

**AGREEMENT FOR
REAL ESTATE BROKERAGE
AND
LEASE MANAGEMENT SERVICES**

THIS AGREEMENT, made this ____ day of _____ 2017, is by and between the City of Fort Lauderdale, a municipal corporation of the state of Florida, (“City”), whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301-1016, and Colliers International South Florida, LLC, a Delaware limited liability company authorized to transact business in the State of Florida (“Contractor” or “Company”), whose address and phone number are 200 Broward Boulevard, Suite 120, Fort Lauderdale, FL 33301, Phone: 954 652-4600, Fax: 954-652-4637, Email: ken.krasnow@colliers.com

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the City and the Contractor covenant and agree as follows:

WITNESSETH:

I. DOCUMENTS

The following documents (collectively “Contract Documents”) are hereby incorporated into and made part of this Agreement (Form P-0001):

- (1) Request for Proposal No. 975-11940, Real Estate Brokerage Services, including any and all addenda, prepared by the City of Fort Lauderdale, (“RFP” or “Exhibit A”).
- (2) The Contractor’s Response to the RFP, dated April 28, 2017, (“Exhibit B”).
- (3) Schedule 1.

All Contract Documents may also be collectively referred to as the “Documents.” In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. First, specific direction from the City Manager (or designee)
- B. Second, this Agreement (Form P-0001) dated _____, 2017, and any Addenda.
- C. Third, **Exhibit A**, RFP No. 975-11940
- D. Fourth, **Exhibit B**, Contractor’s Response dated April 28, 2017

II. SCOPE

The Contractor shall perform the Work (as described in Schedule 1) and as set forth in the Contract Documents with respect to those properties owned or leased by the City ("Facilities") except for those Facilities excluded in Schedule 1. No work under this Agreement is authorized until a Notice to Proceed is issued by the City and accepted by the Contractor. All Notices to Proceed shall be issued by the Contract Administrator.

Unless otherwise specified herein, the Contractor shall perform all Work identified in this Agreement. The parties agree that the scope of services is a description of Contractor's obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

Contractor acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. For purposes of this Agreement, Contract Administrator is the City Manager, or his designee.

By signing this Agreement, the Contractor represents that it has thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the Work and the conditions under which the Work is to be performed.

III. TERM OF AGREEMENT

The initial contract period shall commence on September 1, 2017, and shall end on August 31, 2018. In the event the term of this Agreement extends beyond the end of any fiscal year of City, to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds. The City reserves the right to extend the contract for three (3) additional one (1) year terms, providing all terms and conditions and specification remain the same, both parties agree to the extension, and such extension is approved by the City Manager.

IV. COMPENSATION

The Contractor agrees to provide the services and/or materials as specified in the Contract Documents at the cost specified in **Schedule 1**. It is acknowledged and agreed by Contractor that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for Contractor's services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Except as otherwise provided in the solicitation, no amount shall be paid to Contractor to reimburse Contractor's expenses related to its performance under this Agreement.

V. METHOD OF BILLING AND PAYMENT

The method, amount, process and limitations on payment for Management Services rendered unto the City and the entitlement to Brokerage Commissions are set forth in Schedule 1.

VI. GENERAL CONDITIONS

A. Indemnification

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor or breach or violation of the terms of this Agreement. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement and is not limited by insurance coverage. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

B. Intellectual Property

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of reasonable attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Contractor's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

C. Termination for Cause

The aggrieved party may terminate this Agreement for cause if the party in breach has not corrected the breach within ten (10) days after written notice from the

aggrieved party identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

D. Termination for Convenience

The City reserves the right, in its best interest as determined by the City, to cancel this contract for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that he/she/it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

E. Cancellation for Unappropriated Funds

The City reserves the right, in its best interest as determined by the City, to cancel this contract for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

F. Insurance

The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name the City of Fort Lauderdale, a Florida municipality, as an "additional insured." This MUST be written in the description section of the insurance certificate, even if there is a check-off box on the insurance

certificate. Any costs for adding the City as “additional insured” shall be at the Contractor’s expense.

The City of Fort Lauderdale shall be given notice 30 days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Procurement Services Division.

The Contractor’s insurance must be provided by an A.M. Best’s “A-VIII” rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City’s Risk Manager. Any exclusions or provisions in the insurance maintained by the contractor that excludes coverage for work contemplated in this solicitation shall be deemed unacceptable, and shall be considered breach of contract.

Workers’ Compensation and Employers’ Liability Insurance

Limits: Workers’ Compensation – Per Chapter 440, Florida Statutes
Employers’ Liability - \$500,000

Any firm performing work for or on behalf of the City of Fort Lauderdale must provide Workers’ Compensation insurance. Exceptions and exemptions will be allowed, by the City’s Risk Manager, if they are in accordance with Florida Statutes.

Commercial General Liability Insurance

Covering premises-operations, products-completed operations, independent contractors and contractual liability.

Limits: Combined single limit bodily injury/property damage \$1,000,000.

This coverage must include, but not limited to:

- a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
- b. Coverage for Premises/Operations
- c. Products/Completed Operations
- d. Broad Form Contractual Liability
- e. Independent Contractors

Automobile Liability Insurance

Covering all owned hired and non-owned automobile equipment.

Limits: Bodily injury	\$250,000 each person, \$500,000 each occurrence
Property damage	\$100,000 each occurrence

Professional Liability (Errors & Omissions)

Contractor

Limits: \$1,000,000 per occurrence

Certificate holder should be addressed as follows:

City of Fort Lauderdale
Procurement Services Division
100 North Andrews Avenue, Room 619
Fort Lauderdale, FL 33301

G. Environmental, Health and Safety

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Contractor shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

H. Standard of Care

Contractor represents that he/she/it is qualified to perform the Work, that Contractor and his/her/its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified contractors under similar circumstances. Contractor acknowledges that it represents the City as a Single Agent which requires an undivided loyalty to the City. Any transaction to a Transaction Broker, in which an expectation of undivided loyalty, is no longer in effect shall require the consent of the City as evidenced by an amendment to the Notice to Proceed and execution of the disclosures in form and content acceptable to the City and as required by law. Further, any transition to a Designated Sales Associate shall require the consent of

the City, as evidenced by an amendment to the Notice to Proceed, and execution of the required disclosures.

I. Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and Contractor disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until Contractor delivers all documents to the City as provided herein. Performance of the services hereunder by Contractor shall not be deemed to be a prohibition of, or interference with Contractor's provision of similar services to third parties, provided that Contractor in so doing does not disclose any confidential information of the City or disclose any documents or portions thereof that would otherwise be exempt from the disclosure under the public records laws of the State of Florida.

J. Audit Right and Retention of Records

City shall have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are related to Contractor's work performed or required to be performed under this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Contractor and Contractor's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or Contractor's subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's

subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract.

K. Public Entity Crime Act

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

L. Independent Contractor

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

M. Inspection and Non-Waiver

Contractor shall permit the representatives of CITY to inspect and observe the Work at all times.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

N. Assignment and Performance

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform Contractor's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Contractor engages any subcontractor in the performance of this Agreement, Contractor shall endeavor to ensure that all of Contractor's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees. Contractor's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

O. Conflicts

Contractor employees in a supervisory position with respect to the services shall be collectively referred to as the “Key Contractor Personnel.” For purposes of this Agreement, “Key Contractor Personnel” shall include but is not limited to Ken Krasnow and Brooke Berkowitz. Upon issuance of a Notice to Proceed by the City, the Contractor shall identify the team of professionals assigned to the work described in the Notice to Proceed and whether any of the individuals have a conflict of interest. Before proceeding with any work under the Notice to Proceed, the conflict must be resolved to the satisfaction of the City which resolution may include seeking a waiver from the City or replacing the team member with the conflict. Neither Contractor nor any of Contractor’s employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor’s loyal and conscientious exercise of judgment and care related to Contractor’s performance under this Agreement. If, at any time, any Key Contractor Personnel actually becomes aware that City is involved in any material way in any proposed transaction whereby Contractor or an affiliate represents any other party to that transaction, Contractor agrees to notify City promptly upon discovering such facts. Upon discovery of such conflict, Contractor shall proceed no further with the transaction on City’s behalf until such time as the conflict is resolved to the satisfaction of the City.

Contractor further agrees that none of Contractor’s officers or Key Contractor Personnel employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

P. Substitution of Personnel

In the event the Contractor wishes to substitute personnel, Contractor shall propose personnel of equal or higher qualifications and all replacement personnel are subject to City’s prior written approval. In the event substitute personnel are not satisfactory to the City and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to cancel the Contract for cause.

Q. Schedule and Delays

Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the schedule to be reasonable; provided, however, the parties acknowledge that the schedule might be modified as the City directs.

R. Materiality and Waiver of Breach

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

S. Compliance With Laws

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

T. Severance

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

U. Limitation of Liability

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount

actually paid by the City to Contractor pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

No representation or recommendation is or will be made by Contractor or its subcontractors, agents or employees as to the legal sufficiency, legal effect, tax or accounting consequences of any transaction or documentation.

V. Jurisdiction, Venue, Waiver, Waiver of Jury Trial

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

In the event Contractor is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries a judgment entered against the Contractor. The Contractor waives any and all defenses to the City's enforcement in Canada of a judgment entered by a court in the United States of America.

W. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

X. Prior Agreements

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

Y. Payable Interest

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof

Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

Z. Representation of Authority

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

AA. Uncontrollable Circumstances ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. The non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. The non-performing party uses its commercially reasonable efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

BB. Scrutinized Companies

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida*

Department of Transportation, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of \$1 million or more:

The Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes, as may be amended or revised. The City may terminate this Contract at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes, as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes, as may be amended or revised.

CC. Public Records

Contractor shall:

a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, as may be amended or revised, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the City, all public records in possession of the contractor upon termination of this contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

(e) If Contractor or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to Contractor's duty to provide public records relating to its contract, contact the CITY's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.

IN WITNESS WHEREOF, the City and the Contractor execute this Contract as follows:

CITY OF FORT LAUDERDALE

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manager

Approved as to form:
Cynthia Everett, City Attorney

Lynn Solomon, Assistant City Attorney

ATTEST:

Jeffrey A. Modarelli, City Clerk

ATTEST

By: _____
Matthew Hawkins, Secretary

CONTRACTOR

Colliers International South Florida, LLC, a
Delaware limited liability company

By: _____
Ken Krasnow, Vice President

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was
acknowledged before me this _____ day of _____, 2017, by Ken
Krasnow as Vice President for Colliers International South Florida, LLC, a Delaware
limited liability company, authorized to transact business in the State of Florida. He is
personally known to me _____ or has produced _____ as
identification and did not take an oath.

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

EXHIBIT “A”

RFP No. 975-11940

EXHIBIT “B”

Contractor’s Response

**SCHEDULE 1 TO AGREEMENT FOR
REAL ESTATE BROKERAGE
AND
LEASE MANAGEMENT SERVICES**

Management Fees and Brokerage Commissions

This Addendum establishes the method, amount, process, and limitations on payment of Management Fees for management services rendered by Contractor to City and the method of establishing the entitlement, amount, process, and limitations on the payment of Brokerage Commission to Contractor for Contractors' brokerage services.

Broker Commission. In accordance with the Contractor's response to the RFP, the Contractor shall be entitled to collect a Brokerage Commission of four (4%) percent of the purchase price on the sale of all City owned assets in which a Notice to Proceed (which shall detail the scope of the project) is issued, the City is the Seller in the transaction and the Contractor is the procuring cause. The fee shall be paid by the Buyer without setoff, credit or deduction on the proceeds owed to the City in the transaction provided the Buyer signs a purchase and sale agreement, in form and content acceptable to the City, acknowledging its obligation to pay a commission to Contractor. In addition, Contractor shall be entitled to earn a Brokerage Commission of four (4%) on all new leases in which a Notice to Proceed (which shall detail the scope of the project) is issued by the City, the City is the Lessor and in which the Contractor is the procuring cause. Both parties acknowledge this is not an "exclusive" relationship and Contractor is only entitled to a Brokerage Commission according to the conditions set forth herein. Notwithstanding this Agreement, commissions earned on non-aviation airport leases are subject to limitations set forth in the City Charter and resolutions approved by the City Commission in accordance therewith, as regularly amended and updated.. The current fees for Brokerage Services and Management Services for Fort Lauderdale Executive Airport non-aviation Leases will be provided at the time a Notice to Proceed is issued.. The City shall not be obligated to pay a commission on certain transactions and assets excluded from this Agreement as set forth below. The City reserves the right to rescind a Notice to Proceed at any time and remove the real property from any marketing activity or listing for sale or lease Both parties acknowledge the commissions on new leases shall be paid to Contractor over time from an Escrow Account (as defined below). With respect to new Leases, the CONTRACTOR'S Brokerage Commission shall be a Lessee expense which will be paid by the Lessee into the Escrow Account in equal periodic installments together with Lessee's payment of rent. All Leases shall incorporate such language that obligates Lessee to pay such a Brokerage Commission and shall be presented to the City for review and approval. Upon termination of this Agreement CONTRACTOR will be entitled to Brokerage Commission, if CONTRACTOR was the procuring cause and other conditions set forth herein are satisfied.

1. Management Fees The Contractor shall be entitled to receive a management fee of three (3%) percent for management services related to Leases in which the City is the Landlord. The City shall issue a Notice to Proceed for all Leases in which the Contractor is entitled to earn a Management Fee. The Contractor shall serve as the fiscal and accounting agent for collection of rents under Leases in which the City is the Lessor. It will collect the rents and provide a monthly accounting to the City of the rents received, deposits held as well as other accounting information requested by the City. Further, Contractor shall send written notice of delinquency, according to the term of the applicable lease, to the Tenant in accordance with the Lease and the City's policies and procedures. The fees on Leases shall be calculated on the Total Rent which is defined as the aggregate of all rental paid and received as required during the initial term of the Lease excluding any sums payable for taxes, operating costs, insurance, cost of living and other pass through expenses.

1.1. CONTRACTOR is not entitled to a Management Fee from the CITY where the CITY is the Lessee.

1.2. CONTRACTOR will collect the rents from the CITY's Lessees and retain three (3.0%) percent of the Total Rents collected by CONTRACTOR as a Management Fee. The rents collected by the CONTRACTOR shall be deposited in the CONTRACTOR'S Escrow Account described below.

1.2.1. CONTRACTOR will "invoice" City's Lessees, and remittance of rents shall be directly to CONTRACTOR. CONTRACTOR shall deposit all rents collected into CONTRACTOR'S Escrow Account. All interest earnings shall be disbursed to CITY on a quarterly basis as provided.

1.2.1.1 The term "Escrow Account" shall mean, throughout this Agreement, an interest bearing Escrow Account held by CONTRACTOR for the exclusive benefit of the CITY'S leasehold or real property sales transactions. The funds on deposit in the Escrow Account shall not be co-mingled with funds from other transactions of Contractor. CONTRACTOR shall not be entitled to retain interest earnings on CITY'S funds placed into the Escrow Account.

1.2.2. Management Fees are paid only as rents are collected by CONTRACTOR. If no rent is collected in any given calendar month, then CONTRACTOR does not receive its Management Fee until such time as the rent at issue is paid.

1.2.3. Rents collected from Lessees, less Management Fee, will be paid to the CITY monthly by the last day of the month in which the rent was paid to CONTRACTOR.

1.2.4. CONTRACTOR shall provide CITY with a monthly accounting as to (a) rents paid by CITY's Lessees and the Management Fee paid to Contractor and (b) rents not paid by CITY's Lessees, and (c) interest earned.

1.4 Unless otherwise agreed by the CITY in writing, CONTRACTOR shall **not** be responsible for the rendition of Management Services nor entitled to Management Fees on transactions under the following leasing transactions where the CITY is the Lessor.

1.4.1 CITY Charter Section 8.07, Leases with government entities or agencies for governmental purposes

1.4.2 CITY Charter Section 8.08, Leases of parking spaces in parking facilities owned or operated by the City.

1.4.3 CITY Charter Section 8.13, Leases to civic and charitable organizations.

2. Excluded Transactions.

2.1 Unless otherwise agreed by the CITY in writing, CONTRACTOR shall **not** be entitled to a Brokerage Commission on a transaction under the following transactions:

2.1.1 CITY Charter Section 8.02, Sale of public lands and of public property to public bodies.

2.1.2 CITY Charter Section 8.03, Acquiring right-of-way for purpose of converting same to a public body.

2.1.3 CITY Charter Section 8.06, Leases at Bahia Mar, including leasing of Bahia Mar.

2.1.4 CITY Charter Section 8.07, Leases with government entities or agencies for governmental purposes.

2.1.5 CITY Charter Section 8.08, Leases of parking spaces in parking Facilities owned or operated by the City.

2.1.6 CITY Charter Section 8.11, Sale of real property at Fort Lauderdale Executive Airport.

2.1.7 CITY Charter Section 8.13, Leases to civic and charitable organizations.

2.1.8 Fort Lauderdale Executive Airport Aviation Leases.

2.2 The Brokerage Commission is paid by the Lessee, not by the CITY. In order for the Contractor to receive its Brokerage Commission, the Lease must include a written obligation of the Lessee to pay the Commission without setoff, reduction or credit against the rents owed to the City and such rent shall be deemed Additional Rent under the Lease. Until such time as the CONTRACTOR'S Brokerage Commission is paid in full, CITY and CONTRACTOR agree that 50% of the rents (which shall include a prorata portion of the Brokerage Commission) collected will be disbursed from the Escrow Account to the CONTRACTOR and the other 50% of the rents collected will be disbursed from the Escrow Account to the CITY. After the Brokerage Commission has been paid in full from the rents collected under this Paragraph 2.2, then the additional sums paid by Lessee under Paragraph 2.2.1 shall be disbursed out of the Escrow Account to CITY with CONTRACTOR deducting a 3.0% Management fee as to such additional sums paid by Lessee.

2.2.1 In the event a co-broker is involved in a sales or lease transaction, CONTRACTOR'S Brokerage Commission will be reduced from 4.0% to 3.0%. The co-broker may earn a Brokerage Commission to be paid as a Buyer Expense or Lessee expense, which such co-broker's Brokerage Commission, shall not exceed 3.0%. On a lease transaction, the combined or overall brokerage commission shall not exceed 6.0%, shall be paid by the Lessee and paid into the CONTRACTOR'S Escrow Account with each monthly (or periodic) installment of rent.

2.2.2. 50% of each periodic rent installment (which shall include the Brokerage Commission) shall be disbursed from the CONTRACTOR'S Escrow Account to the CONTRACTOR and co-broker proportionate to their share of the overall Brokerage Commission until such time as the overall Brokerage Commission, not exceeding 6.0%, has been paid.

2.2.3 In the event the overall Brokerage Commission exceeds 6.0% in a lease transaction, then the Lessee shall be responsible for that portion of the overall Brokerage Commission exceeding 6.0% in which case the Lessee shall pay such portion of the overall Brokerage Commission that exceeds 6.0% directly to the co-broker, independent of any periodic installments of rent.

2.2.4 The other 50% of each periodic rent installment shall be disbursed from the Escrow Account to CITY, less the 3.0% Management Fee. At such time as the overall brokerage commission, not to exceed 6.0% is paid in full to the CONTRACTOR and co-broker, then 100% of each periodic rent installment shall be disbursed from the Escrow Account to CITY, less the Lease Management Fee which will be retained by CONTRACTOR.

2.2.5 In the context of a sales transaction, the overall Brokerage Commission shall be a Buyer's expense and shall be disbursed from the gross sales proceeds to the CONTRACTOR and co-broker at the time of the closing on the sale.

2.2.6 Upon payment in full to CONTRACTOR of the Brokerage Commission earned by the CONTRACTOR on a Lease transaction, thereafter 100% of the rents collected will be paid into the CONTRACTOR'S Escrow Account and thereafter disbursed to the CITY, less the CONTRACTOR'S Management Fee.

2.2.7 Upon termination of this Agreement, 2.4.3 On renewal of an existing Lease Agreement with an existing tenant that was negotiated by CONTRACTOR and where CONTRACTOR was the procuring cause of the Amended and Restated Lease Agreement and where the Lessee remains in possession after expiration of a prior lease, the Brokerage Commission shall be 2.0% of the rents due under the initial term of the Amended and Restated Lease Agreement. Contractor shall not collect a Brokerage Commission on renewal of a Lease with an existing tenant where the initial Lease contained renewal provisions or options to renew.

2.2.8 There is no Brokerage Commission paid by CITY to CONTRACTOR on a Lease where the CITY is the Lessee. However, CONTRACTOR may be paid a brokerage commission by the Landlord where the CITY is the Lessee.

2.2.9 As to sales transactions in which the Brokerage Commission will be paid by the Buyer, (i) the Resolution offering the property for sale or (ii) the RFP, as authorized by the CITY and (iii) the terms and conditions of the sales contract must specify that the Buyer will be responsible for the Brokerage Commission in the event the CONTRACTOR is the procuring cause of the sale.

2.2.10 On the sale of surplus property by the CITY under City Charter Section 8.04, where the CONTRACTOR initiated the "surplus property sale" procedure in cooperation with of the CITY and pursuant to a Notice to Proceed, then CONTRACTOR shall be presumed to be the procuring cause of the sale and shall be entitled to a Brokerage Commission to be paid by the Buyer and the Buyer's obligation to pay a Brokerage Commission shall be referenced in the Resolution offering the surplus property for sale and shall be further referenced in the Contract for Purchase and Sale. With respect to the Brokerage Commission paid to the Contractor, the Buyer shall not be entitled to a credit, setoff or reduction against the Purchase Price. In the absence of a reference to the CONTRACTOR'S Brokerage Commission in the Resolution or Contract for Purchase and Sale, there shall be no Brokerage Commission payable to CONTRACTOR

2.2.11 CONTRACTOR shall perform a review and assessment of all CITY-owned and/or underutilized property and make recommendations for the best use of such properties as set forth in Section III of the RFP, *Scope of Services*. CONTRACTOR shall follow the procedures set forth in the *Scope of Services*

leading to the Strategic Report and Final Report. Such service shall be provided at no charge to the City.

3. Advisory Services – In all instances a Notice to Proceed shall be issued and executed by the CONTRACTOR for the use of advisory services by the CONTRACTOR where the CONTRACTOR shall **not** be entitled to a Brokerage Commission. The Hourly Rate by the CONTRACTOR shall be \$150 per hour as submitted in the CONTRACTOR’S Bid Submittal. The not to exceed number of hours of advisory services shall be stated within the Notice to Proceed. Notwithstanding, the total Advisory Services hours shall not exceed 500 hours during the term of this Agreement. Advisory services shall include but is not limited to analyzing and evaluating leases and other real estate documents, preparing lease summaries, data collection, market analysis, cash flow projections, pro forma statements, financial analysis, and such other advisory services set forth in the Notice to Proceed. .

4. Additional Services. Contractor shall provide the following services at no charge to the City: (1) Annual presentations, whether to staff or the City Commission, regarding the state of the Fort Lauderdale-Broward County Real Estate Market, (2) any and all reports as required under the RFP, (3) inventory of all City owned real estate and (4) assessment and strategic plan for disposition of City owned real estate or recommendations regarding real estate best practices, including management protocols, acquisition of software or qualifications, skills, experience, training of employees, or hiring practices for employees, vendors or subcontractors.