIT “A”

Scope of Work or Services

REAL ESTATE BROKER SERVICES SCOPE OF SERVICES

Upon authorization from the City to proceed based on a specific scope of work and subject to Consultant's agreement with such engagement, services to be provided may include, but are not limited to, the following:

STRATEGIC PLANNING

- Demographic analysis
- User needs assessment
- Space programming
- Market survey research
- Request for proposals
- Building and space evaluations
- Financial analysis
- Proposal summary and analysis
- Letter of understanding/Business terms

TRANSACTION SERVICES

- Tenant representation
- Site acquisitions
- Site dispositions
- Lease renewals/restructures
- Project management
- Sale/leaseback
- Document/Lease review
- Negotiation

ADMINISTRATIVE

- Lease administration
- Benchmarking
- Policies and procedures
- Operating expenses audits
- Facility audits

The parties acknowledge and agree that certain of the above menu of services, including without limitation, lease administration, site dispositions, and project management services would require additional terms or a separate agreement and fee schedule.

City acknowledges that Consultant is a full service real estate firm and may represent landlords and sellers of property which City may wish to consider such dual representation, provided Consultant promptly notifies City of same in writing and obtains City's written consent prior to such dual agency representation. City further acknowledges that Consultant, through some of its employees, may represent other parties interested in acquiring space or property that may be submitted to City, provided that Consultant promptly notifies City of same in writing and obtains City's written

consent. Consultant will not disclose the confidential information of any of its clients. In the event the City does not approve any dual agency in writing, then Consultant or City may terminate Consultant's representation of City as to such engagement.

EXHIBIT “B”

Rates or Charges

CUSHMAN & WAKEFIELD OF CALIFORNIA, INC.
SCHEDULE OF LEASE AND SALE COMMISSIONS AND CONSULTING SERVICES FEES
FOR THE LOS ANGELES SOUTH BAY/LONG BEACH OFFICE

I. RATES

- A. GROSS LEASES**
- | | |
|--|--|
| TERM OF LESS THAN FIVE (5) YEARS
6% of the total rental for the first year, plus
6% of the total rental for the second year, plus
5% of the total rental for the third year, plus
4% of the total rental for the fourth year, plus
4% of the rental for the fifth year | TERM OF MORE THAN FIVE (5) YEARS
5% of the total rental for the first five (5) years, plus
3% of the total rental for the second five (5) years, plus
1% of the total rental for the balance of the term |
|--|--|
- B. NET LEASES**
- | | |
|--|--|
| TERM OF LESS THAN FIVE (5) YEARS
7% of the total rental for the first year, plus
7% of the total rental for the second year, plus
6% of the total rental for the third year, plus
5% of the total rental for the fourth year, plus
5% of the total rental for the fifth year | TERM OF MORE THAN FIVE (5) YEARS
6% of the total rental for the first five (5) years, plus
3% of the total rental for the second five (5) years, plus
2% of the total rental for the balance of the term |
|--|--|
- C. SALES**
- Six percent (6%) of the first \$500,000, plus
Five percent (5%) of the balance of the sales price
- D. HOURLY CONSULTING SERVICES**
- | | |
|---|----------|
| Director and Senior Director hourly rate: | \$250.00 |
| Associate hourly rate: | \$125.00 |

II. OPTIONS OR RIGHTS IN LEASE

A. TO RENEW, EXTEND OR LEASE ADDITIONAL SPACE:

If a Lease is renewed or extended or if a Tenant leases additional space pursuant to an option or right contained in the Lease, Lessor shall pay to Cushman & Wakefield, at the time of the exercise of the option or right, an additional commission based on the total rental for the renewal or extension term, or for such additional space. In the case of a renewal or extension, the commission shall be calculated at the above rates, but at the percentage levels that would have applied if the renewal or extension period were in force at the time the original Lease was made. In the case of the Lease of additional space, the commission shall be calculated as though a new lease has been entered into. Where the ultimate terms of a renewal, extension, or lease of additional space not strictly conform to the terms of the option or right contained in the Lease, Cushman & Wakefield shall not be entitled to a commission for any period or for any space in excess of that set forth in the applicable Lease provisions unless, however, Cushman & Wakefield participates in the new negotiations.

B. TO PURCHASE:

If the property at which the Lease is made is purchased by the Tenant, pursuant to an option or right contained in the Lease, Lessor shall pay to Cushman & Wakefield, at the time of closing of title, a sales commission computed in accordance with Section I Paragraph C above. If the sale is consummated during the term of a Lease for which Cushman & Wakefield has been paid a leasing commission attributable to the unexpired portion of the term of the Lease, subsequent to the closing date of the sale, the leasing commission paid for that unexpired portion of the lease term shall be credited against the above mentioned sales commission, provided, however, that Cushman & Wakefield shall not be required to return any portion of the leasing commission to Lessor should the sales commission be less than the leasing commission attributable to the balance of the lease term subsequent to the closing date.

III. TIME OF PAYMENT

- A.** Lease Commissions are payable on the execution and delivery of the Lease by Landlord and Tenant.
- B.** Sale Commissions shall be paid in full at the time of the closing or transfer of title to the property, except in the case of an installment purchase contract, in which case, the commission shall be paid in full at the time of the execution and delivery of the installment sales contract by and between the Seller and Purchaser.

IV. TENANT'S RIGHT TO CANCEL

Where the Tenant has the right to cancel the Lease at a time subsequent to the commencement of the term, but prior to the expiration date set forth in the Lease, Cushman & Wakefield shall initially be paid a commission based on the aggregate rental for the uncancellable portion of the term plus any cancellation penalty or fee payable by Tenant pursuant to the Lease; and thereafter, if the Lease is not so cancelled or if the right of cancellation is exercised by the Lessor only, Cushman & Wakefield shall be paid the balance of the commission based on the aggregate rental for the remaining portion of the lease term, less the cancellation penalty fee. If the cancellation is by mutual agreement not pursuant to a provision contained in the Lease, or if the right of cancellation is contingent on the Lessor's acts or failure to act or otherwise within the Lessor's control, Cushman & Wakefield shall be paid a commission for the entire lease term. A lease shall not be deemed cancelled within the meaning of this paragraph unless the Tenant vacates the premises.

V. COMPUTATION OF COMMISSION

A. LEASE COMMISSIONS:

Lease commissions shall be computed in accordance with the above rates based upon the total rental set forth in the Lease, excluding any additional rent payable pursuant to tax, operating and variable cost of living escalation provisions. If a rental concession is made by Landlord allowing Tenant not to pay rent for the initial months of the lease term, then the commission shall be calculated on the average rental for the entire term with the first year being deemed to commence on the first day of the first month of the lease term whether or not rent is payable. If the rental concessions are granted in lieu of Landlord performing construction or alteration work and with respect to any other allowances or concessions granted to Tenant whether in the form of a credit against rent, construction, decoration or otherwise, there shall be no deduction from the aggregate rent set forth in the Lease.

In the case of a surrender, cancellation, assignment, or sale of a Lease, the commission shall be based upon the aggregate rental for the remaining unexpired term of the Lessor's Lease plus any consideration paid to or by the Lessor for such surrender, cancellation, assignment, or sale of a Lease.

The term "Lease", as used herein shall also be deemed to mean Sublease, and the terms "Lessor" and "Tenant" shall be deemed to include any subsidiaries, affiliates, successors, and nominees of same.

B. SALES COMMISSIONS:

Sales commissions shall be computed in accordance with the above rates based upon the total sales price, which shall include any mortgages, loans or other obligations of the Seller which may be assumed by the Purchaser or which the Purchaser takes title "subject to", any purchase money loans or mortgages taken back by the Seller, the sales price of any fixtures or other personal property sold by separate agreement between the Seller and Purchaser as part of the overall sale of the real property, and the current market value of any other real or personal property transferred from the Purchaser to the Seller.

VI. LEGAL FEES

In the event any action or proceedings are brought to enforce this agreement or any provision hereof, the prevailing party shall be entitled to recover all its court costs, including reasonable attorneys fees.

EXHIBIT “C”

City’s Representative:

Mary Torres, Development Project Manager

EXHIBIT “D”

Materials/Information Furnished: None