CITY OF SAN DIEGO
REAL ESTATE LISTING AGREEMENT

THIS CITY OF SAN DIEGO REAL ESTATE LISTING AGREEMENT ("Agreement") is made by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and COLLIERS INTERNATIONAL CA, INC., a California corporation ("BROKER"), to be effective as of the date signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. Defined Terms.

   a. "**BROKER**" shall mean Colliers International CA, Inc., a California corporation (California Real Estate Broker License No. 01908588).

   b. "**Commission Rate**" shall mean a percentage of the Final Sale Price of the Property as listed in Section 2.

   c. "**Contract**" shall mean this Agreement and the City's General Contract Terms and Provisions, which are attached as Exhibit A, which is awarded to BROKER through the competitive bidding process as a result of **RFP 10084699-19-K, Residential Real Estate Services.**

   d. **"Final Sale Price"** shall mean the price paid to CITY in exchange for the Property under a purchase and sale contract negotiated pursuant to this Agreement and entered into by CITY.

   e. "**Listing**" shall mean the exclusive right to solicit offers and negotiate the sale of the Property under this Agreement for ALL CASH, unless otherwise agreed to in writing signed by both BROKER and CITY.

   f. "**Minimum Price**" shall mean the minimum price for which the property may be sold as authorized by the City Council of the City of San Diego.

   g. "**Property**" shall mean that certain CITY-owned real property more fully described in Section 2 below.

   h. "**Sale Commission**" shall mean the amount CITY shall pay to BROKER, which amounts shall be calculated by multiplying the Commission Rate times the Final Sale Price. Sale Commissions authorized under this Contract shall not exceed $250,000.00, unless this Contract is approved by Council in its sole discretion.

   i. "**Term**" shall mean the term of this Contract, which shall be six (6) months, and month-

to-month thereafter not to exceed five (5) years, commencing on the Effective Date.

2. Property.

LOCATION	APN NUMBER	COMMENTS	Commission Rate
San Onofre Terrace & Santa Isabel Drive	552-112-11		Four and a half Percent (4.5%)
Velma Terrace & Trinidad Way Parcel A	548-450-01		Four and a half Percent (4.5%)
Velma Terrace & Trinidad Way Parcel B	548-450-02		Four and a half Percent (4.5%)
Velma Terrace & Trinidad Way Parcel C	548-450-03		Four and a half Percent (4.5%)
San Bernardo Terrace & Trinidad Way Parcel A	548-450-14	Only the front 50 feet is buildable. Rest of parcel must be reserved for a flowage easement.	Four and a half Percent (4.5%)
San Bernardo Terrace & Trinidad Way Parcel B	548-450-20	Northern border of parcel and 15 feet southward from the northernmost western corner must be reserved for a flowage easement.	Four and a half Percent (4.5%)
San Bernardo Terrace & Trinidad Way Parcel C	548-450-21		Four and a half Percent (4.5%)
La Paz Drive & San Bernardo Terrace Parcel A	548-462-09		Four and a half Percent (4.5%)
La Paz Drive & San Bernardo Terrace Parcel B	548-462-10		Four and a half Percent (4.5%)
Olvera Avenue & Santa Isabel Drive Parcel A	548-462-18		Four and a half Percent (4.5%)
Olvera Avenue & Santa Isabel Drive Parcel B	548-462-19		Four and a half Percent (4.5%)
Olvera Avenue & Santa Isabel Drive Parcel C	548-462-20		Four and a half Percent (4.5%)
Santa Isabel Drive & Encina Drive	552-113-11		Four and a half Percent (4.5%)
Republic Street & Weaver Street	543-072-19		Four and a half Percent (4.5%)
Former Eider Street Standpipe	544-073-32		Four and a half Percent (4.5%)

LOCATION	APN NUMBER	COMMENTS	Commission Rate
Broadway & Wunderlin Avenue	544-191-06		Four and a half Percent (4.5%)
Wunderlin Avenue & Brooklyn Avenue	544-192-09		Four and a half Percent (4.5%)
Woodman Street & Madrone Avenue	549-186-08		Four and a half Percent (4.5%)
Logan Avenue & Coban Street	552-190-19		Four and a half Percent (4.5%)
2nd Street & Mariposa Street	669-010-32		Four and a half Percent (4.5%)
Saranac Street Lot between 72nd & 73rd Streets	469-080-24		Four and a half Percent (4.5%)
Langley Street	535-532-15 535-532-16		Four and a half Percent (4.5%)
K Street & 33rd Street	545-333-15		Four and a half Percent (4.5%)
Foothill Road & Smythe Avenue	638-041-15		Four and a half Percent (4.5%)
Whittier Street & Nimitz Blvd	449-270-35		Four and a half Percent (4.5%)
Catalina Blvd & Nimitz Blvd	449-270-36		Four and a half Percent (4.5%)
SE Catalina Blvd & Nimitz Blvd	449-270-37		Four and a half Percent (4.5%)
Boundary Street & Redwood Street	453-801-03		Four and a half Percent (4.5%)
29th Avenue & C Street	539-531-26		Four and a half Percent (4.5%)

3. Listing. CITY grants the Listing to BROKER and BROKER accepts the Listing under the terms and conditions of the Contract.

4. Sales to Public Agencies. Notwithstanding any provision of this Contract to the contrary, no Sale Commission shall be paid for a sale or any other transfer of the Property to a public agency, unless such a sale or transfer is made as a stepped transaction to accommodate an

ultimate purchaser identified as such at the time of the sale or transfer and who is not a public agency.

5. Termination after Initial Six Months. After the initial six (6) months of the Term, and provided BROKER is not then in default of this Contract, this Contract shall continue on a month-to-month basis, not to exceed five (5) years, terminable by either party upon thirty (30) days prior written notice. If at the expiration or termination of this Contract CITY has granted an option or right of first refusal to purchase the Property or any interest in the Property, or an escrow remains open, or negotiations for the sale of Property have commenced and are continuing, then the Term shall be extended for the duration of such pending action for the sole purpose of allowing said pending action to conclude, and for no other purpose whatsoever, without the consent of the CITY, which consent shall be in CITY's sole discretion.

6. Brokerage Services. BROKER shall diligently pursue, in accordance with industry standards and the Contract, the procurement of a buyer (or buyers) to purchase the Property. CITY shall cooperate with BROKER in effecting a sale of the Property. CITY shall refer all prospective buyers to BROKER. BROKER shall conduct all negotiations for the sale of the Property only as approved by CITY, shall assist with preparation and finalization of documents necessary for closing escrow, including providing standard forms for seller's mandatory disclosures, if any. BROKER may advertise the Property and may, with CITY's prior written approval, place pertinent signage on the Property.

7. Sale Commission. Provided that all other applicable legal requirements are met, for Property listed in Section 2, CITY shall pay a Sale Commission to BROKER if and only if one of the following occurs:

   a. A sale of the Property is consummated during the Term; or

   b. CITY enters into a purchase and sale contract for the Property during the Term, and a sale of the Property is ultimately consummated with the buyer identified in such contract; or

   c. Within one hundred eighty (180) days after the expiration or termination of this Contract, either: (i) a sale of the Property is consummated with a person who was qualified as a prospective buyer during the Term (a "Qualified Person"), such qualification being evidenced by a list of such persons prepared by BROKER and approved in writing by CITY; or (ii) CITY enters into a purchase and sale contract for the Property with a Qualified Person, and a sale of the Property is ultimately consummated with that Qualified Person.

8. Sale Commission Payment. The Sale Commission shall be paid through and at the close of an escrow created under a purchase and sale contract as contemplated by this Contract, or if no such escrow is created, within thirty (30) days after recordation of a deed conveying the Property to the buyer.

9. Recovering Damages for Buyer's Default. If a sale of a Property is prevented by the buyer's default of a purchase and sale contract, CITY and BROKER shall each be responsible for recovering their own damages, if any, from the buyer.

10. Property to be Sold "AS IS". The Property is being sold "AS IS, WHERE IS" with no representations or warranties of any kind, express or implied.

11. City's Representations. CITY represents to BROKER that to the current actual knowledge of CITY's Real Estate Assets Department as of the Effective Date, each of the following is true:

    a. CITY is the owner of the Property.

    b. No person has a right to purchase or acquire any interest in the Property pursuant to any contract.

    c. CITY is not in default of any contract relating to the Property.

    d. Neither the Property nor CITY is subject to the jurisdiction of any court in any bankruptcy, insolvency, conservatorship or probate proceeding.

    e. Neither BROKER nor any agent of BROKER has made any promise or representation to or agreement with CITY relating to the sale of the Property and that is not contained in the Contract.

12. Deposits. CITY hereby authorizes BROKER to accept any deposit or other payment from a prospective buyer, which BROKER shall deliver to the escrow agent (or to CITY, if no escrow has been created) by the next business day after receipt thereof.

13. Acknowledgements. CITY and BROKER acknowledge and agree with each of the following:

    a. It is illegal to refuse to present, sell or lease real property to any person because of their race, color, religion, national origin, sex, marital status, age or physical disability.

    b. Neither BROKER nor any agent of BROKER is qualified or authorized to give legal or tax advice.

    c. A comprehensive and complex series of local, state and federal laws and regulations have been adopted which impose liability upon owners, lessees and users of real property for the use, storage, handling, clean up, removal and disposal of hazardous substances. Hazardous substances are defined very broadly by federal, state and local law as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect renders it subject to regulation, investigation, remediation or removal as potentially injurious to public health or welfare. The determination of the existence of a hazardous substance or condition is highly technical and beyond BROKER's expertise. CITY is not relying upon any investigation or statement by BROKER with respect to hazardous

substances. For the purposes of this Contract, CITY shall assume all responsibility for the decision to retain or not to retain experts in this field and to perform or not to perform studies on the Property.

d. The United States Congress has enacted the Americans with Disabilities Act (the "ADA," codified at 42 USC §12101, *et seq.*). Owners and lessees are subject to this law which, among other things, is intended to make business establishments equally accessible to persons with a variety of disabilities. Under the ADA, modifications to real property improvements may be required by owners and lessees. Owners and lessees may delegate between themselves costs and responsibilities for meeting the requirements of the law, but the fact that responsibilities have been allocated does not reduce or negate liability to an individual with a disability who files and wins a lawsuit. A determination of the ADA's applicability to the Property is beyond BROKER's expertise. CITY is not relying upon any investigation or statement by BROKER with respect to the ADA's applicability to the Property.

e. CITY shall be responsible for determining the financial condition of any prospective buyer of any of the Property, and for determining such buyer's ability to perform the terms of any purchase and sale contract.

f. The buyer, alone, and neither CITY nor BROKER shall be responsible for seeking or obtaining any license or other permit required for the buyer's use of any of the Property.

14. City Council Approval Required. BROKER acknowledges and agrees that the sale of the Property, and the payment of any Sale Commission to BROKER therefore, is expressly conditioned on the San Diego City Council's prior authorization ("Council Authorization"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by BROKER as a result of the City Council's failure to grant the Council Authorization.

    a. BROKER's Waiver. BROKER EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT BROKER INCURS AS A RESULT OF THE CITY COUNCIL'S FAILURE TO GRANT THE COUNCIL AUTHORIZATION.

15. Mediation. Any dispute or claim by or between CITY and BROKER relating to this Contract which cannot be settled informally shall first be submitted to mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to litigation. BROKER and CITY shall each pay one half of the cost of such mediation. Notwithstanding the foregoing, nothing in this section shall preclude a party from filing an action in the courts, or taking other legal action necessary to protect that party's legal rights, either prior to or during the mediation process, and such action shall not be considered a waiver or breach of the right and obligation to mediate, provided the party filing the action proceeds with mediation as required herein.

16. Default. Either party shall be in default of this Contract if it breaches any of its obligations under this Contract and fails to correct the breach within thirty (30) days following written notice thereof from the other party, or if not curable within thirty (30) days, fails to commence to correct the breach within thirty (30) days and diligently pursue the correction to completion. Upon a default, this Contract may be immediately terminated upon written notice to the defaulting party.

17. Compliance with Law. When performing its obligations under this Contract, BROKER shall at all times comply with all applicable laws, rules regulations and directives of competent governmental authorities, at BROKER's sole cost and expense.

18. CITY's Consent, Approval. CITY's consent or approval under this Contract shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise stated or required by law or Council Policy of the City Council. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise stated or required by law or Council Policy of the City Council.

19. California Public Records Act. CITY shall determine in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Contract is or is not a public record subject to disclosure under the California Public Records Act (CPRA). BROKER shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosures of any such information in response to a request for information under the CPRA.

20. Notices. Any notice required or permitted to be given under this Contract shall be in writing and may be served personally or sent via the United States Postal Service, postage prepaid with return receipt requested, or via a generally recognized overnight courier. Notices shall be delivered to the addresses set forth below:

City:
THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

Broker:
Colliers International
4350 La Jolla Village Drive, Suite 500
San Diego, California 92122
Phone Number: (858) 677-5314

21. Captions. The section headings and captions for various sections shall not be held to define, limit, augment or describe the scope, content or intent of any or all parts of this Contract.

22. Partial Invalidity. If any term, covenant, condition or provision of this Contract is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

23. Survival. Any obligation which accrues under this Contract prior to its expiration or termination shall survive such expiration or termination.

24. Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

26. No Affiliation. Nothing contained in this Contract shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and BROKER or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of BROKER or any other party or entity.

27. Binding on Successors. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

28. Entire Understanding. The Contract constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to the Contract. Any modification, alteration or amendment of this Contract shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Contract is binding upon such party in accordance with its terms.

[The remainder of this page is intentionally left blank.]

29. Authority to Contract. Each individual executing this Contract on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Contract on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.

IN WITNESS WHEREOF, this Contract is executed to be effective as of the Effective Date.

BROKER:

Date: 3-12-19

Colliers International CA, Inc.

BY: _____

Name: Richard Andrew LaDow

Title: Managing Director

CITY:

Effective Date:_____

THE CITY OF SAN DIEGO, a California municipal corporation

By: _____

Kristina Peralta
Director
Purchasing & Contracting

Approved as to form:

MARA W. ELLIOTT, City Attorney

BY: _____

Name: Melissa Ables

Title: Deputy City Attorney

Date: 3/29/19

Exhibit A: City of San Diego General Contract Terms and Provisions Revised 12/18/17 OCA Document No. 845794_6