

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1 AGREEMENT

2 35885

3 THIS AGREEMENT is made and entered, in duplicate, as of March 24, 2021,
4 for reference purposes only, pursuant to a minute order adopted by the City Council of the
5 City of Long Beach at its meeting on August 21, 2018, by and between CUSHMAN &
6 WAKEFIELD OF CALIFORNIA, INC., a California corporation ("Consultant"), with a place
7 of business at 425 Market Street, Suite 2300, San Francisco, California 94105, and the
8 CITY OF LONG BEACH, a municipal corporation ("City").

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

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

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

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

20 1. SCOPE OF WORK OR SERVICES.

21 A. Consultant shall furnish specialized services more particularly
22 described in Exhibit "A", attached to this Agreement and incorporated by this
23 reference, in accordance with the standards of the profession, and City shall pay for
24 these services in the manner described below, not to exceed Thirty Thousand
25 Dollars (\$30,000), at the rates or charges shown in Exhibit "B".

26 B. The City's obligation to pay the sum stated above for any one
27 fiscal year shall be contingent upon the City Council of the City appropriating the
28 necessary funds for such payment by the City in each fiscal year during the term of

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

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

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

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

27 F. CAUTION: Consultant shall not begin work until this
28 Agreement has been signed by both parties and until Consultant's evidence of

1 insurance has been delivered to and approved by City.

2 2. TERM. The term of this Agreement shall commence at midnight on
3 March 24, 2021, and shall terminate at 11:59 p.m. on June 30, 2023, unless sooner
4 terminated as provided in this Agreement, or unless the services or the Project is
5 completed sooner.

6 3. COORDINATION AND ORGANIZATION.

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

15 B. The parties acknowledge that a substantial inducement to City
16 for entering this Agreement was and is the reputation and skill of Consultant's key
17 employee, named in Exhibit "E" attached to this Agreement and incorporated by this
18 reference. City shall have the right to approve any person proposed by Consultant
19 to replace that key employee.

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

1 the usual and customary rights, benefits or privileges of City employees. Consultant
2 expressly warrants that neither Consultant nor any of Consultant's employees or agents
3 shall represent themselves to be employees or agents of City.

4 5. INSURANCE.

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

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

27 ii. Workers' Compensation insurance as required by the
28 California Labor Code and employer's liability insurance in an amount not

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less than \$1,000,000. This policy shall be endorsed to state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.

iii. Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.

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

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

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

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

E. Consultant shall require that all subconsultants or contractors

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

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

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

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

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

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

9 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
10 certifies that, at the time Consultant executes this Agreement and for its duration,
11 Consultant does not and will not perform services for any other client which would create
12 a conflict, whether monetary or otherwise, as between the interests of City and the interests
13 of that other client. Consultant further certifies that Consultant does not now have and shall
14 not acquire any interest, direct or indirect, in the area covered by this Agreement or any
15 other source of income, interest in real property or investment which would be affected in
16 any manner or degree by the performance of Consultant's services hereunder. And,
17 Consultant shall obtain similar certifications from Consultant's employees, subconsultants
18 and contractors.

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

23 9. OWNERSHIP OF DATA. All materials, information and data
24 prepared, developed or assembled by Consultant or furnished to Consultant in connection
25 with this Agreement, including but not limited to documents, estimates, calculations,
26 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
27 models, reports, summaries, drawings, designs, notes, plans, information, material and
28 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,

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

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

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

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

1 disclosed pursuant to subpoena or court order.

2 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

21 15. LAW. This Agreement shall be construed in accordance with the laws
22 of the State of California, and the venue for any legal actions brought by any party with
23 respect to this Agreement shall be the County of Los Angeles, State of California for state
24 actions and the Central District of California for any federal actions. Consultant shall cause
25 all work performed in connection with construction of the Project to be performed in
26 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
27 county or municipal governments or agencies (including, without limitation, all applicable
28 federal and state labor standards, including the prevailing wage provisions of sections 1770

1 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
2 marshal, health officer, building inspector, or other officer of every governmental agency
3 now having or hereafter acquiring jurisdiction.

4 16. PREVAILING WAGES.

5 A. Consultant agrees that all public work (as defined in California
6 Labor Code section 1720) performed pursuant to this Agreement (the "Public
7 Work"), if any, shall comply with the requirements of California Labor Code sections
8 1770 *et seq.* City makes no representation or statement that the Project, or any
9 portion thereof, is or is not a "public work" as defined in California Labor Code
10 section 1720.

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

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

25 18. INDEMNITY.

26 A. Consultant shall indemnify, protect and hold harmless City, its
27 Boards, Commissions, and their officials, employees and agents ("Indemnified
28 Parties"), from and against any and all liability, claims, demands, damage, loss,

1 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
2 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
3 in connection with (1) Consultant's breach or failure to comply with any of its
4 obligations contained in this Agreement, including any obligations arising from the
5 Project's compliance with or failure to comply with applicable laws, including all
6 applicable federal and state labor requirements including, without limitation, the
7 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful
8 acts, errors, omissions or misrepresentations committed by Consultant, its officers,
9 employees, agents, subcontractors, or anyone under Consultant's control, in the
10 performance of work or services under this Agreement (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 was
22 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 Agreement.

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

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

2 20. FORCE MAJEURE. If any party fails to perform its obligations
3 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
4 labor or materials or reasonable substitutes for labor materials, governmental restrictions,
5 governmental regulations, governmental controls, judicial orders, enemy or hostile
6 governmental action, pandemic, civil commotion, fire or other casualty, or other causes
7 beyond the reasonable control of the party obligated to perform, then that party's
8 performance will be excused for a period equal to the period of such cause for failure to
9 perform.

10 21. NONDISCRIMINATION.

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

21 B. It is the policy of City to encourage the participation of
22 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
23 procurement process, and Consultant agrees to use its best efforts to carry out this
24 policy in its use of subconsultants and contractors to the fullest extent consistent
25 with the efficient performance of this Agreement. Consultant may rely on written
26 representations by subconsultants and contractors regarding their status.
27 Consultant shall report to City in May and in December or, in the case of short-term
28 agreements, prior to invoicing for final payment, the names of all subconsultants

1 and contractors hired by Consultant for this Project and information on whether or
2 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
3 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

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

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

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

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

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

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

26 E. If the City determines that the Consultant has set up or used its
27 contracting entity for the purpose of evading the intent of the EBO, the City may
28 terminate the Agreement on behalf of the City. Violation of this provision may be

1 used as evidence against the Consultant in actions taken pursuant to the provisions
2 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

3 23. NOTICES. Any notice or approval required by this Agreement shall
4 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
5 postage prepaid, addressed to Consultant at the address first stated above, and to City at
6 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
7 to the City Engineer at the same address. Notice of change of address shall be given in
8 the same manner as stated for other notices. Notice shall be deemed given on the date
9 deposited in the mail or on the date personal delivery is made, whichever occurs first.

10 24. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

24 25. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
25 that Consultant has not employed or retained any entity or person to solicit or obtain this
26 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
27 commission or other monies based on or from the award of this Agreement. If Consultant
28 breaches this warranty, City shall have the right to terminate this Agreement immediately

1 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
2 due under this Agreement or otherwise recover the full amount of the fee, commission or
3 other monies.

4 26. WAIVER. The acceptance of any services or the payment of any
5 money by City shall not operate as a waiver of any provision of this Agreement or of any
6 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
7 Agreement shall not constitute a waiver of any other or subsequent breach of this
8 Agreement.

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

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

20 29. ADVERTISING. Consultant shall not use the name of City, its officials
21 or employees in any advertising or solicitation for business or as a reference, without the
22 prior approval of the City Manager or designee.

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

27 31. THIRD PARTY BENEFICIARY. This Agreement is not intended or
28 designed to or entered for the purpose of creating any benefit or right for any person or

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664


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entity of any kind that is not a party to this Agreement.

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

3/25/21, 2021

By 
Name Dan Broderick
Title President, West Region

_____, 2021

By _____
Name _____
Title _____

"Consultant"

CITY OF LONG BEACH, a municipal corporation

April 13, 2021

By Linda J. Satum
City Manager

"City" EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Agreement is approved as to form on 3/25/21, 2021.

CHARLES PARKIN, City Attorney

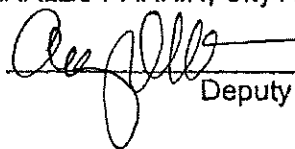
By 
Deputy

EXHIBIT “A”

Scope of Work

EXHIBIT A

REAL ESTATE BROKER SERVICES SCOPE OF SERVICES

Services to be provided 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
- Design and Construction
- Construction management

ADMINISTRATIVE

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

EXHIBIT “B”

Rates or Charges

EXHIBIT B
SECTION 10 - COST
REQUEST FOR PROPOSAL EP 18-078

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.

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

GROSS LEASES

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.

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

NET LEASES

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.

Six percent (6%) of the first \$500,000, plus
Five percent (5%) of the balance of the sales price

SALES

D.

Director and Senior Director hourly rate: \$275.00
Associate hourly rate: \$150.00

HOURLY CONSULTING SERVICES

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.

EXHIBIT B

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.

ACCEPTED this 25th day of March, 2021.

CUSHMAN & WAKEFIELD OF CALIFORNIA, INC.

CITY OF LONG BEACH

Seller/Lessor

By: 

By: _____

EXHIBIT “C”

City’s Representative:

Mary Frances Torres, Project Manager

(562) 570-6846

EXHIBIT “D”

Materials/Information Furnished: None

EXHIBIT “E”

Consultant’s Key Employee:

Robert Garey



REGGIE PARKS
ASSOCIATE GENERAL COUNSEL,
BROKERAGE & CAPITAL MARKETS

Cushman & Wakefield
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Fax: 312-470-3800
E: reggie.parks@cushwake.com

January 16, 2020

Via Federal Express and Electronic Mail

City of Long Beach
Department of Economic Development
333 West Ocean Boulevard, 3rd Floor
Long Beach, CA 90802
Attention: Mary Frances Torres

RE: Addendum to Agreement for As-Needed Real Estate Broker Services

Dear Ms. Torres:

As you know, the City of Long Beach (the "City") and Cushman & Wakefield U.S., Inc. ("C&W") entered into that certain Agreement for As-Needed Real Estate Broker Services on _____, 2020 (the "Agreement"). The City and C&W have agreed to modify the Agreement with this Addendum to reflect the inclusion of certain provisions set forth below:

1. Each party represents and warrants to the other that neither of them: (a) is, and shall not become, a person or entity with whom C&W is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; and (b) is not knowingly engaged in, and shall not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.

2. Each party represents and warrants to the other that it (and any party acting on its behalf) has not, in order to enter into this Agreement, offered, promised, authorized or made any payments or transfers of anything of value which have the purpose or effect of public or commercial bribery, kickbacks or other unlawful or improper means of doing business ("Prohibited Activity") and will not engage in Prohibited Activity during the term of this Agreement. In the event of any violation of this section, the non-offending party shall be entitled to immediately terminate this Agreement and take such other actions as are permitted or required to be taken under law or in equity.

3. In all other respects the Agreement shall remain in full force and effect.

Very truly yours,

Reggie Parks
Associate General Counsel,
Brokerage & Capital Markets

Acknowledged and agreed upon
by:

Danda J. Johnson

[Name]

Its: ASST. CITY MANAGER

APPROVED AS TO FORM

3-30, 2021

CHARLES PARKIN, City Attorney

By

Amy R. Webber

AMY R. WEBBER
DEPUTY CITY ATTORNEY