

**FIRST AMENDMENT TO
AGREEMENT & ADDENDUM FOR
REAL ESTATE BROKERAGE
AND
LEASE MANAGEMENT SERVICES**

THIS FIRST AMENDMENT to Agreement For Real Estate Brokerage and Lease Management Services (“First Amendment”) is entered into this 17th day of March, 2015 by and between:

CBRE, Inc., a Delaware corporation authorized to transact business in the State of Florida (hereinafter “CONTRACTOR”) whose address is 200 East Las Olas Boulevard, Fort Lauderdale, FL 33301

-and-

CITY OF FORT LAUDERDALE, a Florida municipal corporation whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter “CITY”)

R E C I T A L S

A. CONTRACTOR and CITY entered into an Agreement for Real Estate Brokerage and Lease Management Services on July 23, 2014, including an Addendum thereto (“Agreement”).

B. That the Agreement had an Addendum which provided among other matters that pursuant to Paragraph 1.31 of the Addendum, CITY will continue to “invoice” City’s Lessees, but the remittance of rent shall be directly to CONTRACTOR.

C. Since execution of the Agreement and Addendum, after further review of operations, CITY management has determined that it would be in the overall interests of the CITY for CONTRACTOR to invoice City’s Lessees and remittance of rent shall be directly to the CONTRACTOR which such rents shall be deposited in the CONTRACTOR’S Escrow Account, which Escrow Account is more particularly described below.

D. That the Agreement had an Addendum which provided among other matters that pursuant to Paragraph 1.4.3 of the Addendum, CONTRACTOR shall not and was not responsible for the rendition of Management Services nor entitled to Management Fees on transactions under City Charter Section 8.10, Fort Lauderdale Executive Airport (Prospect Field).

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E. Since execution of the Agreement and Addendum, after further review of operations, CITY management has determined that it would be in the overall interests of the CITY and Executive Airport for CONTRACTOR to undertake rendition of Management Services relative to Executive Airport for CONTRACTOR to be entitled to Management Fees relative thereto.

F. That pursuant to Paragraph 2.1.4 of the Addendum, CONTRACTOR was not entitled to a Brokerage Commission for a transaction involving City Charter Section 8.10, Fort Lauderdale Executive Airport (Prospect Field).

G. Since execution of the Agreement and Addendum, after further review of operations, CITY management has determined that it would be in the overall interests of CITY and Executive Airport for CONTRACTOR to undertake rendition of Brokerage Services relative to Executive Airport for CONTRACTOR to be entitled to Brokerage Commissions relative transactions under CITY Charter Section 8.10.

H. That pursuant to Paragraph 2.1.8 of the Addendum, CONTRACTOR was not entitled to a Brokerage Commission for a transaction involving City Charter Section 8.11, Sale of Real Property at Fort Lauderdale Executive Airport.

I. Since execution of the Agreement and Addendum, after further review of the operations, CITY management has determined that it would be in the overall interests of CITY and Executive Airport for CONTRACTOR to be entitled to Brokerage Commissions relative transactions under CITY Charter Section 8.11.

J. By authorizing execution of this First Amendment, the City Commission finds that execution hereof serves a valid municipal purpose and is in the best interests of CITY for the Executive Airport.

K. Since execution of the Agreement and Addendum, after further review of the operations, CITY management has determined that it would be in the overall best interests of the CITY for CONTRACTOR to be entitled a Success Fee for Master Development Transactions as provided under Paragraph 4 of the Amended Addendum.

L. Since execution of the Agreement and Addendum, after further review of the operations, CITY management has determined that it would be in the overall best interests of the CITY for CONTRACTOR to be entitled certain fair market commissions of 4.0% of the aggregate net present value of lease payments, including escalations, for long term/ground lease of real property and that the CITY shall issue a Notice to Proceed to CONTRACTOR engaging CONTRACTOR to negotiate identified sale or lease transactions as the CITY'S broker of record with the CONTRACTOR'S Brokerage Commission to be paid as a Buyer or Lessee expense.

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M. By execution of this First Amendment, the CITY Commission determines that execution thereof is in the best interests of the CITY and serves a valid municipal purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable considerations, the receipt and sufficiency of which is hereby stipulated, the parties agree as follows:

1. **The foregoing Recitals are true and correct.**
2. **Paragraph 1, Management Fees, of the Agreement Addendum is hereby amended as follows:**

1. **Management Fees** payable to CONTRACTOR for rendition of management services for managing Leases for CITY.

- 1.1. Management Fees are generated only where the CITY is the Lessor.

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

- 1.3. CONTRACTOR will collect the rents from the CITY's Lessees and retain three (3.0%) per cent of the rents collected by CONTRACTOR as a Management Fee. The rents collected by the CONTRACTOR shall be deposited in the CONTRACTOR'S Escrow Account, such Escrow Account being more particularly described in Paragraph 1.3.1.1 below.

- 1.3.1. 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 below.

- 1.3.1.1 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 transactions other than CITY'S leasehold or real property sales transactions under this Agreement. All interest earnings shall be the property of the CITY and shall be disbursed from the Escrow Account monthly to the CITY. Interest earnings on funds

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deposited to the Escrow Account shall be the property of the CITY and shall be disbursed to CITY on a quarterly basis on or about March 31, June 30, September 30, and December 31.

1.3.2. 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 get a Management Fee until such time as the rent at issue is paid.

1.3.3. Rents under Paragraph 1.3 of the Addendum, 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.

1.3.4. CONTRACTOR shall provide CITY with a monthly accounting as to (a) rents paid by CITY's Lessees and the Management Fee paid to CONTRACTOR (b) rents not paid by CITY's Lessees, and 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 8.10, Fort Lauderdale Executive Airport (Prospect Field)~~

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

3. Paragraph 2, Brokerage Commission, of the Addendum is amended as follows:

2. Brokerage Commission – fees generated where Contractor is the procuring cause of a sale or lease or where a Notice to Proceed as to an identified transaction has been issued by the CITY to the CONTRACTOR.

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

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

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

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

~~2.1.4 CITY Charter Section 8.10, Fort Lauderdale Executive Airport (Prospect Field).~~

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

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

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

~~2.1.8 CITY Charter Section 8.11, Sale of real property at Fort Lauderdale Executive Airport.~~

2.2 Brokerage Commission on a CITY Lease is paid **only** where the CITY is the Lessor. CONTRACTOR shall be entitled to a Brokerage Commission on those lease transactions where CITY has provided CONTRACTOR with a Notice to Proceed identifying a sales or lease transaction for which the CITY engages the brokerage services of the CONTRACTOR, such Notice to Proceed detailing the scope of the project and CONTRACTOR'S associated fee in accordance with the terms of this Agreement. The authority to issue a Notice to Proceed is hereby delegated to the City Manager.

~~2.2.1 The Brokerage Commission is paid only as rents are collected by CONTRACTOR. The CONTRACTOR'S Brokerage Commission shall be a Lessee expense which will be disbursed by the Lessee into the Escrow Account together with Lessee's payment of rent. However, no Brokerage Commission will be paid to CONTRACTOR for renewal options, as provided in Paragraphs 2.4 and 2.4.1 below.~~

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2.2.2 The Brokerage Commission is paid by the Lessee, not by the CITY. Until such time as the CONTRACTOR'S Brokerage Commission is paid in full, CITY and CONTRACTOR agree that 50% of the rents 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.

2.2.2.1 As an exception to Paragraph 2.2.2 above, in the event a co-broker is involved in a sales or lease transaction, CONTRACTOR'S brokerage fee 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 exceeding 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.

2.2.2.2 50% of each periodic rent installment 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.

2.2.2.3 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.

2.2.2.4 The other 50% of each periodic rent installment shall be disbursed from the Escrow Account to CITY, less the 3.0% Management Fee to be disbursed from the CONTRACTOR'S Escrow Account. 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,

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less the Lease Management Fee which will be retained by CONTRACTOR.

2.2.2.5 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.

2.2.3 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.

2.3 The Brokerage Commission of four (4.0%) per cent of the rent collected ~~will be paid in each installment of rent collected by CONTRACTOR in accordance with Paragraph 2.2.2 or Paragraphs 2.2.2.1 2.2.2.5 above.~~

2.4 The maximum Brokerage Commission payable to CONTRACTOR on a Lease would be 4.0% of the gross amounts of rents due during the initial term of the Lease, except as otherwise expressly set forth herein.

2.4.1 In the event there are one or more renewal option terms under any given Lease, the 4.0% Brokerage Commission will not be paid to CONTRACTOR for the renewal term(s).

2.4.2 In the event that the contractual relationship between the CITY and CONTRACTOR ends (e.g. end of contract term), CONTRACTOR will not be entitled to any further Brokerage Commission from the rents paid after the CONTRACTOR contract term expires.

2.4.3 On an Amended and Restated Lease Agreement 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.

2.5 CONTRACTOR will collect rents and retain 4.0% of the rents collected as a Brokerage Commission, ~~less Brokerage Commission of 4.0% and Management Fee of 3.0% shall be paid to the CITY by CONTRACTOR on a monthly basis as more particularly set forth in Paragraphs 2.2.2 through and including 2.2.3 above.~~

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2.5.1 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.

2.6 On a sale of real property, the Brokerage Commission will be paid by the Buyer to the Contractor as a Buyer expense.

~~2.6.1 To the end that the Brokerage Commission will be paid by the Buyer, 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. As to sales transactions to the end that 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.~~

2.7 On the sale of surplus property by the CITY under CITY Charter Section 8.04, where the CITY initiated the “surplus property sale” procedure independent of CONTRACTOR, then there is a presumption that CONTRACTOR gets no Brokerage Commission, unless CONTRACTOR has secured, through its independent marketing efforts the successful bidder under the “surplus property sale” procedures.

2.8 On the sale of surplus property by the CITY under City Charter Section 8.04, where the CONTRACTOR initiated the “surplus property sale” procedure independent of or in cooperation with of the CITY, 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. 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.

2.9 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 (approximately 140 parcels) as set forth in Part IV 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.

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2.9.1 Recommendations in the Final Report for the sale of property shall be brought to the CITY Commission.

2.9.2 Based on the recommendations in the Final Report, the CITY Commission shall decide which properties are to be marketed for sale by CONTRACTOR. Properties on this approved list shall be marketed by CBRE for which CBRE a Brokerage Commission may be generated.

2.9.2 As to those properties in the Final Report not approved by the CITY Commission for marketing for sale, there shall be no entitlement to a Brokerage Commission, unless otherwise agreed upon by the CITY at a later date.

2.10 CITY shall not be obligated to CONTRACTOR and CONTRACTOR shall have no cause of action against CITY in the event the Buyer or Lessee shall fail to pay the CONTRACTOR'S Brokerage Commission.

4. The Addendum is amended to create a new Paragraph 3, Financial Advisory Services Fee for Master Development Transactions, to read as follows:

3. Financial Advisory Services Fee for Master Development Transactions.

3.1 At the request of the CITY, by and through the City Commission, and at the CITY'S sole discretion, CONTRACTOR may be requested to provide Financial Advisory Services to implement the Strategic Plan and reduce facility costs for the CITY. This may include, but not be limited to, the sale/leaseback of CITY-owned facilities such as CITY Administrative Facilities, bondable net leases, the structuring of joint ventures, public/private partnerships or other transactions necessary to implement the real estate portfolio strategies outlined in the Strategic Plan.

3.2 CONTRACTOR'S compensation for any such Financial Advisory Services shall be (i) a market-based compensation schedule determined by mutual agreement of CONTRACTOR and CITY (by and through the CITY COMMISSION) once the scope of work has been defined, and (ii) funded through transaction proceeds (third-part landlord's or financing arrangements) so as to eliminate or reduce the CITY'S out-of-pocket costs.

5. Conflict. In the event and to the extent that there is any conflict between the terms and conditions of the Agreement and Addendum and the terms and conditions of this First Amendment, then the terms and conditions of this First Amendment shall supersede and prevail over any such conflicting terms in the underlying Agreement and Addendum

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6. Ratify and Confirm. In all other respects, the parties ratify and confirm this Agreement and Addendum, as amended hereby.

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:

Robert B. Dunckel,
Assistant City Attorney

ATTEST:

Jonda K. Joseph, City Clerk

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ATTEST

CONTRACTOR

By: _____
Kathleen Thompson
Secretary

CBRE, INC., a Delaware corporation

By: _____
Jim Reid, President, Eastern Region

(CORPORATE SEAL)

STATE OF DISTRICT OF COLUMBIA :
COUNTY OF WASHINGTON :

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Jim Reid as president for CBRE, Inc., a Delaware corporation authorized to transact business in the State of Florida.

(SEAL)

Notary Public, State of _____
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known ____ OR Produced Identification ____
Type of Identification Produced _____

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