

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

AGREEMENT

35556

THIS AGREEMENT is made and entered, in duplicate, as of May 7, 2020, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on May 5, 2020, by and between OVERLAND, PACIFIC & CUTLER, LLC, a Delaware limited liability company ("Consultant"), with a place of business at 3750 Schaufele Avenue, Suite 150, Long Beach, California 90808, 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 property acquisition, relocation, and related 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, in an amount not to exceed Five Hundred Thousand Dollars (\$500,000), at the rates or charges shown in Exhibit "B".

B. The City's obligation to pay the sum stated above for any one fiscal year shall be contingent upon the City Council of the City appropriating the

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

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

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

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

F. CAUTION: Consultant shall not begin work until this

1 Agreement has been signed by both parties and until Consultant's evidence of
2 insurance has been delivered to and approved by City.

3 2. TERM. The term of this Agreement shall commence at midnight on
4 May 1, 2020, and shall terminate at 11:59 p.m. on April 30, 2022, unless sooner terminated
5 as provided in this Agreement, or unless the services or the Project is completed sooner.
6 The parties have the option to extend the term three (3) additional one-year periods, at the
7 discretion of the City Manager.

8 3. COORDINATION AND ORGANIZATION.

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

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

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

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

6 5. INSURANCE.

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

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

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

1 the date this Agreement expires or is terminated.

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

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

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

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

24 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
25 contemplates the personal services of Consultant and Consultant's employees, and the
26 parties acknowledge that a substantial inducement to City for entering this Agreement was
27 and is the professional reputation and competence of Consultant and Consultant's
28 employees. Consultant shall not assign its rights or delegate its duties under this

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

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

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

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

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

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

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

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

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

4 13. ADDITIONAL COSTS AND REDESIGN.

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

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

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

23 15. LAW. This Agreement shall be construed in accordance with the laws
24 of the State of California, and the venue for any legal actions brought by any party with
25 respect to this Agreement shall be the County of Los Angeles, State of California for state
26 actions and the Central District of California for any federal actions. Consultant shall cause
27 all work performed in connection with construction of the Project to be performed in
28 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,

1 county or municipal governments or agencies (including, without limitation, all applicable
2 federal and state labor standards, including the prevailing wage provisions of sections 1770
3 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any fire
4 marshal, health officer, building inspector, or other officer of every governmental agency
5 now having or hereafter acquiring jurisdiction.

6 16. PREVAILING WAGES.

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

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

24 17. 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 in this Agreement.

27 18. 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, arising or alleged to have arisen, in whole or in part, out of or
5 in connection with (1) Consultant’s breach or failure to comply with any of its
6 obligations contained in this Agreement, including any obligations arising from the
7 Project’s compliance with or failure to comply with applicable laws, including all
8 applicable federal and state labor requirements including, without limitation, the
9 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful
10 acts, errors, omissions or misrepresentations committed by Consultant, its officers,
11 employees, agents, subcontractors, or anyone under Consultant’s control, in the
12 performance of work or services under this Agreement (collectively “Claims” or
13 individually “Claim”).

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

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

28 D. The provisions of this Section shall survive the expiration or

1 termination of this Agreement.

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

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

11 21. NONDISCRIMINATION.

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

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

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

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

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

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

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

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

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

27 E. If the City determines that the Consultant has set up or used its
28 contracting entity for the purpose of evading the intent of the EBO, the City may

1 terminate the Agreement on behalf of the City. Violation of this provision may be
2 used as evidence against the Consultant in actions taken pursuant to the provisions
3 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

4 23. NOTICES. Any notice or approval required by this Agreement shall
5 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
6 postage prepaid, addressed to Consultant at the address first stated above, and to City at
7 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
8 to the City Engineer at the same address. Notice of change of address shall be given in
9 the same manner as stated for other notices. Notice shall be deemed given on the date
10 deposited in the mail or on the date personal delivery is made, whichever occurs first.

11 24. COPYRIGHTS AND PATENT RIGHTS.

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

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

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

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

1 breaches this warranty, City shall have the right to terminate this Agreement immediately
2 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
3 due under this Agreement or otherwise recover the full amount of the fee, commission or
4 other monies.

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

10 27. CONTINUATION. Termination or expiration of this Agreement shall
11 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
12 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

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

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

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

28 31. THIRD PARTY BENEFICIARY. This Agreement is not intended or

1 designed to or entered for the purpose of creating any benefit or right for any person or
2 entity of any kind that is not a party to this Agreement.

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

5 OVERLAND, PACIFIC & CUTLER, LLC, a
6 Delaware limited liability company

7 7-1, 2020

By [Signature]
Name Bridget Fieroff
Title President & CEO

8
9 7-1, 2020

By Roy Gonzalez
Name Roy Gonzalez
Title Senior Project Manager

11 "Consultant"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 July 10, 2020

By Linda J. Jakem
City Manager

15 EXECUTED
16 TO SECTION 901 OF
17 THE CITY CHARTER.

"City"

18 This Agreement is approved as to form on July 9, 2020.

19 CHARLES PARKIN, City Attorney

20 By [Signature]
21 Deputy

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

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EXHIBIT “A”

Scope of Work

EXHIBIT "A"
SCOPE OF SERVICES

I. REAL ESTATE PROPERTY ACQUISITION SERVICES

Services to be provided include, but not limited to:

- Prepare decision to appraise letter, owner offer letter and summary statements in accordance with State and/or Federal guidelines, and in accordance with the City and/or LBCIC instructions.
- Prepare lists of compensable items of fixtures and equipment.
- Obtain and review fixture and equipment appraisals to determine compensable items and compare said items with fee appraisal to prevent valuation overlaps.
- Prepare tenant offer letters in accordance with State and/or Federal guidelines and in accordance with City and/or LBCIC instructions.
- Process bulk sale in accordance with State and/or Federal guidelines, and in accordance with City and/or LBCIC instructions.
- Process all documents necessary for right-of-way and street widening projects in accordance with CalTrans requirements.
- Process all documents necessary for the acquisition and disposition of eligible property in accordance with Department of Housing and Urban Development programs.
- Personally negotiate with property owners and their tenants, business and residential (or their appointed representative(s)), for the purchase of the required property rights. Negotiations shall be conducted in the owners' and tenants' native language(s), if requested. The City's and/or LBCIC's written offer to purchase shall be presented to the appropriate owner and tenant, if applicable, or their representative(s) in person, when possible.
- Prepare all acquisition documents (i.e. agreements, grant deeds, quitclaim deeds, assignment of leases, estoppel certificates, etc.) for the acquisition of both the fee interest and tenant(s)/lessee(s) interest, if applicable, including fixtures and equipment.
- Provide due diligence services including, but not limited to, environmental assessments, building and structural assessments, hazardous materials surveys and demolition bids/estimates.

- In the event that negotiations appear to be unsuccessful and the City must acquire property by eminent domain, provide all necessary information to and work with the City's and/or LBCIC's relocation Consultant or staff member, in order to expeditiously and professionally complete the project.
- Prepare specialty reports, including valuation of Furniture, Fixtures and Equipment, Goodwill, Leasehold Interest, and/or Mineral Oil Rights.
- Provide condemnations support including expert witness testimony.
- Maintain a file for each acquisition, which shall contain a diary of all pertinent information along with copies of all correspondence, agreements, and documents relating to the transaction.
- Prepare property and/or site valuation estimates.
- Consultant shall provide general real estate and acquisition consulting.
- On partial takings, review and analyze litigation guarantees, preliminary title reports to identify specific title exceptions (i.e. easements, oil rights, deeds of trust, liens, judgment, etc.) that may have an adverse effect on intended use. Consultant shall also obtain necessary release documents (i.e. reconveyance, subordination agreement, release of lien, etc.) to satisfy all title issues before conveyance to the City and/or LBCIC.
- Consultant shall prepare a written summary of the status of acquisition of each parcel, relocation activity reports, and/or such other reports as requested by the City and/or LBCIC.
- On requests from the City and/or LBCIC staff, Consultant shall survey and solicit voluntary acquisition of properties in the project areas. The survey shall include physical search as well as review of other relevant sales data.
- Market surplus properties for sale, as directed by the City and/or LBCIC. Specifically, Consultant shall:
 - Develop and maintain an escrow schedule;
 - Deliver documents and checks to escrow companies;
 - Review all documents for submission and delivery to escrow companies;
 - Review title and escrow documents; ensure that the City and/or LBCIC is acquiring good title and/or the property rights needed for the completion of the project;
 - Free and clear any and all encumbrances that may affect or hinder the development of future construction; Coordinate escrow closings and file all applicable forms and documents with the County Assessor's office.
 - Expedite acquisition within 30 days of approved appraisal.

II. RELOCATION, PROPERTY MANAGEMENT AND RELATED SERVICES

Services to be provided include, but not limited to:

- Perform all relocation assistance services in accordance with the Uniform Relocation and Real Property Acquisition Policies Act; the California Relocation Assistance and Real Property Acquisition Guidelines; City and/or LBCIC Policies and Procedures, and any other applicable regulations.
- Advise the City and/or LBCIC staff on relocation activities, property management and administration matters necessary for proper operation of the program.
- Confer with the U.S. Department of Housing and Urban Development (HUD) and other governmental agencies on relocation and property management, as necessary.
- Upon the request by City and/or LBCIC staff, develop policies and procedures for implementation of the relocation and property management programs and make updates as needed.
- Prepare Relocation Plans as may be required by state law, including Title 25 of the California Code of Regulations, and respond to any questions on the plan by local residents or state agencies.
- Conduct field surveys of residents and businesses located in the proposed project area, identify relocation resources for both, and meet with and answer questions of any affected local community groups.
- Maintain availability, as requested by the City and/or LBCIC, for various public presentations and/or consultations and be able to provide fluent translations in Spanish, Khmer and Tagalog.
- Meet with and fully inform project area occupants of the nature of, and procedures for, obtaining relocation assistance and benefits. Meetings shall be conducted in project area occupants' native language, if requested.
- Provide the required relocation assistance services to adequately relocate owners and tenants to legally suitable replacement locations.
- Prepare the required relocation assistance claims for review and approval by the City and/or LBCIC.
- Arrange for demolition, site clearance, asbestos and lead-based paint abatement (when required), paving, fencing or other property management related functions.
- Contract with subcontractors as necessary to provide services as required by the City and/or LBCIC.

EXHIBIT "B"

Rates or Charges

OPC 2020 Schedule of Hourly Rates

Management & Implementation

Senior Program Manager	\$265.00
Program Manager	\$210.00
Senior Project Manager	\$160.00
Project Manager/Project Controls Manager	\$140.00
Sr. Acquisition Agent/Sr. Relocation Agent/Sr. Analyst	\$120.00
Acquisition Agent/Relocation Agent/Analyst	\$110.00

Property Management/Property Services

Property Management Supervisor	\$160.00
Property Manager	\$120.00
Property Services Supervisor	\$120.00
Community Liaison	\$110.00
Lead Crewperson	\$70.00
Landscape Crewperson	\$45.00

Project Support/Administrative

Project Support Specialist	\$80.00
Administrative Assistant	\$60.00

Terms and Conditions

OPC considers local travel/mileage, photocopying, first class postage, telephone, facsimile, and mobile communication charges a normal part of doing business and such costs are included in the stated hourly rates.

In the event OPC is required to perform any act in relation to litigation arising out of any project with the Client (for example, expert consulting, responding to a complaint, or proceeding with discovery and trial), such services are not part of this contract, nor are they part of our normal fees. If required, these types of services will be invoiced at two (2) times the regular hourly rates.

In the event this contract extends twelve (12) months beyond the initial date of execution, the hourly rates and any remaining amount in the contract shall be adjusted upwardly by five percent (5%) per annum, compounded annually, on the anniversary date of this contract.

Written communication services in other languages would be an additional cost and would be billed separately based on quoted hourly rates by independent translation services. Verbal communication in Spanish, if necessary, will be included at no additional charge.

OPC will submit monthly invoices for the professional and trade services rendered based on the hourly rate schedule provided above. The client shall promptly pay the uncontested amount due within no more than thirty (30) days after receipt of invoice.

RP Laurain & Associates, Inc. Rates

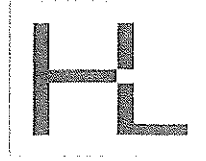
HOURLY RATES

Note that due to this firm's long history in working with the City of Long Beach, the hourly rates for the City of Long Beach are discounted from the standard rates, as follows:

- Principal appraisers: \$160.00 per hour.
- Senior designated appraiser: \$150.00 per hour.
- Associate appraisers: \$140.00 per hour.
- Market researcher: \$120.00 per hour.
- Court/deposition appearances: \$300.00 per hour.

Hourly Rate Schedule
 For
 City of Long On-Call Services
 Cushman & Wakefield Western, Inc.

Person	Title	Rate/ yr 1	Rate/ yr 2	Rate/ yr 3	Rate/ yr 4	Rate/ yr 5
Kevin J. Donahue, MAI	Executive Director	\$ 350	\$ 361	\$ 371	\$ 382	\$ 394
Kevin J. Donahue, MAI	Expert Testimony	\$ 600	\$ 618	\$ 637	\$ 656	\$ 675
Kevin J. Donahue, MAI	Pre-trial Preparation	\$ 500	\$ 515	\$ 530	\$ 546	\$ 563
Adam Dembowitz, MAI	Senior Director	\$ 400	\$ 412	\$ 424	\$ 437	\$ 450
Adam Dembowitz, MAI	Expert Testimony	\$ 500	\$ 515	\$ 530	\$ 546	\$ 563
Adam Dembowitz, MAI	Pre-trial Preparation	\$ 400	\$ 412	\$ 424	\$ 437	\$ 450
Jan Kelly	Associate	\$ 250	\$ 258	\$ 265	\$ 273	\$ 281
Mark Wallen	Associate	\$ 200	\$ 206	\$ 212	\$ 219	\$ 225
Denyse Neville	Associate	\$ 200	\$ 206	\$ 212	\$ 219	\$ 225
David Koller	Managing Director	\$ 400	\$ 412	\$ 424	\$ 437	\$ 450
David Koller	Expert Testimony	\$ 500	\$ 515	\$ 530	\$ 546	\$ 563
David Koller	Pre-trial Preparation	\$ 400	\$ 412	\$ 424	\$ 437	\$ 450
Michael Comstock	Director	\$ 400	\$ 412	\$ 424	\$ 437	\$ 450
Mary Younakof	Director	\$ 400	\$ 412	\$ 424	\$ 437	\$ 450



HODGES LACEY & ASSOCIATES, LLC

FEE SCHEDULE 2019

<u>Appraiser</u>	<u>Standard Hourly Rate</u>	<u>Deposition/Court Hourly Rate</u>
Michael Lacey, ASA	\$150	\$350
Richard Hodges, ASA	\$150	\$350

Note: A minimum of 4 hours will be charged for court appearance.

Rate Schedule
Desmond, Marcello & Amster

<u>Title</u>	<u>Staff Member</u>	<u>Standard Rate</u>	<u>Depo/Court Appearance Rate</u>
GOODWILL LOSS APPRAISAL			
Partner	Madeleine Mamaux	325	400
Manager	Diane Christensen	175	250
Manager	Kevin Blair	185	250
Analyst	Silvia Tauber	125	N/A
FIXTURES & EQUIPMENT APPRAISAL			
Senior Manager	Marcus Pigrom	200	300
Appraiser	Enno Palm-Leis	150	N/A

Fee Schedule

(Effective April 1, 2019 through March 31, 2020)

	Rate/Hour
Clerical	75
Administrative/Secretarial	85
Technician	90
CAD Drafter.....	96
Senior Engineering Technician.....	102
Associate Staff Professional (DE SOUZA/VARGAS).....	105
Office Services Manager/Senior Project Administrator.....	116
Staff Professional I.....	115
CAD Designer	118
Staff Professional II.....	120
Senior Office Services Manager.....	129
Staff Professional III.....	130
Project Professional I (WATKINS).....	135
Project Professional II	140
Project Professional III	145
Senior Project Professional I	150
Senior Project Professional II (PEREZ/SIEG).....	160
Senior Project Professional III	170
Project Manager I (RAUZON)	175
Project Manager II.....	190
Certified Industrial Hygienist	205
Senior Project Manager I (LOVE).....	210
Senior Certified Industrial Hygienist	225
Senior Project Manager II.....	225
Senior Project Manager III (HUTCHENS).....	250
Senior Technical Manager/Advisor.....	255
Project Director I	260
Project Director II	267
Principals (NUNO).....	See Note 7

General Terms

1. Scheduled rates are effective through March 31, 2020. Work performed thereafter is subject to a new Fee Schedule.
2. Costs for outside consultants and subcontractors, equipment/supplies, and for job-related employee travel and subsistence, are billed at actual cost plus a 15 percent administrative fee.
3. Charges for SCS field equipment and instruments will be in accordance with SCS's Field Equipment Rental Rates Schedule in effect at the time the work is performed. Company trucks are charged at \$60 for up to a half day (4 hours) of use, and \$110 for up to a full day (company cars at \$50/\$60). These charges incorporate an allowance of 100 miles per job per day; a \$0.35

SCS Fee Schedule

April 1, 2019

Page 2

per mile surcharge is applied for additional miles. Vehicle charges for long-term and/or high-mileage projects may be negotiated on a case-by-case basis.

4. Invoices will be prepared monthly or more frequently for work in progress, unless otherwise agreed. Invoices are due and payable upon receipt. Invoices not paid within 30 days are subject to a service charge of 1.5 percent per month on the unpaid balance.
5. Payment of SCS invoices for services performed will not be contingent upon the client's receipt of payment from other parties, unless otherwise agreed in writing. Client agrees to pay legal costs, including attorney's fees, incurred by SCS in collecting any amounts past due and owing on client's accounts.
6. For special situations such as expert court testimony and limited consultation, hourly rates will be on an individually negotiated basis.
7. Hourly rates for Principals will be on an individually negotiated basis. Typically, these rates are \$300/hour for Vice Presidents and other Principals and \$325/hour for Senior Vice Presidents and Senior Executives.

CAL PACIFIC LAND SERVICES, INC.

Schedule of Professional Fees

Classification	
Charles W. Wadell, Jr., Principal and Project Manager	\$145
Greg Armentrout, Sr. Right of Way Agent	\$125
Jerry Wilson, Sr. Senior Right of Way Agent	\$105
Right of Way Agent	\$85
Title Agent	\$95
Project Coordinator	\$70
CAD Operator	\$60
Office Clerk	\$50
Depositions and Court Testimony	\$300

DIRECT CHARGES			
Copies - B/W	\$0.05	Postage/FedEx	Cost
Color	\$0.25	Mileage	Current IRS Rate
D & E Size Copies	\$4.00	Sub-Consultants	Cost
Real Estate Data Services	Cost	Other Expenses	Cost *
Telephone/Fax	Cost		

* Upon prior client approval.

Terms of Payment – Net 30 days. Invoices will be submitted monthly. Rates are valid until December 31, 2020.

EXHIBIT "C"

City' s Representative:
Mary Torres, Property Services Officer
Department of Economic Development
(562) 570 -6846

EXHIBIT “D”

Materials/Information Furnished: None

EXHIBIT “E”

Consultant’s Key Employee:

Roy Guinaldo

Senior Project Manager

rGuinaldo@OPCservices.com

(562) 304-2000