

PROFESSIONAL CONSULTING AGREEMENT
[STANDARD FORM]

Agreement No. 10366

THIS AGREEMENT (the "Agreement") is entered into as of the Effective Date by and between the Consultant and the Company on the following terms and conditions:

SUMMARY OF BASIC TERMS AND DEFINITIONS

The following is a summary of the fundamental terms, conditions and definitions contained in this Agreement ("Summary"). The summary provisions set forth below are qualified by the more detailed provisions contained elsewhere in this Agreement.

- A. Company: NEWLAND REAL ESTATE GROUP, LLC
Company's Address: 2850 E. Camelback, Ste. 300
City/State: Phoenix, AZ 85016
Telephone: 602.468.0800 Fax: 602.468.1633
- B. Consultant: 3FORM INC.
Consultant's Address: 2300 South 2300 West
City/State: Salt Lake City, UT 84119
Telephone: 800.726.0126 Fax: _____
- C. Effective Date: April 1, 2011
- D. Expiration Date: December 31, 2011
- E. Project: Symphony Park - Las Vegas - SPMA - Front Entry Monument
- F. Scope of Services/Schedule of Performance: See Exhibit A
- G. Fees and Reimbursements: ☒ GUARANTEED MAXIMUM FEE of \$ 468,782.35, ("Fee") per the attached proposal. Does not include reimbursables.
40% Down - 60% Upon Completion & prior to shipment
OR
☐ MONTHLY TIME AND MATERIALS FEE ("Fee") NOT TO EXCEED \$ _____ including Reimbursements.
See Exhibit B for Consultant's billing rates and additional payment terms and Reimbursements.

CONSULTANT'S NOTE: No payments will be made by Company other than the specific Fees and Reimbursements set forth in this Agreement unless an amendment authorizing additional Services and/or Fees and/or Reimbursement is first entered into by the parties. To the extent a Consultant proposal is attached as an Exhibit, only the description of services, billing rates and specified Fee shall be made a part of this Agreement. Any other terms and conditions contained in the Consultant's

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proposal are expressly excluded from this Agreement.

H. Exhibits:

Exhibit A - Scope of Services/Schedule of Performance

Exhibit A-1 - Consultant's Proposal (or general description of Services) and Billing Rates

Exhibit B - Billing Rates and Reimbursable Expenses

Exhibit C - Insurance Exhibit

I. **Additional Defined Terms:** All initial capitalized terms set forth in the Summary shall have the same meaning elsewhere in the Agreement as set forth in the Summary. In addition to the terms defined in this Summary above, the following terms shall have the meaning set out below:

(a) **"Affiliates"** shall mean any person or entity, including any corporation, limited liability company, partnership, joint venture, division or other legal entity, directly or indirectly, in whole or in part, or through one or more intermediaries, owning, controlling, controlled by, or under the common control with, the Company and its officers, officials, directors, trustees, partners, managers, members, employees, agents and representatives.

(b) **"Claims"** shall mean any and all direct or indirect claims, demands, actions, causes of action, suits, rights of recovery for any relief or damages, debts, accounts, damages, taxes, assessments, fees, fines, penalties, costs, losses, liabilities, mechanic's liens or stop notices and expenses (including, without limitation, court or arbitration costs, and attorneys' fees and expenses, and other costs of defense), of any kind or nature, including, without limitation, whether based on contract in tort, in law or equity, pursuant to any violation of any and all state laws, rules, ordinances, regulation, by-laws, orders, decrees, permits, licenses and certificates of any federal, state or other governmental agency or body having jurisdiction, and whether foreseeable or unforeseeable.

(c) **"Confidential Information"** shall mean all information acquired by Consultant, including materials prepared by Consultant, concerning the subject of the Services or the Company's intentions with respect thereto.

(d) **"Consultant Parties"** shall mean Consultant and Consultant's agents, employees, subcontractors, advisors, support consultants and other parties employed or engaged by Consultant or any of the foregoing or for whom Consultant is liable, and any other persons performing Services on behalf of Consultant under this Agreement.

(e) **"Legal Requirements"** shall have the meaning set forth in Section 22.

(f) **"System"** shall mean the State of California Public Employees' Retirement System, and NNP IV Investors, LLC (who may be a member of an Affiliate of Company), and each of their officers, officials, directors, trustees, partners, managers, members, employees and agents.

(g) **"Services"** shall have the meaning set forth in Section 1.

AGREEMENT

1. **Consultant's Services.** On the terms and conditions contained herein, Company hereby retains Consultant, and Consultant hereby agrees to perform all services identified on the attached Exhibit A, together with all other services and work product reasonably necessary to complete and/or customarily performed in connection with the Scope of Services identified on Exhibit A (collectively, the "Services").

2. **Term.** Unless earlier terminated by the express provisions hereof, the term of this Agreement ("Term") shall commence on the Effective Date and expire on the Expiration Date.

3. **Quality of Services.** Consultant shall devote Consultant's commercially reasonable and professional efforts consistent with other professionals in Consultant's industry, and fully and faithfully perform the Services (i) in an efficient and diligent manner so that the Services provided by Consultant hereunder will be timely (and in any

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event in accordance with the Schedule of Performance) and of a scope and quality not less than that performed by other professionals engaged in the performance of similar services in connection with projects of similar size, scope and complexity, and (ii) in compliance with the Legal Requirements. Consultant shall provide, at no charge (other than amounts payable as Fees or Reimbursements), progress copies of drawings, reports, specifications and other necessary information, as required hereunder or as requested by Company, to Company and Company's contractors and other consultants. Consultant shall ascertain the requirements for the Services, shall confirm such requirements to Company and inform Company of any additional information Consultant needs from Company or Company's contractors or other consultants sufficiently ahead of time to allow Company to obtain such additional information and shall promptly notify Company of any deficiencies in the information provided to Consultant by Company or Company's contractors or other consultants. Company will employ other contractors, engineers and consultants in connection with the Project, and Consultant shall cooperate and coordinate its Services with such other contractors, engineers and consultants as required to facilitate reasonable, orderly and timely completion of the Project; provided that Consultant shall not be required to perform any Services other than as set forth herein and those customarily furnished in connection therewith.

4. **Licenses or Permits.** If any governmental license or permit shall be required for the proper and lawful conduct of Consultant's business, or shall be required for the Consultant Parties in connection with providing the Services hereunder, Consultant, at its expense, shall duly procure and thereafter maintain such license or permit, or cause such license or permit to be procured and thereafter maintained, and submit the same to the Company for inspection. Consultant, at its expense, shall at all times comply with the requirements of each such license or permit and shall cause any Consultant Parties providing the Services hereunder to so comply with the requirements of each such license or permit during the Term of this Agreement. The failure of Consultant to comply with the terms of this Section shall in no way relieve Consultant of its indemnification obligations under Section 13 of this Agreement.

5. **Personnel and Other Consultants.** All Consultant Parties providing the Services hereunder on behalf of Consultant shall (i) be qualified and competent professionals experienced in rendering the Services described in the Exhibit(s), conforming to the professional standards set forth in Section 3 and (ii) licensed to the extent required by Section 4. Consultant shall ensure that such persons perform the Services in the manner described in Section 3 above. If Consultant's proposal(s) identifies other persons to provide all or a portion of the Services other than Consultant, Consultant shall provide the Company with such person's or persons' qualifications and experience. Consultant shall nevertheless be fully responsible to Company and the indemnity set forth in Section 13 shall apply to Services rendered by other parties to or on behalf of Consultant.

6. **Fees and Reimbursements.** In consideration of the performance of the Services, the Company agrees to pay Consultant the Fees and Reimbursements, computed and presented as set out in Exhibit B hereto. Any single cost or expense subject to reimbursement by the Company which exceeds Two Thousand Five Hundred Dollars (\$2,500.00) or which is not listed on Exhibit B must be approved by the Company in advance of the obligation being incurred in order for such cost or expenses to be reimbursed.

7. **Invoices.** Consultant shall bill the Company for the Services based on invoice(s) with appropriate support documentation for the Fee and Reimbursements. Consultant shall submit invoices for the Fee and Reimbursements broken down separately as to each item. Provided Consultant has submitted invoices with appropriate support documentation by the first (1st) of the month, Consultant shall be paid by the thirtieth (30th) of such month unless such invoice is disputed as described below. The format of the invoice and backup documentation shall strictly adhere to the requirements established by Company. If the Company disputes or questions any part or all of an invoice, the Company shall advise Consultant in writing of such questions or disputes within thirty (30) days of the Company's receipt of such invoice. In the event of any dispute regarding the Services performed to date, Consultant, including any of Consultant's subcontractor(s) or agent(s) responsible for the Services, in Company's sole and absolute discretion, shall, so long as Company is pursuing resolution of such dispute in an expeditious manner, continue to carry on performance of the Services and maintain their progress during any such dispute, lawsuit or other proceeding to resolve the dispute, and Company shall continue to make payments of undisputed amounts to Consultant in accordance with this Agreement. Except as otherwise determined by the Company, all payments for approved advisors and support consultants will be made to Consultant for payment to the designated advisors and support consultants.

8. **Ownership of Materials.** Except for any and all intellectual property owned by Consultant in the materials (and corresponding designs or processes for making the same), of which none are transferred by this Agreement, all materials produced or purchased at the Company's expense by Consultant or its approved advisory and support consultants shall be the property of the Company. When Consultant completes the Services and is paid in full for all approved and non-disputed Fees and Reimbursements, Consultant shall deliver the originals of all materials produced or purchased by Consultant to the Company within thirty (30) days. Subject to intellectual property already held by Consultant, the Company shall be the owner of any and all work product (including, without limitation, all writings, drawings, specifications, blueprints, pictures, photographs and recordings) created, produced, developed, prepared or submitted by Consultant to Company or to Company by Consultant related to the design of the structure for which Consultant will provide material under this Agreement whether it be in printed or electronic form (the "Work Product"), and Company may reproduce, modify and otherwise use the Work Product created for any and all purposes. The Company shall also be the owner of all intellectual property rights in such Work Product, including all rights of copyright therein. Without any additional consideration, Consultant will execute and deliver any and all further documents that Company reasonably determines may be desirable to perfect its ownership of any intellectual property rights, including any copyright rights, in any of the Work Product. It is the intention of Consultant and the Company that the Work Product is a "work for hire" as that term is used in the federal Copyright Act. However, if the Work Product consists of plans and specifications for physical structures, the Company will indemnify Consultant from any claim for property damage or personal injury arising from the use of the plans and specifications for any purpose other than the purpose for which originally produced. Notwithstanding anything to the contrary contained in this section 8, Company acknowledges that elements of the Work Product will consist of materials that are not transferred to the Company, including right, title, or interest in Consultant's proprietary methods, techniques, designs, products, and processes, as well as third party trademark materials in which neither Company nor Consultant has an ownership interest. However, in no event shall the foregoing be deemed to prevent Company from using and owning the Work Product as delivered by Consultant for the purposes for which the Services are intended.

9. **Company's Intellectual Property.** Consultant agrees that all trademarks, trade names, service marks, logos, or copyrighted materials of the Company that Consultant is permitted to use in connection with the Services are used by the consent of the Company and shall remain the sole and exclusive properties of the Company or its Affiliates, and this Agreement does not confer upon Consultant any right or interest therein or in the use thereof.

10. **Termination.**

(a) For convenience, the Company may terminate this Agreement or any of the Services of Consultant at any time with or without cause on seven (7) days' prior written notice. Upon receipt of a notice of termination, Consultant shall cease providing the Services as directed by the Company. Commitments for Services from advisors and support consultants shall be concluded as expeditiously and economically as possible, unless otherwise directed by the Company. If the Company selects an alternate provider of the Services, Consultant shall cooperate with the alternate provider so that the transfer of responsibility may occur as quickly as possible without disruption of the Company's business. Consultant shall in any case be entitled to payment in full for any non-disputed Fees and Reimbursements in connection with all Services it performs until termination of performance has occurred.

(b) This Agreement may be immediately terminated at the election of Company with notice and five (5) days to cure, upon the occurrence of any of the following events:

(i) Consultant's breach of any covenant or failure to perform any obligation under this Agreement; or

(ii) The failure of Consultant to comply with any statute, law or regulation applicable to Consultant in performing Consultant's Services hereunder.

11. **Confidentiality.** Consultant shall not disclose any Confidential Information to others without the Company's prior written consent. Disclosure to Consultant's employees and other professional advisors who agree to be bound by the terms of this Section is permitted when required in connection with the Services. Upon the conclusion of the Services, Consultant shall return all Confidential Information to the Company or shall certify to the Company that all Confidential Information has been destroyed. In addition, Consultant agrees that ideas or concepts under

consideration by the Company and disclosed to or developed by Consultant are confidential and proprietary to the Company and may not be utilized by Consultant for any purpose other than in connection with the Services or disclosed to any third party unless authorized in writing by the Company. Consultant shall not refer to or show the Services provided for Company under this Agreement in any of Consultant's marketing or promotional materials absent Company's prior written approval, which may be withheld in Company's sole and absolute discretion. Consultant agrees to commit the Consultant Parties to protect the confidential and proprietary nature of these ideas and concepts.

12. **Performance Reviews.** During the Term, Consultant and the Company shall meet as frequently as either party deems necessary to review Consultant's performance of the Services.

13. **Indemnification by Consultant; Exculpatory Clause and Waiver.**

(a) Consultant hereby agrees to defend, indemnify, protect and hold harmless the Company, its Affiliates and System and their respective members, managers, partners, lenders, officers, joint-venturers, directors, affiliates, representatives, agents, shareholders, attorneys and employees, and each of them and their respective successors and assigns (collectively, the "Owner Parties") from and against any and all Claims occurring incident to or resulting in whole or in part from, the activities of any of the Consultant Parties in connection with this Agreement; provided however, that this indemnity shall not apply to the extent of Company's gross negligence or willful misconduct. This indemnity shall survive the expiration or termination of this Agreement as to any such Claims arising out of this Agreement. Consultant shall, upon receipt of notice of any Claim, promptly take all action necessary to make a claim under any applicable insurance policy or policies Consultant is carrying and maintaining. In any and all Claims against one or more of the Owner Parties by any employee of any of the Consultant Parties, the indemnification obligation under this Section 13 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant Parties under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

(b) Consultant Parties acknowledge and agree that System is not a party to this Agreement. Accordingly, System shall have no liability hereunder and no personal or direct liability shall at any time be asserted or enforceable against System on account of or arising out of any obligations arising out of or related to this Agreement. Further, Consultant Parties waive any claims against System, irrespective of the nature of such claims, and agree to look solely to the assets of Company for the enforcement of any claims arising hereunder or related hereto. Consultant Parties acknowledge that this contractual relationship would not be created except with the inclusion of this provision.

14. **Waiver.** The failure of either party to require the strict performance of any provisions of the Agreement in any one or more instances, or to exercise its rights hereunder or at law or in equity, shall not be construed as and shall not constitute a waiver or relinquishment of any such provisions or rights, and such provisions and rights shall continue in full force and effect.

15. **Books and Records.** Consultant agrees that it will maintain records and books of account reflecting all Fees and Reimbursements and other charges invoiced to the Company, including supporting documentation, according to generally accepted accounting principles consistently applied, for a period of at least two (2) years after the Services are completed or terminated, and that the Company shall have the right to inspect and audit such books, records and supporting documentation at Consultant's office, including any and all correspondence, contracts, books, accounts, and other materials prepared or held by Consultant that are directly related to its performance of the Services. If any overcharges are discovered, Consultant agrees to refund promptly the overcharge to the Company, plus interest at the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum rate allowed by law.

16. **Supervision.** Consultant shall supervise the performance of subcontractors or support consultants retained by it and when requested to do so those retained by the Company in connection with the Services.

17. **Releases, Licenses and Permits.** Consultant shall obtain all releases, licenses, permits or other authorizations required to use drawings, plans, photographs, copyrighted materials, art work, or any other property or rights belonging to third parties that are required for use in performing the Services. The Company shall cooperate with Consultant in obtaining any such release, license, permit, or other authorization.

18. **Insurance.** Consultant and its advisors and support consultants of every tier shall maintain, with companies satisfactory to the Company, any and all insurance which would otherwise be obtained in the course of prudent business practice and shall comply with all terms and conditions thereof. Such insurance shall include, without limitation, the types of insurance in minimum amounts as listed on the Schedule of Insurance attached to this Agreement as Exhibit C. Consultant understands and agrees that Consultant is not covered and may make no claim under any of Company's insurance policies.

19. **Miscellaneous.**

(a) **Notices.** All notices required to be given under this Agreement shall be given to the other party in writing and by personal delivery, facsimile (with telephonic confirmation of receipt), or certified mail with return receipt requested, to the address of each party given in the Summary of this Agreement and with copies to such other parties as set forth below. Notice given by personal delivery or facsimile shall be effective when received and notices by certified mail shall be effective the third business day after such notice is deposited in the United States mail postage prepaid. Copies of any such notices shall be provided as follows:

IF NOTICE IS TO COMPANY:	IF NOTICE IS TO CONSULTANT:
Newland Real Estate Group, LLC Attn: Legal Department 9820 Towne Centre Dr. San Diego, CA 92121-1974 Telephone: 858/455-7503 Facsimile: 858/455-6142	3form Inc. Attn: Wynn Clayton 2300 South 2300 West Salt Lake City, UT 84119 Telephone: 801/649-2529 Facsimile: 801/649-2699

(b) **Independent Contractor.** Consultant is an independent contractor in the performance of its duties under this Agreement. The detailed methods, manner and means of conducting the Services shall be under the complete control and direction of Consultant. Consultant understands and agrees that none of the Consultant Parties are entitled to any of the rights, privileges or benefits established for Company's employees. Consultant understands and agrees that Company will not pay or withhold from any amounts paid to Consultant under this Agreement any income tax, self-employment tax, payroll tax, workers compensation or other similar payments, and all such payments as may be required by law are the sole responsibility of Consultant. No partnership or joint venture is intended or implied by this Agreement.

(c) **Safety.** Consultant shall comply with all safety and loss prevention rules and procedures established at each work site as well as all applicable safety and health laws and regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Consultant's employees. Consultant shall notify the Company immediately, by telephone with prompt confirmation in writing, of injuries and fatalities that occur to its employees or subcontractors in connection with this Agreement and shall provide the Company with reports of any injuries and fatalities as the Company shall deem necessary, including but not limited to copies of all reports and other documents filed or provided to Consultant's insurers and the agencies having jurisdiction in connection with injuries or fatalities. If the Company determines that Consultant has breached or violated the terms of this Section 19.c., the Company shall have the right to suspend the Services or terminate this Agreement, as the Company shall determine, in its sole discretion, and the Services shall not recommence until and unless the Company is satisfied that the safety provisions will not thereafter be breached or violated. Nothing contained in this Section shall be interpreted as (i) enlarging the Company's legal duty to Consultant or to Consultant's agents, employees, subcontractors, advisors, support consultants or third parties, or (ii) altering the status of Consultant as an independent contractor under this Agreement.

(d) **Assignment.** This Agreement may not be assigned by Consultant, but may be assigned by the Company to an Affiliate, lender, or in connection with a sale of the property which is the subject matter of the Services hereunder.

(e) **Amendment.** This Agreement may be amended only by a written instrument which refers to this Agreement and is executed by each of the parties hereto.

(f) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements with respect to such subject matter between Consultant and the Company.

(g) **Governing Law.** The laws of the city, county and state where the Project is located shall govern and control the construction, interpretation and enforcement of this Agreement, excluding any conflict of law rule which would refer any matter to the laws of any other jurisdiction.

(h) **Non-Discrimination in Employment.** During the Term of this Agreement, neither Consultant nor the other Consultant Parties shall unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Consultant and the other Consultant Parties shall assure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Consultant and its affiliates, employees and agents shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. During the Term of this Agreement, Consultant, its affiliates, employees and agents shall conduct their respective activities in accordance with Title VI of the Civil Rights Act of 1964 and the rules and regulations promulgated therein.

(i) **Counterparts.** This Agreement may be executed in counterparts, and when all counterpart documents are executed, the counterparts shall constitute a single binding instrument. In addition, properly executed authorized signatures may be transmitted via facsimile and upon receipt shall constitute an original signature.

(j) **Successors.** Subject to the provisions of Section 19(d) above, this Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the respective parties and any person claiming by, through or under any of the respective permitted successors or assigns.

(k) **Headings.** The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

(l) **Severability.** If any provision of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement, which shall remain in full force and effect, and the parties hereto shall continue to be bound thereby.

(m) **Time of the Essence.** Time is of the essence of this Agreement. Consultant shall prosecute the Services hereunder with diligence and in such a manner as is necessary to complete the Services on or before the completion date or dates specified in the Exhibit(s), it being understood by Consultant this being of the utmost concern and matter to the Company.

(n) **Cumulative Remedies.** All rights, privileges and remedies afforded the parties by this Agreement shall be cumulative and not exclusive, and the exercise of any one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein or available at law or equity.

20. **Dispute Resolution.** Any dispute or claim between the Company and Consultant relating to or arising out of this Agreement and/or the Services performed by Consultant under this Agreement shall be subject to the provisions of this Section 20.

(a) Company and Consultant shall first submit all claims, disputes and other matters in question arising out of or relating to this Agreement or the actual or alleged breach thereof (collectively, "Dispute") to non-binding attempts at mediation before a neutral third party mediator, unless participating in the mediation would cause the dispute to be barred by the passing of any applicable statute of limitations or barred by any legal requirements. Unless the parties mutually agree otherwise, such mediation shall be conducted in accordance with the



Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Such mediation shall include all necessary parties and proceedings by consolidation to resolve the dispute, including, but not limited to, all Consultant Parties. If any Dispute has not been resolved within forty five (45) calendar days after submission thereof to mediation, any party may initiate arbitration in accordance with the following paragraph.

(b) Except as provided in paragraph (c) below, any Disputes which cannot be resolved by the parties through mediation as provided for above, including but not limited to the validity, interpretation of performance or non-performance of this Agreement and the jurisdiction of the arbitrator, shall be subject to and decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect (the "Rules"). Such arbitration shall take place at a location determined by Company in the State in which the Project is located. If the amount in controversy in the Dispute does not exceed One Hundred Thousand Dollars (\$100,000), the arbitration and hearing shall be conducted without any rights to discovery and the parties hereby knowingly waive any rights to discovery in connection with such Dispute. If the amount in controversy is in excess of One Hundred Thousand Dollars (\$100,000), all discovery shall be completed within one hundred twenty (120) days of a demand for arbitration. Subject to the foregoing, discovery may be obtained in accordance with the Rules. Except as set forth in paragraph (c) below, no arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by Company and Consultant and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof. In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statutes of limitations and/or provisions of law relating to timing for stop notices and mechanics' liens. In rendering its decision, the arbitrator shall prepare written findings of fact and conclusions of law. The award rendered by the arbitrator or arbitrators shall be final and binding and not subject to appeal or review. Judgment may be entered upon the arbitrator's decision in accordance with applicable law in any court having jurisdiction thereof. The fees and expenses of the arbitrator shall be paid in the manner allocated by the arbitrator. The arbitration shall be conducted and completed not later than one hundred eighty (180) days from the date of demand for arbitration by a party and the award shall be rendered within thirty (30) days of completion of the arbitration. The arbitrator shall have no authority to award punitive or exemplary damages.

(c) Notwithstanding the foregoing, if Company is involved in any Dispute, arbitration, judicial reference, litigation or other legal or administrative action with a person or persons other than Consultant, which Company believes involves or may involve Consultant, then Company shall have the sole and exclusive right, but not the obligation, to consolidate proceedings in any Dispute, mediation, arbitration, judicial reference, litigation or other legal or administrative action with Consultant into the Dispute, arbitration, litigation or other legal or administrative action between Company and such other person(s). Consultant hereby consents to such consolidation. Further, if such dispute resolution procedure provides that the decision of the court, referee or arbitrator will be final, binding and not subject to appeal or review, then Consultant agrees to be so bound by such decision. Consultant also agrees to attend and participate fully at any mediation which Company believes involves or may involve Consultant, and to participate equally with other parties in sharing costs of such mediation. Notwithstanding any provision herein, pending any decision in arbitration, judicial reference, mediation or litigation, Consultant shall continue to perform all obligations under this Agreement, unless terminated by Company as provided herein.

(d) If either party institutes any action or proceeding against the other relating to the provisions of this Agreement or any default hereunder, the nonprevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of such attorneys' fees and all cost and disbursements incurred therein and in any mediation respecting the subject matter of such action or proceeding and including any appeal from such action or proceeding. Subject to the provisions of local law, the prevailing party shall recover all such fees, costs or disbursements as costs taxable by the court, arbiter or mediator in the action or proceeding itself without the necessity for a cross-action by the prevailing party.

(e) Each party to this Agreement hereby waives its respective right to a trial by jury.

21. Acknowledgment and Understanding; Interpretation. Each of the parties hereto specifically agrees that it has a duty to read this Agreement and agrees that it is charged with notice and knowledge of the terms of this Agreement; that it has in fact read the Agreement and is fully informed and has full notice and knowledge of the terms, conditions and effect of this Agreement; that it has been represented by independent legal counsel of its choice throughout the negotiations prior to its execution of this Agreement and has received the advice of its attorney in entering into this Agreement; and it recognizes that certain of the terms of this Agreement result in one party assuming the liability inherent in some aspects of the transaction and relieving the other party of its responsibility for such liability. In addition, each party agrees that this Agreement shall not be construed against Company merely because of Company's involvement in its preparation and the parties hereto agree that such fact shall not create a presumption, construction, or interpretation favoring the position of either party in interpreting the Agreement. Further, the parties agree that any deletion of language from this Agreement shall not be construed to have any particular meaning or to raise any presumption, construction or implication, including without limitation, any implication that the parties intended thereby to state the opposite of the deleted language.

22. Compliance with Laws. Consultant agrees, at its own expense, to comply and to cause the Consultant Parties to comply with all requirements of any existing federal, state and local laws, rules, regulations and requirements ("Legal Requirements") at all pertinent times in connection with the performance of the Services hereunder.

23. Exhibits. If there are any terms and conditions contained in any exhibit(s) attached hereto which are inconsistent with the terms and conditions contained in this Agreement, the terms and conditions of this Agreement shall prevail. All exhibits attached hereto are incorporated herein by this reference.

24. Conflict of Interest. Consultant hereby agrees to notify Company and seek Company's approval prior to Consultant's retention by any other individuals or entities, which either directly or indirectly may create a conflict of interest in Consultant's Services under this Agreement. Company may deny any such approval for Consultant's retention set forth above, in the event Company, in Company's sole and absolute discretion, should conclude that such retention would have an adverse affect on Consultant's Services under this Agreement or on the Project generally.

25. Fair Housing. Consultant acknowledges that Company and its Affiliates are (i) pledged to the letter and spirit of U.S. policy for achievement of equal housing opportunity throughout the nation and (ii) encourage and support community development programs in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status or national origin.

BALANCE OF PAGE INTENTIONALLY OMITTED

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date,

CONSULTANT

3FORM INC.

a Utah Corporation

By: [Signature]

Name: William K. Clayton

Title: CFO

COMPANY

NEWLAND REAL ESTATE GROUP, LLC
A LIMITED LIABILITY COMPANY

By: [Signature]

Name: Sam Glodstein

Title: VP, ops

EXHIBIT A
SCOPE OF SERVICES/SCHEDULE OF PERFORMANCE

Consultant shall fully and faithfully perform all Services reasonably necessary for the Project, including without limitation, the following:

- a. Coordinate all consulting activities with Company's designated representative for the Project, Sam Gladstein.
- b. Submit a monthly, or more frequently as requested by Company, written status/progress report of all activities conducted by Consultant for the Project; and
- c. Perform the services as described on Exhibit "A-1" which is attached hereto and made a part hereof.
- d. Estimated date for completion of Services: 12/31/2011
- e. With respect to any reports or work product produced under this Agreement, Consultant shall issue any such reports and/or work product to: "Company and any Affiliate or other entity managed, either directly or indirectly, by Company."

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EXHIBIT A-1

Proposal of Services

Symphony Park Front Entry Monument, Design, Manufacturing and Shipping




Memorandum

City of Las Vegas
Economic and Urban Development Department

Time Sensitive

To: Bill Arent, Director
From: JoAnn Crolli, Business Specialist
Via: Steve van Gorp, Deputy Director
cc: Scott Carter, Redevelopment Officer
Date: April 4, 2011
Re: Contract for Symphony Park Front Entry Monument

Attached please find a memo from Sam Gladstein outlining a final proposal from 3-Form Advanced Technology in the amount of \$468,782.35 for the design, manufacturing and shipping of the front entry monument at Symphony Park.

The budget for this contract is from the Phase IIA Life of Project Costs, which were appropriated for the construction of the park on Parcels M1 and M2.

Please review, sign below acknowledging your approval and return to me at your earliest convenience. Sam will need approval by April 8th.

If you have any questions, please let me know.

Thank you.

APPROVAL:

 4/5/11

William Arent, Director

Date



117741
10359

MEMO

TO:	JoAnn Crolli	FROM:	Sam Gladstein
CC:	Scott Carter	DATE:	4/4/2011
SUBJECT:			
Contract for Symphony Park front entry monument			

☒ URGENT	☒ FOR REVIEW	☐ PLEASE COMMENT	☒ PLEASE REPLY	☐ PLEASE RECYCLE
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NOTES/COMMENTS: **TIME SENSITIVE**

JoAnn:

Attached, please find a final proposal from 3-Form Advanced Technology for the front entry monument at Symphony Park in the amount of \$468,782.35. Because of the current unrest in the Middle East, which is where raw material for the Koda XT panels (referenced in the proposal) is sourced, there will be a significant price increase within the next two weeks. It is anticipated that the front entry monument pricing could be as much as \$20,000 higher. 3-Form will hold our current pricing until next Friday April 8th. It would be advantageous for the project to take advantage of this price savings, especially since we still need to contract with a sign company to complete the installation of the project.

Please don't pay attention to the May quote expiration date that is indicated on the 3-Form proposal. They reissued the proposal to reflect a \$6000 discount for shipping and their computer system automatically generates a new date. The April 8th date is our cutoff.

The 3-Form proposal includes the design, manufacturing, and shipping of the monument. A separate contract will be required from a qualified sign installer for the fabrication and installation of the monument.

The budget for this proposal is part of the Phase IIA Life of Project costs, which were appropriated for the construction of the park on Parcels M1 and M2. That budget currently has \$1.5M available.

In addition to pricing with 3-Form, we requested competitive bidding from Salt & Associates, the company that was award the contract for the Symphony Park signage along Grand Central Parkway. Please refer to the attached letter from Bob Salt, which indicates that 3-Form is the best choice the front entry monument.

Please contact me with any questions.

Sam Gladstein

SALT & ASSOCIATES | global print management

1042 N El Camino Real
Suite B509
Encinitas, CA 92024 USA
T 760.635.0221
F 760.635.0222



Nancy Higgins
SYMPHONY PARK MARKETING
6130 Elton Avenue
Las Vegas, Nevada, 89107

Dear Nancy:

Many thanks for the opportunity to review the specifications and plans for the new Monument Signage for Symphony Park. Per your request, after receiving the specifications, I contacted some of my resources for such signage as well as researched several others to see if we could get a competitive option to the proposal you were provided from 3form.

I checked with some of the local, Las Vegas resources we explored for the park fencing graphics and both Fusion and Influent are primarily print oriented signage companies and do not get into such hard material fabrication.

I contacted a couple other resources, such as Sever Signs in Perris, CA and Los Angeles Sign Company. Sever had some experience in the type of monument you are considering, but did not really have the durable, color material needed to make it work.

Doing further research, I spoke with San Diego Electric Sign, National Sign Fabricators in Phoenix, and Quantum Sign Fabricators in Illinois. Quantum Sign had the best experience with large, tall signage, but again they were limited in the materials needed to make it work as designed.

Seems the prime materials being used by 3form, their Koda XT panels, is rather unique in its durability, strength and color richness.

I'm sorry to share that I was unable to come up with a viable alternative for consideration on this project.

Regards,

Robert J Salt
President

Project: **Symphony Park**

In Collaboration with: **Davies Associates, Inc.**

Paul Hershfield

Project Owner: **Sam Gladstein c/o The Symphony Park Master Association**

6130 Elton Avenue, Suite 212 / Las Vegas, NV 89107

3form Sales Representative: **Rebecca Koteen / 310-272-6088**

3form Director of Business Dev.: **Ruben Suarez / 949-280-5998**

3form ATG Estimator: **Jen Silbert / 801-649-2542**

Project Scope: 38' tall exterior signage using 3form Koda XT panels in a variety of colors. The design is a series of faceted geometry panels. 3form to design and develop the support system for the sculptural installation, including panels, point support hardware, substructure and major internal structural support. 3form will engineer the system to support the signage panel as well.

Quote Submittal Date: **April 1, 2011**

Quote Expiration Date: **May 1, 2011**

Estimated Lead Time: **19 Weeks**

Estimated Project Install Date:

Project Overall Cost (Pre-Tax) **\$439,908.31**

Project Overall Cost (w/est. tax*): **\$468,782.35**

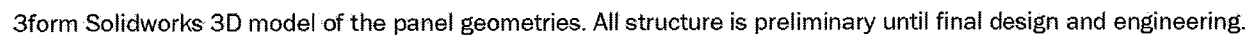
*Note Tax is estimated for the assumed shipping destination of Nevada . Estimate includes state tax only. Does not include any local or municipal taxes.

Application: **Exterior Sculptural Installation**

Design rendering based on 3form 3D model of the panels. 3form to provide turnkey system of panels, hardware, structure, and lighting:



3form is responsible for the panels, point support hardware, substructure, internal support structure (for sculpture and signage), and all associated engineering, detail development, fabrication drawing and 3D modeling. The sculpture will be delivered to the site as a kit of parts for easy installation.



MATERIAL

Panel Type	Koda XT with C3 color (3 layers each panel)
Gauge	1/2"
Size	4' x 8' standard and 4' x 10' custom for the bottom base panels
Quantity	There are (11) 4x10 and (25) 4x8 needed to fabricate (80) triangles for the sculpture surface
Front Finish (Face)	Sandstone
Back Finish	Standstone
Layup Notes	Panels will have C3 color. The colors below have been sampled and approved. The final color layout will be determined based on the modeling completed in Phase 1 of the project. Moss x1 Rose x1 Midnight x1 Surf x1 with Aloe x1 Blush x1 Glow x1 with Bewitched x1 Marsh x1 with Tide x1 Vitamin C x1 with Camel x1

> Panel Specifications must be approved via signature on submittal sample. Any changes to the panel specifications contained within this quote will require confirmation via signature. See also the change order section below.

MATERIAL FABRICATION

The panels will be prefabricated at the 3form factory and delivered to site ready for install. On-site fabrication will be kept to a minimum.

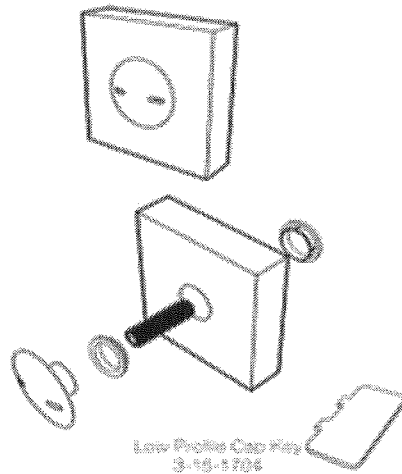
CNC Trimming 3 axis	All panels will be CNC cut to precise geometry
Edge Finishing	Panels edges will be polished
Panel Joinery	There is a <1" gap between all adjacent panel edges
Drilling	Holes for hardware point supports to be pre-drilled

HARDWARE COMPONENTS

3form ATG will design and develop the hardware system, including point supports, substructure, and main structural support

> CONNECTION HARDWARE

- > The panels will connect to the substructure with exposed exterior point supports. The 3form standard XT point supports will be modified (or substituted) to have a low profile cap edge
- > There are at least 6 point supports per triangular panel, with 2 point supports along each edge. Point supports will not be directly in the corners
- > The installation is not watertight – weather will pass between the 1" gap at all panel edges



Low profile cap head. This is an interior part, but a similar aesthetic will be developed for the exterior application, especially considering tamper-resistance (the low profile cap uses a special tool for installation and is therefore harder to tamper with)

> **MAIN STRUCTURAL COLUMN**

- > 20" x 20" square internal structure to support the 3form panels and the Symphony Park sign (panels and letters for the sign by others)
- > Main column runs the full height of the structure, approx. 39'
- > Base plate at bottom to anchor into the ground
- > Main structure will ship to site in 3 pieces for easy on-site assembly

> **INTERNAL SUBSTRUCTURE**

- > Internal substructure will hang off the main structural column to connect to the panels
- > The design will be finalized during the design development / engineering phase of the project, and will be tied back to the main structural column with structural tubular struts
- > Substructure to be either an offset surface or space frame system, each option will support the panels with point supports as well as the 3form lighting solution

LIGHTING

3form Light Design will provide the light system for the sculptural installation, to create dynamic light effects over the faceted surface

- > Lights will be 3form proprietary HP LED system suitable for exterior applications
- > Because the panels are faceted, the lighting will not be even across the installation, and will illuminate certain areas more brightly than others
- > The HP LED light bars throw light ~36", therefore there will be a gradient on some of the panels that are further from the light sources
- > One edge of each triangle panel has a light fixture
- > There are a total of ~ 500 linear feet of lighting quoted, for ~ 61 triangular panels
- > Lights are white. The exact temperature of the lights will be determined during the prototype phase of the project when this can be evaluated at full scale

SERVICES

Material Development	Koda XT 3C colors
Digital Modeling	Full 3D model will be presented for review and approval, and used for panel / hardware
Hardware Design	Point support hardware to connect between panels and structure
Engineering	
- Hardware	Point supports
- Sub-Structure	Strut system to connect between panels and main structure
- Main Structure	Steel structural column
- Stamped Drawings	All engineering calculations will be stamped and signed by a NV licensed engineer
Lighting	3form light design to specify, test and provide light fixtures
Shop Drawings	Full set of shop drawings showing panels and hardware will be submitted for review and approval
Site Services	A 3form representative will be on site for 3 days at the start of the installation
Prototype	Full scale prototype using (3) 4'x8' panels will be fabricated, including all internal structure, hardware, and lighting to test the panels, connections, light effect. Prototype will be assembled in Salt Lake City for review and approval.

Site Conditions & Installation

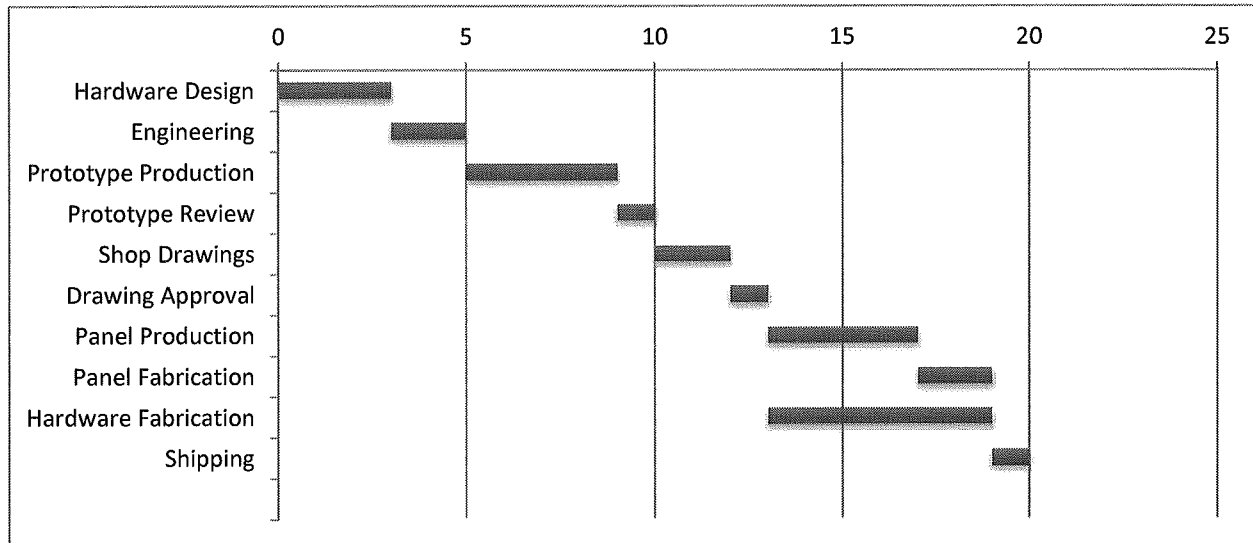
3form is not responsible for site measurements, site preparation, or installation. All site conditions must be provided to 3form prior to commencing engineering and design development. 3form is not responsible for discrepancies between site measurements and finished product.

> Installation of the 3form system is not included in this quote. However, a 3form ATG representative will be available for 3 days of on-site installation oversight.

Leadtime / Schedule

Project has standard 3form lead times and delivery schedule. Manufacturing of panels will not and cannot begin until a signed submittal sample is received verifying material layup, composition, and finishes. See representative chart.

Schedule Item	Weeks
- Hardware Design	3
- Engineering	2
- Prototype Production	4
- Prototype Review	1
- Shop Drawings	2
- Drawing Approval	1
- Panel Production	4
- Panel Fabrication	2
- Hardware Fabrication	6
- Shipping	1
Total	19



*Note: Panel production may not begin or be scheduled until panel specifications are approved by signature on a signed submittal sample.

**Note: Hardware fabrication may run concurrently with panel production.

Shipping

Project will be crated and shipped or delivered via dedicated truck. Shipping takes approximately 1 week.

Change Orders

Any changes from this signed agreement documenting scope, schedule, and cost will result in a change order. Prior to commencing work on the change order, a signed change order documenting those changes in scope, schedule, and cost must be executed by all parties to this agreement. Additionally, payment must be received for that change order per the payment terms of this agreement.

Payment

Project will not ship prior to payment being received in full. 40% downpayment required at time of signing, 30% due within 60 days of signing (or prior to shipment, whichever is sooner), and the remainder due prior to shipment. Failure to receive payments at specified times will result in a delay of schedule. All change orders related to this agreement must also be paid in full prior to shipment.

References

The following drawings files and minute notes were referenced in the creation of the quote.

Filename:	Date:
3form 3D model	2/20/2011 0:00

PROJECT COST*	\$439,908.31
Project Phase 1 - Completed 02/10/11	-\$6,500.00
Shipping	\$12,000.00
Shipping Reduction (As 04/01/11 discussion)	-\$6,000.00
Nevada 0.06500 ‡	\$29,374.04
TOTAL PROJECT COST WITH ESTIMATED TAX	\$468,782.35

*NOTE: Prices may change without notice due to raw material cost increases.

All pricing is in US Dollars.

‡ Estimated Tax is calculated on total project cost.

Not Included in this quote:

- > Installation or assembly
- > Iterations and modifications to approved data
- > Testing of materials for Code requirements.
- > Electrical engineering or electrical conduit / boxes
- > Concrete footing

Additional Conditions:

- a Depending on the nature of the project, it can be assumed that some fitting/trimming of panels will be required for final installation. This quotation includes material, meaning fabricated panels &/or hardware, as outlined in this quotation. It does not include installation or any installation costs related to this final fitting of panels. Bidder should factor this in. Unless otherwise agreed upon, signee agrees to hold 3form harmless for any additional installation costs that may be the result of site conditions, incorrectly fabricated panels or incorrectly installed material.
- b The schedule &/or lead-times presented above are subject to change and are calculated from the receipt of a signed PO, required deposit, and final panel specification approval. Additionally, it is dependent upon receiving necessary requested approvals within 48 hours, or 2 business days, from time of request, unless otherwise stated. Change orders will impact the schedule.
- c This document and the attachments, if any, may contain proprietary information including design concepts, drawings and details that are protected by copyright and are to be treated as confidential. You must not disclose copy, circulate or use the information contained in this document without the consent of 3form or for any non-3form supplied project.
- d Unless otherwise noted, drawings and modeling prepared within the context of this quote &/or resulting project are not prepared by licensed architects.
- e By signing this document you agree that the proposed number of panels and molds required to fabricate proposed installation is sufficient and correct. Any changes to either the number of molds or panels will result in a change order and resultant fees.
- f Standard 3form Terms and Conditions, as presented on the following page.
- g Unless otherwise noted, Change Orders will impact the production schedule and shipping dates. The minimum impact a change order will have upon the schedule of a project will be two weeks extension.

3form TERMS AND CONDITIONS:

- 1 The following terms and conditions shall govern unless a conflicting term or terms appear in this individual proposal (above), in which case the terms of this proposal shall govern.
- 2 All sales subject to the 3form limited product warranty and product specifications available to view or download at www.3-form.com.
- 3 Pricing is per sheet, based on full 48"x 96" sheets only unless otherwise specified.
- 4 40% deposit is due upon receipt of a signed P.O., with the balance due prior to shipment.
- 5 All prices are in U.S., Incoterm FCA . Salt Lake City, Utah, freight prepaid and added to invoice.
- 6 Changes to a signed P.O. will result in a minimum change order fee of 5% of the order value, unless the change results in an increase in the total order amount in excess of 5%. Changes must be in writing.
- 7 Cancellation fee for signed P.O.s is 10% plus a fee for the work completed through the cancellation date.
- 8 Quoted prices are firm for 30 days. Thereafter, prices are subject to change without notice, until the order is accepted by 3form after receipt of (a) a signed P.O. and (b) a 40% deposit. Standard lead-time is 19 weeks from order acceptance by 3form.
- 9 The prices listed in this P.O. may not include taxes. If Customer is required to pay, or is charged, sales, use, property, value-added, income tax withholding or other taxes based on the Products sold pursuant to this P.O. or on Customer's sale of the Products, then such taxes shall be billed to and paid by Customer. If a party is required to withhold any tax from any payment, then the amount of the payment will be automatically increased to offset such tax so that the amount remitted to 3form, net of all taxes, equals the invoice amount or otherwise due.
- 10 Due to dye lot variations and the nature of the manufacturing process, dye lots, gauges and textures may vary slightly from samples provided by 3form customer representatives and the Varia sheets actually delivered. 3form warrants that the Varia sheets will be substantially similar to those samples provided to its customers, but cannot guarantee exact replicas.
- 11 Products which include natural or irregular 3-dimensional inserts will be subject to the following: a) patterns will vary from sheet to sheet, b) density and layout may vary across a single sheet and c) surface imperfections may exist. Surface imperfections include dips, shiny spots and inconsistent texture.
- 12 Custom fabrication is available. Please call for details and pricing. Customer acknowledges that, to the extent any product ordered is to be fabricated, customer (a) has reviewed and agreed upon a seaming and edge finishing technique with a 3form customer representative and understands that all seams are visible and subject to some slight irregularities in gauge and texture and (b) understands that if the fabricated product is to be heat draped or molded, the surface finish of the Varia product will be subject to slight irregularities due to the fabrication process.
- 13 Without additional approvals, 3form retains the right to photograph and publish photographs of the final installation of the product sold in this purchase order.
- 14 If any portion of an account is referred to a collection agency or an attorney for collection. Applicant shall pay reasonable collection costs and attorney's fees and costs plus finance charges of 1.5% per month.

- 15 Any of the terms and provisions of any order by Applicant (or Buyer), in which are inconsistent with the terms and provisions hereof shall not be binding on 3form, and shall not be considered applicable to the sale or shipment of any items by 3form, unless expressly agreed to in writing, signed by an officer of 3form.
- 16 If materials are complete and 3form is not able to ship because final payment or shipping instructions have not been received a fee of \$10 per day after 5 days past the ship date (min \$50) will be added to the order total and must be paid prior to shipping the order.
- 17 Material orders are non-refundable and non-returnable.
- 18 All negotiations and contract performance are deemed to have occurred in Salt Lake City, Utah. Customer agrees that any legal disputes shall be resolved exclusively in Salt Lake County, State of Utah, and shall be governed by Utah law.
- 19 Customer is responsible for inspecting materials prior to installation.
- 20 3form understands the scheduling requirements of the job and will use all reasonable business practices to deliver the job on the agreed upon schedule, however the customer agrees to hold 3form harmless from late penalties or claims including any claims for actual or consequential damages if the project is delivered late.
- 21 3form is not responsible for field conditions, field measurements, site surveys, or installation.

If this quote and the associated terms and conditions are suitable, please initial and date each page and sign below. Upon receipt of signed quote and deposit, 3form will create a CO (customer order) commence work upon the project..

Customer Signature

Date

Signature of other interested Parties with responsibilities as
described in this quote.

Date

EXHIBIT B
Fees and Reimbursements

Fees: Consultant's Billing Rates are attached hereto as Exhibit "B-1" and made a part hereof.

Reimbursements:

1. Out of Pocket Expenses.

Consultant is to be reimbursed for all reasonable and actual (without mark-up) out-of-pocket expenses directly associated with Consultant's performance of the Services, including but not limited to:

- a. Courier;
- b. Reproduction (not to exceed \$.10 per copy);
- c. \$.44.5 per mile (or, if different, the current IRS Standard Mileage Rate) for legitimate automobile travel, in attending meetings and/or appointments;
- d. \$50 per month for legitimate phone expenses.

Such out-of-pocket expenses shall not exceed \$ -0- without Company's prior written approval.

2. Travel Expenses.

Consultant is to be reimbursed for all reasonable out-of-town travel expenses (without mark-up) directly associated with Consultant's performance of the Services, including, but not limited to [specify dates and trips, if possible]:

- e. Air fare (coach class only);
- f. Ground transportation;
- g. Hotel (business class);
- h. Meals.

Such out-of-town travel expenses shall not exceed \$ -0- per trip and \$ _____ in the aggregate, without Company's prior written approval.

W
S

EXHIBIT C

SCHEDULE OF INSURANCE PROFESSIONAL AND CONSULTING SERVICES AGREEMENT

Consultant shall carry and maintain, and shall cause any and all approved advisors and support consultants to carry and maintain, at all times during the term of this Agreement, and thereafter if so designated hereinafter, at no cost to the Company, the following insurance coverages in amounts not less than those shown below, through insurers authorized to conduct business in the state where the Services are to be performed and with an A.M. Best & Co. rating of no less than A VIII, and shall comply with all of the provisions in this Schedule of Insurance:

a.	TYPE OF INSURANCE	MINIMUM LIMITS
	I. Workers' Compensation.	Statutory limits complying with the laws of the state in which the project is located during performance by Consultant pursuant to this Agreement), and employer's liability insurance with limits not less than \$1,000,000 bodily injury by accident (each accident), \$1,000,000 bodily injury by disease (policy limit), and \$1,000,000 bodily injury by disease (each employee).
	II. Commercial General Liability ("CGL") insurance written on an occurrence policy form ("modified occurrence" and claims made forms are not acceptable), including premises-operations coverage (including explosion, collapse and underground coverage) and products-completed operations coverage. The CGL policy or policies shall provide, without limitation, severability of interests (full separation of insureds), contractual liability coverage (including, without limitation, coverage to the maximum extent possible for the indemnification contained in this Agreement), broad form property damage coverage (including completed operations).	Not less than \$1,000,000 per occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 general aggregate limit, and \$2,000,000 products-completed operations aggregate limit, or limits carried, whichever are greater.
	III. Commercial Automobile Liability including, without limitation, liability arising out of all owned, non-owned, leased and hired automobiles, trucks and trailers, or semi-trailers, including, without limitation, any machinery or apparatus attached thereto.	\$1,000,000 per accident.
	IV. Professional Liability (Errors and Omissions) to be carried and maintained during the term of the Agreement and for a period of three (3) years thereafter covering liability to Company imposed by law or contract arising out of an error,	\$1,000,000 per occurrence and in the aggregate.



	omission or negligent act in the performance, or lack thereof, of professional services and any physical property damage, bodily injury or death resulting therefrom. Policy shall at all times include a retroactive date no later than the Effective Date.	
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b. Waiver of Subrogation. All policies listed under Section a. I, II and III shall be endorsed to provide that each insurer thereunder waives its right of subrogation against or contribution from the Company, its Affiliates, the Project Owner, or any of their insurers.

c. Additional Insureds. The policies listed above under Section a. II & III shall name the Company, its Affiliates, System and any lender identified by Company as (i) additional insureds under the CGL policy required above, by issuance of both ISO Form CG 20 10 10 01 and CG 20 37 10 01 additional insured endorsements, or equivalents acceptable to Company, and (ii) as additional insureds under the commercial automobile liability insurance.

d. Primary Coverages. All policies shall be primary insurance for Consultant Parties and the Company, Company's lender(s), the Owner Parties and such other persons and entities as may from time to time be designated by Company. Such policies shall contain a clause stating: "It is further agreed that such insurance as is afforded by this policy for the benefit of the additional insureds shall be primary insurance, and any insurance maintained by or available to the additional insureds shall be excess and noncontributory with the insurance provided hereunder." The coverage provided to the additional insureds must be at least as broad as that provided to Consultant Parties and may not contain any exclusionary language or limitations applicable to the additional insureds.

e. Deductibles and Self-Insured Retention. No deductible or self-insured retention shall exceed \$50,000 per occurrence for the coverages required above. Consultant may seek written approval by Company of a deductible or self-insured retention exceeding \$50,000 per occurrence, which Company may (but is not obligated to) grant in its sole discretion.

f. Verification of Coverage. Prior to commencing the Services, Consultant shall deliver to Company the required endorsements and waivers of subrogation referred to in this Exhibit C, as well as certificates of insurance evidencing the coverages referred to in this Exhibit C. Promptly upon Company's request, Consultant shall deliver to Company a copy of any and all of the insurance policies and other insurance documents required by this Exhibit C. In the case of policies expiring while work is in progress, a renewal certificate with all applicable endorsements must be received at the business office of Company prior to the expiration of the existing policy or policies.

Permitting Consultant to start or continue services, or releasing any progress payment prior to compliance with these requirements shall not constitute a waiver thereof. If at any time Consultant's insurance fails to meet the requirements stated herein, all payments may be held until the deficiency has been resolved.

Each certificate and endorsement must be executed by an authorized agent of the respective insurers. All certificates of insurance must, and the policies shall be endorsed to, provide Company with not less than thirty (30) days advance written notice of cancellation, intent to non-renew, or adverse material change in or reduction of coverage. Consultant shall, immediately upon receipt, provide Company with a copy of any notice of cancellation, intent to non-renew, adverse material change in or reduction of coverage or rescission. The "endeavor to" and "failure to mail such notice shall impose no obligation or liability of any kind upon the Company, its agents or representatives" wording from the cancellation provision of all said certificates will be lined through and initialed by an authorized agent of each insurer.

g. Acceptability of Insurers. All insurance carried in accordance with this Schedule of Insurance shall be provided through insurers authorized to conduct business in the state where the Services are to be performed and with an A.M. Best & Co. rating of no less than A:VIII.

h. Failure of Compliance with these Provisions. The failure of Consultant to carry and maintain the insurance coverages under this Schedule of Insurance, including, without limitation, the failure to maintain the Professional Liability (Errors and Omissions) during the term the Services are performed and for three (3) years thereafter, shall not be deemed to limit Consultant's liability or in any way limit, modify or otherwise diminish Consultant's indemnification obligations contained in this Agreement. The insolvency, bankruptcy or failure of any insurance company issuing insurance for Consultant, or the failure or refusal of any insurance company to pay claims shall not be held to waive any of the provisions of this Agreement. In the event Consultant fails to carry and maintain the insurance specified herein, the Company may, at its option, but without the obligation to do so, secure such insurance, and the cost thereof, plus a five percent (5%) administrative charge, shall be paid by the Consultant to the Company within ten (10) days after demand from the Company to Consultant, or, at the Company's discretion, offset such amount against any amounts due from the Company to Consultant.

W
SR

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

3form, Inc.

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☒ Corporation ☐ Partnership

☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶

☐ Other (see instructions) ▶

☐ Exempt
payee

Address (number, street, and apt. or suite no.)

2300 South 2300 West

City, state, and ZIP code

Salt Lake City, UT 84119

Requester's name and address (optional)

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number

87

0550558

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign
Here

Signature of
U.S. person ▶

Matt VanDoren

Date ▶

6-21-2010

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



Policy Number: 8019770400

Date Entered: 8/13/2009

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/20/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	LAUB INSURANCE AGENCY 2809 S State St SLC, UT 84115	CONTACT NAME:		
		PHONE (A/C, No, Ext): (801) 486-2171	FAX (A/C, No): (801) 487-9031	
		E-MAIL ADDRESS: chris@laubinsurance.com		
		INSURER(S) AFFORDING COVERAGE	NAIC #	
INSURED	3-Form, Inc. 2300 Decker Lake Blvd, Suite B SLC, UT 84119	INSURER A: Truck Insurance Exchange		
		INSURER B: Essex Insurance Company		
		INSURER C:		
		INSURER D:		
		INSURER E:		
		INSURER F:		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	GENERAL LIABILITY			06593-81-77	8/1/2010	8/1/2011	EACH OCCURRENCE	\$ 1,000,000	
	☒ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000	
	☐ CLAIMS-MADE ☒ OCCUR						MED EXP (Any one person)	\$ 5,000	
							PERSONAL & ADV INJURY	\$ 2,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000	
	☐ POLICY ☒ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	\$ 1,000,000	
								\$	
A	AUTOMOBILE LIABILITY			06593-81-77 06593-81-77	8/1/2010 8/1/2010	8/1/2011 8/1/2011	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
	☐ ANY AUTO						BODILY INJURY (Per person)	\$	
	☐ ALL OWNED AUTOS	☒ SCHEDULED AUTOS					BODILY INJURY (Per accident)	\$	
	☒ HIRED AUTOS	☒ NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident)	\$	
								\$	
A	UMBRELLA LIAB	☒ OCCUR		06593-68-38	8/1/2010	8/1/2011	EACH OCCURRENCE	\$ 10,000,000	
	EXCESS LIAB	☐ CLAIMS-MADE					AGGREGATE	\$ 10,000,000	
	DED	RETENTION \$					Products/	\$ 10,000,000	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS		OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT	\$	
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$	
							E.L. DISEASE - POLICY LIMIT	\$	
A	Hired/non-owned auto			06593-81-77	8/1/2010	8/1/2011	\$500 comp	\$500 coll	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Newland Real Estate Group, LLC and it's affiliates have been listed as additional insured with regard to CGL and commercial automobile coverage per form BP 04 05. Coverage is primary and non-contributory. Waiver of subrogation in favor of Newland Real Estate Group, LLC. 30-day cancellation notice applies.

CERTIFICATE HOLDER**CANCELLATION**

Newland Real Estate Group, LLC 2850 E Camelback, Suite 300 Phoenix, AZ 85016	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Christopher Laub

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Attach to your policy with the same policy number shown on this endorsement

ENDORSEMENT

Effective Date
04/20/11

Policy Number of the Designated Company
08593 81 77

Additional Insured endorsement BP04500107

Newland Real Estate Group, LLC
NNP IV Investors, LLC
California Public Employees Retirement Systems (CALPERS) and any of their respective parents, partners,
subsidiaries, & affiliates
City Of Las Vegas
City Parkway V

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all other terms of the policy.

Countersigned Chris Staub
Authorized Representative

91-0002 (E0002) 1st Edition 9-88
SH/500

D-91 1751



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**E3306
1st Edition**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US**

Effective Date 04/20/11

Policy Number 06693 81 77

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COMMON POLICY CONDITIONS - BP 00 09

SCHEDULE

Name of Person or Organization: Newland Real Estate Group, LLC

(If no entry appears above, information required to complete this Endorsement must be shown in the Declarations as applicable to this endorsement.)

The provisions of the Businessowners Common Policy Conditions are modified by this endorsement as follows:

Condition K. Transfer Of Rights Of Recovery Against Others To Us in the Businessowners Common Policy Conditions is amended by the addition of the following:

3. We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage

arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard." This waiver applies only to the person or organization shown in the Schedule above.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all the terms of the policy.

POLICY NUMBER
06593 81 77

BUSINESSOWNERS
BP 04 50 01 97

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

SCHEDULE*

Name Of Person Or Organization

Newland Real Estate Group, LLC

* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph C. Who is An Insured in the Businessowners Liability Coverage Form:

4. Any person or organization shown in the Schedule is also an Insured, but only with respect to liability arising out of your ongoing operations performed for that insured.