



Mark E. Butcher, CPM®
Associate Managing Director

CBRE, Inc.
Asset Services

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January 3, 2017

***VIA HAND DELIVERY**

City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101
ATTN: Director, Real Estate Assets Division

RE: 101 Ash Street – San Diego, CA

Dear Ms. Thompson:

Enclosed, please find two (2) original and partially executed Property Management Agreement(s) for 101 Ash Street in San Diego, CA. Please review, sign where appropriate and then return one (1) fully executed original to me at:

CBRE, Inc.
4365 Executive Drive, Suite 1600
San Diego, CA 92121
ATTN: Mark Butcher

We appreciate our partnership with the City of San Diego and look forward to our continued mutual success.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark E. Butcher', is written over a horizontal line.

Mark E. Butcher
Associate Managing Director
CBRE, Inc.

Encl:

Property Management Agreement

101 Ash Street, San Diego, CA

THIS PROPERTY MANAGEMENT AGREEMENT (this “**Agreement**”) is made as of JANUARY 3, 20 17 between The City of San Diego (“**Master Tenant**”), and CBRE, Inc., a Delaware corporation (“**Manager**”).

Master Tenant is the master tenant of the Property (defined in Section 1 below). Manager is experienced and skilled in property management and leasing. Manager wishes to provide property management and related services to Master Tenant for the Property. Master Tenant desires to contract with Manager to provide services in the management, leasing and operation of the Property, and Manager desires to provide such services.

Therefore, Master Tenant and Manager agree as follow:

1. Definitions

The following terms shall have the following meanings when used in this Agreement:

- a) “**Budget**” generically means any of the Property Budget, Operating Budget, and Capital Budget. “**Property Budget**” means a composite of the Operating Budget and the Capital Budget. “**Operating Budget**” means an estimate of receipts and expenditures (prepared on an accrual basis) for the operation of the Property during a fiscal year (July 1 – June 30), including a schedule of expected rent and expenses, a schedule of expected special repairs and maintenance projects, a reserve for contingencies if stipulated by Master Tenant, and a schedule which lists the positions and functions for all Property Employees, as defined in Section 4.6 (see also Schedule 2). “**Capital Budget**” means an estimate of Capital Expenditures (prepared on a cash basis) for the fiscal year.
- b) “**Business Plan and Budget**” means a fiscal year plan for the operation of the Property meeting the requirements listed in Schedule 4 and including (i) the Property Budget, and (ii) a plan for marketing and leasing, if necessary, with specific leasing guidelines.
- c) “**Capital Expenditures**” means amounts paid for replacements or improvements to the Property and includes amounts Master Tenant requires to be set aside as reserves. Classification as a Capital Expenditure shall be consistent with the Internal Revenue Service code and regulations and generally accepted accounting principles (“**GAAP**”). If there is any conflict between these standards, Manager shall obtain a determination from Master Tenant.
- d) “**Commencement Date**” is defined in Section 3.1.
- e) “**Debt Service**” means the regularly scheduled installment payments on financing encumbering the Property.

- f) **"Gross Rental Receipts"** means the actual receipt by Master Tenant or Manager of (i) fixed rents, (ii) reimbursements for operating expenses and CAM's, (iii) percentage rents, (iv) late fees, (v) parking fees (net of any amounts paid parking facility managers), and (vi) proceeds of business interruption insurance. Gross Rental Receipts shall exclude: (i) any interest or other income from investment of cash, (ii) security deposits, (iii) advance collection of rentals (i.e. prepaid rent), (iv) payments for subtenant improvements, (v) payments in the nature of compensation for loss, damage or liability sustained, including without limitation reimbursement for attorneys' fees and expenses; (vi) proceeds from the disposition or refinance of all or part of the Property (including proceeds from condemnation), (vii) receipts from vending machines and other concessions, (viii) purchase discounts, (ix) any sums which, under normal accounting practice, are attributable to capital, and (x) other receipts not specifically included in the definition of Gross Rental Receipts herein. Notwithstanding the foregoing, when a portion of a security deposit is applied to rent, such applied portion shall be included within Gross Rental Receipts at that time.
- g) **"Lender"** means an entity with an outstanding loan to Master Tenant, secured or unsecured.
- h) **"Manager Compensation"** means amounts payable to Manager under Schedule 2.
- i) **"Master Tenant"** shall refer to the City of San Diego, pursuant to the terms and conditions of that certain lease agreement on record with the City Clerk as Document No. 00-20745.
- j) **"Negative Cash Flow"** means the amount by which the sum of Operating Expenses, Debt Service and Capital Expenditures exceeds the Gross Rental Receipts and all other cash flow from the Property.
- k) **"Operating Account"** has the meaning set forth in Section 7.1.
- l) **"Operating Expenses"** means all expenses of any kind incurred in operation of the Property other than Capital Expenditures, including (i) cleaning, sweeping and gardening, (ii) utility and telephone service, (iii) trash service, (iv) advertising, (v) property taxes and assessments, (vi) insurance premiums, (vii) maintenance and repair of the Property, (viii) Manager Compensation, and (ix) Reimbursable Expenses. Property taxes, assessments and insurance premiums shall be spread equally over the months covered by the charge. GAAP shall be used to determine Operating Expenses versus Capital Expenditures unless otherwise directed by Master Tenant.
- m) **"Property"** means real property described on Schedule 1 with all the improvements thereon, including buildings, landscaping, paving, site improvements, infrastructure and utilities, and fixtures and equipment.
- n) **"Reimbursable Expenses"** are described in Schedule 3.

2. Appointment of Manager. Master Tenant hereby engages Manager to manage the Property as an independent contractor on behalf of Master Tenant to provide the services described herein. Manager hereby accepts such engagement on the terms and conditions herein contained.

3. Term and Termination

3.1 Term. The term of this Agreement shall commence on the day the City of San Diego assumes Master Tenant status, which is anticipated to be January 3, 2017 (the “**Commencement Date**”) and shall continue for a period of twelve (12) months or until a contract for property management of the Property has been awarded and commenced pursuant to a City issued Request for Proposals, whichever is earlier (the “**Initial Term**”).

3.2 Termination. This Agreement may be terminated (i) by notice from Master Tenant upon the sale of the Property, (ii) immediately by notice from Master Tenant if Manager misappropriates Master Tenant funds or commits any fraud, malfeasance, intentional misconduct or willful misrepresentation; (iii) by Manager at any time without cause upon sixty (60) days’ prior notice to Master Tenant; (iv) by Master Tenant at any time without cause upon not less than thirty (30) days’ prior notice to Manager; and (v) by either party due to default by the other if such default is not cured within ten (10) days after notice of the default; provided, however, if the default is not reasonably capable of being cured with ten (10) days, then the cure period shall be extended as needed so long as the defaulting party promptly commences the cure and thereafter diligently pursues it to completion within not more than sixty (60) days.

3.3 Effect of Termination. Upon the effective date of termination, the authority given to Manager hereunder shall immediately cease. Following termination, Manager agrees to fulfill all reporting and accounting functions hereunder for the period from the end of that covered by the last such report or accounting until the date of termination, without further charge. On the effective date of the termination, Manager shall also immediately deliver to Master Tenant or its designee (i) all funds in Master Tenant’s bank accounts, (ii) all materials and supplies, keys, and any computer or other equipment and/or software provided to Manager by Master Tenant; and (iii) all books and records including all contracts, leases, vendor and subtenant files, receipts for deposits, unpaid bills, a summary of all leases and all other documents which pertain to the Property. Upon such termination, Master Tenant will assume responsibility for payment of all unpaid bills. After termination, Manager shall deliver to Master Tenant or its designee any monies due Master Tenant under this Agreement received after such date. Master Tenant shall promptly pay to Manager all Manager Compensation payable in accordance with this Agreement which has accrued prior to the date of termination.

4. Authority and Responsibilities of Manager

4.1 Generally. Manager shall provide full service management of the Property including administration, operations, accounting and tenant relations, and including the specific services described below subject to availability of the necessary funding and in compliance with the Business Plan and Budget. Manager’s services shall be rendered to a standard at least consistent with that generally prevailing among management companies which routinely manage

comparable institutional projects in the area of the Property. Manager shall act in a fiduciary capacity with respect to Master Tenant's assets. Manager shall at all times deal with third parties on an arm's-length basis and will use its best efforts to act in Master Tenant's best interest at all times.

4.2 Authority. Except as limited hereby, Manager shall have all powers and authorities as may be necessary or convenient in connection with the discharge of Manager's duties and obligations hereunder. Such authority may be amended in writing from time to time by Master Tenant. Manager represents and warrants that Manager holds each and all of the licenses required by all jurisdictions which are necessary to perform its services under this Agreement.

4.3 Contracting. Upon the Master Tenant's prior written approval in each instance, and utilizing the Master Tenant's required methodologies for procuring goods, services and consultants, Manager shall negotiate and manage contracts for maintenance, repairs, alterations and improvements and for the purchase of equipment, tools, appliances, materials and supplies as are necessary or desirable to properly maintain the Property on behalf of the owner. Manager shall also contract for utility services to the Property. All contracts shall be terminable on thirty (30) days' notice from Master Tenant without penalty or premium. All such contracts shall be made in the name of Master Tenant and shall be executed by Manager as authorized signer for Master Tenant. Manager shall not enter into any contract with or purchase goods or services from any affiliate of Manager except on terms as advantageous to Master Tenant as are available from unrelated third persons and only after obtaining Master Tenant's prior written approval.

4.4 Maintenance. Subject to approved budget, Manager shall cause the Property and all equipment to be maintained according to the customary standards and as may be required by any financing, or as required by law, including interior and exterior cleaning, painting, decorating, plumbing, carpentry, and such other normal maintenance and repair work as may be necessary. Manager shall not be obligated to act or refrain from acting to the extent such obligation would be inconsistent with applicable laws.

4.5 Vendor Insurance. Contracts with third parties (referred to as "vendors") must include a provision that the vendor, at the vendor's sole cost and expense, shall procure and maintain during the term of the contract, workers' compensation insurance in statutory amounts and employer's liability coverage with limits of liability of not less than \$500,000; (ii) commercial general liability insurance on an occurrence form covering the vendor's obligations under the contract, in the amount of \$1,000,000 per occurrence \$2,000,000 aggregate per project, naming The City of San Diego as additional insured's; and (iii) business automobile liability insurance covering any vehicle including owned, non-owned and hired vehicles operated by or on behalf of vendor, in the amount of \$1,000,000 combined single limit for bodily injury and/or property damage. Coverage required hereunder shall be primary and non-contributory as to Master Tenant and Manager. Manager must obtain Master Tenant's prior approval to deviate from any of the above requirements. Manager shall obtain certificates of insurance evidencing compliance with the insurance requirements set forth above. Master Tenant may impose additional vendor requirements on notice to Manager.

4.6 Employees. If specifically approved by Master Tenant, Manager shall hire, discharge and supervise personnel to provide services just to the Property (the “**Property Employees**”) as Master Tenant and Manager determine to be necessary. Manager will (A) pay all wages and other benefits payable to the Property Employees; (B) maintain adequate payroll records; (C) remit to the proper authorities all required income and social security withholding taxes, unemployment insurance payments, worker's compensation payments, together in each case with all required reports and other filings; and (D) obtain, maintain and administer all medical, disability and other insurance and fringe benefits as may, from time to time, be required under any union or other arrangements pertaining to such personnel. All wages, salaries and other compensation paid to the Property Employees, including all items payable in respect to the payroll (e.g., unemployment insurance, worker's compensation, health insurance, etc.) shall be Operating Expenses.

4.7 Budget Limits. Manager shall not incur any expenditures which either exceed the amount indicated in a Budget by more than five percent (5%) or are in excess of \$5,000 for any one item, without Master Tenant’s approval, except for emergency repairs where in Manager’s opinion there is insufficient time to contact Master Tenant and such repairs are immediately necessary to either (1) prevent damage to persons or property, or (2) avoid interference with necessary services, or (3) avoid penalties.

4.8 Collections. Manager shall diligently collect all rents and other amounts due, and to immediately deposit them in the Operating Account. Manager shall calculate, bill and collect all reimbursements due from tenants such as CAM payments. Within sixty (60) days after the end of each fiscal year, Manager shall reconcile collected common area expenses to actual costs for each tenant and make appropriate billings, payments, or credits for each tenant pursuant to the terms of the subleases.

4.9 Compliance with Laws. Manager shall give prompt notice to Master Tenant of any known violation or notice of violation of governmental or Board of Fire Underwriters or other requirements (collectively, “**Requirements**”). Manager shall use all reasonable efforts to cause all such acts and things to be done in and about the Property as Master Tenant or Manager shall deem necessary or desirable to comply with the Requirements and, in each case, shall use all reasonable efforts to cure or remove any violations thereof. As and when directed by Master Tenant, Manager shall institute in the name of Master Tenant, using counsel selected or approved by Master Tenant, appropriate actions or proceedings to contest any Requirement.

4.10 Master Tenant’s Insurance. Master Tenant shall maintain the following insurance during the Term:

- (i) “All risk” direct damage property insurance for the Property on a replacement cost basis.
- (ii) Commercial general liability insurance - Master Tenant shall provide Manager a letter of self insurance evidencing its self insured status.

4.11 Loans. Manager shall administer any loans on the Property including providing any reports required by Lenders. Manager shall also support and assist the efforts of Master Tenant to sell, finance, or refinance the Property, including providing supporting Property information.

4.12 Subtenants/Leasing. Manager's involvement in leasing shall be as directed by Master Tenant but in all events Manager shall use commercially reasonable efforts to enforce Master Tenant's rights under the Leases. Manager shall work with Master Tenant to manage any lease amendments, consent to subleases and assignments, subject to obtaining Master Tenant's written approval therefore. Leases and amendments, consents and other related documents shall be prepared by Master Tenant or Master Tenant's legal counsel and executed by Master Tenant. Manager shall work with approved construction manager to facilitate and manage the construction of any tenant improvements, as approved by Master Tenant. Manager shall maintain business-like relations with tenants and respond to service requests in a timely manner. Manager shall coordinate tenant move-ins and move-outs to minimize inconvenience and avoid damage to the Property. Manager shall be vigilant regarding any subtenant defaults, including in notifying Master Tenant immediately of subtenant defaults and taking prompt action.

4.13 Manager's Insurance. Manager shall carry insurance coverage in the amounts set forth below, or their equivalents. All coverage shall be carried by companies with a Best's rating of A-VIII or higher and Managers Commercial General Liability and Auto Liability shall name as additional insureds The City of San Diego and all others specified by Master Tenant, but only to the extent of a loss arising from or attributable to Managers indemnification obligation. A certificate of the coverage shall be delivered to Master Tenant concurrently with execution of this Agreement. Manager shall also provide Master Tenant evidence of renewal of such coverage when due. Manager shall provide Master Tenant thirty (30) days' notice prior to cancellation of the required coverages.

Worker's Compensation Insurance	As required by state law, in an amount of \$500,000 for each accident, bodily injury or disease (as a policy limit).
Commercial General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate. and umbrella coverage of \$5,000,000
Professional Liability	\$2,000,000 aggregate coverage may be purchased on a "claims made" basis and shall be maintained while performing services under this Agreement and for a period of no less than two years following cancellation.
Automobile Liability	\$1,000,000 any auto/accident (hired/owned and non-owned)
Fidelity Insurance	\$1,000,000

4.14 REAs. Where applicable, to administer any Declarations of Conditions, Covenants, and Restrictions (“**CC&Rs**”), Reciprocal Easement Agreements or similar agreements affecting the Property.

4.15 Delegation. At Manager’s sole cost and expense and with the prior approval of Master Tenant, to delegate portions of its obligations under the terms of this Agreement to one or more agents or independent contractors; provided, however, that such delegation shall not relieve Manager from its duties and obligations hereunder and shall be subject to termination by Manager without cause on thirty (30) days’ notice without penalty or premium. Master Tenant may immediately terminate such delegation if Master Tenant did not give prior written approval to Manager.

4.16 No Discrimination. Manager shall not violate any anti-discrimination law in the hiring or firing of employees or in the screening of prospective subtenants, the leasing of Property, or the bidding or letting of contracts.

4.17 Hazardous Materials. Notwithstanding anything to the contrary contained herein, Master Tenant acknowledges and understands that Manager is not qualified to (x) evaluate the presence or absence of hazardous or toxic substances, mold, waste, materials, electromagnetic field, radon, radioactive materials, or other environmental concerns under applicable law, upon, within, above, or beneath the Property (collectively, “**Hazardous Materials**”); (y) maintain or evaluate compliance with environmental, Hazardous Materials or waste laws, rules and regulations; or (z) conduct or ensure clean-up or remediation of Hazardous Material spills or contamination. Any environmental assessment report of the Property will be obtained from an independent environmental consultant retained by Master Tenant. In no event will Manager make an independent determination as to the presence or absence of Hazardous Materials, or whether Master Tenant, the Property or any particular subtenant is in violation or compliance with any laws relating to Hazardous Materials

4.18 Construction Management Services. The parties acknowledge and agree that the work product provided by contractors, architects, engineers, design professionals and similar persons (“**PJM Contractors**”) will be the responsibility of such persons and Manager does not warrant or guaranty their performance or work product. Manager, as agent for Master Tenant, or subtenant as the case may be, will enter into all construction project-related contracts directly with PJM Contractors. Manager shall have no responsibility to discover any latent defects of work product or completed operations of PJM Contractors. Except to the extent resulting from Manager’s gross negligence or willful misconduct, in no case shall the liability of Manager for construction management services exceed five times the total fees paid to Manager for the applicable construction project. Specific fees are outlined in Schedule 2.

5. Accounting and Budgeting

5.1 Books and Records. Manager shall maintain at Manager’s principal place of business a comprehensive system of records concerning the Property consistent with general prevailing practices. Manager shall maintain the Property records on this system on an accrual basis. Manager shall pay a license fee to Yardi for such access in the amount negotiated between

Master Tenant and Yardi. Manager's records shall be subject to examination by Master Tenant, and its authorized agents during normal business hours and upon reasonable notice. If any examination reveals that the accounting records are understated in error by five percent (5%) or more, Manager shall promptly reimburse Master Tenant for the reasonable cost of the examination and any monies owed Master Tenant. All such records are and shall remain the property of Master Tenant.

5.2 Business Plan and Budget. Manager shall provide a draft Budget and Business Plan for the Property for Master Tenant's review and approval no later than September 1 for the following fiscal year per Schedule 4. Manager shall input the final Budget into Yardi by May 1 of the prior fiscal year. Each Business Plan and Budget shall include the items listed in Schedule 2.

5.3 Early Close and Monthly Reports. Manager shall do an "early close" each month as directed by Master Tenant. Manager shall deliver to Master Tenant the monthly statements and reports outlined in Schedule 4 electronically and in hard copy not later than 10 days after the close of the prior month.

5.4 Other. Manager shall also promptly deliver to furnish Master Tenant such other reports, statements and information as Master Tenant reasonably requests including periodic leasing and rental survey information.

6. Responsibilities and Obligations of Master Tenant. Master Tenant's duties shall be as follows:

6.1 Plans and Specifications. Manager already has in its possession plans and specifications of the Property so that Manager may be advised with respect to the layout, construction, location, character, plan and operation of the elevators, escalators, lighting, heating, air conditioning, plumbing, electrical and other mechanical equipment in the Property in order to facilitate efficient management, maintenance and operation of the Property by Manager.

6.2 Property Agreements. Manager already has in its possession all contracts and leases in effect at the Property and any environmental reports on the Property.

6.3 Communications with Master Tenant. Manager acknowledges that all notices and interactions between Manager and Master Tenant shall occur between Manager and The City of San Diego as the Master Tenant.

7. Bank Accounts

7.1 Bank Accounts. Manager shall open and maintain, in such bank as Manager may select and shall be approved by Master Tenant, a non-interest bearing, non-money market operating account (the "**Operating Account**") in Manager's name and tax identification number ("**TIN**"), as Master Tenant's nominee and agent, so that at all times the funds deposited into such account shall be the sole and exclusive property of Master Tenant. Such account shall be styled

in a manner acceptable to Master Tenant. Master Tenant acknowledges that only employees of Manager or Manager's affiliate shall be signatories for the Operating Account. Manager shall deposit in the Operating Account amounts collected or otherwise received in connection with the Property, including all Gross Rental Receipts. Upon receipt of Manager's monthly statement of receipts and disbursements and requests for funding or upon Manager's reasonable written request, in the event of any actual or projected insufficiency, Master Tenant shall promptly fund into the Operating Account an amount sufficient to pay the estimated expenses of the Property for the following month in order to eliminate such actual or projected insufficiency. Such request for additional monies shall be accompanied by an explanation of expenses and insufficiencies which require such funding. Manager is authorized to draw on the Operating Account in payment, as and when required in connection with the operation or maintenance of the Property only for the purpose of:

(1) paying expenses of the Property in accordance with this Agreement, including paying (each, a **"Property Activity"**, and collectively, the **"Property Activities"**) the following:

- (i) Operating Expenses, Capital Expenditures and Debt Service in compliance with the current Property Budget;
- (ii) any impound or reserve payments required by any financing on the Property; and
- (iii) any other charge, item of cost, or expense Master Tenant directs to be paid.

(2) disbursing funds to Master Tenant as and when requested by Master Tenant.

No payment shall be made by Manager out of the Operating Account for expenses, except expenses relating to the Property, payment of which by Manager is authorized by the terms of this Agreement. Expenses incurred by Manager without authorization hereunder are not and shall not be deemed costs of Property Activities. In no event shall Property Activity costs and expenses include any amounts paid by Manager to affiliates of Manager which are in excess of a market rate for the applicable services or goods required for the Property. Any checks drawn on or withdrawals made from the Operating Account in excess of Five Thousand and No/100 Dollars (\$5,000.00) shall require two (2) signatures by Manager – and the prior approval of Master Tenant as set forth above in Section 4.7 of the Agreement. Master Tenant acknowledges and agrees that Manager maintains bank accounts for itself (**"Manager's Account"**) and other clients using Manager's TIN (the Operating Account, Manager's Account, and such other client accounts collectively referred to as the **"CBRE TIN Accounts"**), Master Tenant also acknowledges that, if (a) any CBRE TIN Account is overdrawn, or (b) a judgment is entered against Master Tenant, Manager, or any other client for whom Manager maintains a CBRE TIN Account, then the funds maintained in each CBRE TIN Account may be subject to a legal collection process (including garnishment or set-off), including a legal collection process against the Operating Account for liabilities of third-parties. However, because the funds in the Operating Account are held in trust for the City of San Diego and said funds are public funds, and to help prevent a situation where a financial institution could withdraw funds from the City of San Diego's Master Tenant's

Operating Account to rectify an overdrawn account of anyone other than the Master Tenant's, or a situation where a Court could award a judgment for a legal collection process against the whole of Manager's CBRE TIN Accounts located at a particular financial institution, including the Master Tenant's Operating Account, Manager agrees to the following: (a) Manager shall maintain a trust account for Master Tenant (utilizing Manager's CBRE TIN), from which the Master Tenant's funds shall be used solely for the payment of expenses related to the Property; (b) Manager agrees never to commingle Master Tenant's funds with other CBRE TIN Account funds to cover any other CBRE TIN Account funds or use Master Tenant's funds to cover any other CBRE TIN Account which is overdrawn; and (c) should any type of legal collection process for liabilities of third-parties ever be instituted against the Operating Account, or Manager gains knowledge that the Master Tenant's Operating Account funds are at risk for the payment of liabilities of a party other than the Master Tenant, CBRE shall within two (2) business days receipt of gaining knowledge of a pending legal collection process or otherwise that the Operating Account funds are at risk, give Master Tenant written notice of such collection process and/or other knowledge (allowing Master Tenant the opportunity to possibly intervene), and Manager shall within five (5) business days at the latest reimburse the Master Tenant's Operating Account for all funds seized for the obligations of a party other than the Master Tenant. If the financial institution at which the Master Tenant's Operating Account is maintained subsequently reimburses the Operating Account, Master Tenant shall, upon demand, reimburse Manager for any funds previously paid by Manager with respect to funds seized.

Subject to the foregoing, Manager shall have no liability to Master Tenant in connection with the Operating Account if the Operating Account becomes subject to garnishment or court judgment, except in the event of Manager or Manager's affiliate's negligence, willful misconduct, or fraud.

7.2 Negative Cash Flow. Manager shall notify Master Tenant of any anticipated Negative Cash Flow. Within 5 days from Master Tenant's receipt of such notice, Master Tenant may, but shall have no obligation to, deposit cash funds in the Operating Account in an amount necessary to cover said Negative Cash Flow. Manager shall be held harmless for failure to pay any charges to the extent that funds are not available in the Operating Account. To the extent that there is Negative Cash Flow, Manager shall apply the funds in the Operating Account as directed by Master Tenant but in any event first to pay Debt Service. Nothing herein contained shall obligate Manager to advance its own funds on behalf of Master Tenant or relieve Master Tenant from the obligation to pay the Manager Compensation.

8. Tenant Security Deposits. If required by law, security deposits shall be maintained in a separate deposit account. Manager may deduct from the deposits appropriate amounts as determined pursuant to the applicable lease and applicable law. Manager may return security deposits at such time as the tenants become entitled thereto.

9. Manager Compensation

9.1 Management Fee: Manager shall receive the compensation specified in Schedule 2. The Manager's management fee shall be paid to Manager monthly in arrears.

9.2 Reimbursable Expenses: Expenditures of the type specified in Schedule 3 incurred by Manager in performing duties shall be subject to reimbursement, and no others. Master Tenant shall pay, or reimburse Manager for, any tax on such reimbursements.

10. Indemnity

10.1 Manager's Indemnity of Master Tenant. Manager agrees to defend (with counsel reasonably acceptable to Master Tenant), indemnify and save The City of San Diego and their respective officers, directors, employees, and agents harmless from and against all claims, loss, cost, liability and expense, including, without limitation, reasonable attorneys' fees and costs (collectively "**Claims**"), to the extent such Claims arise from or relate to the actions of Manager outside the scope of its authority under this Agreement or by any acts of gross negligence or willful misconduct on the part of Manager, its employees or agents. Except as provided in the preceding sentence, The City of San Diego shall make no claim against Manager to the extent they arise from any good faith business decision, made by Manager in accordance with the terms of this Agreement, and are in connection with the operation of the Property.

10.2 Master Tenant's Indemnity of Manager. Master Tenant agrees to indemnify, defend and hold harmless Manager, its affiliates, and their officers, directors and employees from and against any and all Claims relating to the Property incurred by Manager, except for such Claims occasioned by the acts of Manager outside the scope of its authority under this Agreement or by any acts of gross negligence or willful misconduct on the part of Manager or Manager's employees or agents.

10.3 Waiver of Subrogation. Each party waives rights of subrogation on behalf of its insurers for any loss or damage covered by insurance procured by the party suffering the loss.

11. Confidentiality. Notwithstanding any provision of this Agreement to the contrary, Manager agrees not to disclose to any person or entity (i) any information of any kind or nature pertaining to the City of San Diego, except as may be necessary to perform this Agreement or as required by law, or (ii) any of the City of San Diego's documents, books and records except upon that entity's express authorization. The foregoing confidentiality obligation shall not apply to information (i) publicly available through no breach of the foregoing by Manager or (ii) obtained by Manager from another source without any obligation of confidentiality to The City of San Diego.

12. Relationship of the City of San Diego and Manager. The execution of this Agreement by Master Tenant and Manager is for the sole purpose of creating a management relationship between Master Tenant and Manager in connection with the management and operation by Manager of the Property. Authorized acts performed by Manager under the provisions of this Agreement shall be done as agent of Master Tenant. Nothing contained herein shall create a partnership or joint venture between or among Master Tenant or Manager or otherwise constitute Master Tenant an agent of Manager.

13. Equal Benefits. The Equal Benefits Ordinance (“EBO”), San Diego Municipal Code (“SDMC”) sections 22.4301-22.4308, requires that any *contract* between the City and another party for the provision of goods, services, consultant services, grants from the City, leases of City property, or construction of public works, shall require *contractors* to offer equal benefits; that the City shall not execute, award, or amend any *contract* with any *contractor* that discriminates in the provision of *benefits* between employees with spouses and employees with *domestic partners*, between spouses of employees and *domestic partners* of employees, or between dependents and family members of spouses and dependents and family members of *domestic partners*, or with any *contractor* that discriminates in the provision of these *benefits* based on the gender or sexual orientation of the spouses or *domestic partners*. In accordance with the EBO, *contractors* must certify they will provide and maintain *equal benefits* as defined in SDMC section 22.4302 for the duration of the *contract* (SDMC section 22.4304(f)). Failure to maintain *equal benefits* is a material breach of the *contract* (SDMC 22.4304(e)). All *contractors* must notify employees of their *equal benefits* policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of a contract with the City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners. All *contractors* are required to complete the Equal Benefits Ordinance Certification of Compliance attached hereto as Schedule 6. *Contractors* also must give the City access to documents and records sufficient for the City to verify the *contractors* are providing *equal benefits* and otherwise complying with EBO requirements. Full text of the EBO and Rules Implementing the Equal Benefits Ordinance are posted on the City’s website at www.sandiego.gov/purchasing/, or can be requested from the Equal Benefits Program at (619) 533-3948. [All italicized words are defined within the Equal Benefits Ordinance.]

14. Living Wages. This Agreement is subject to the City’s Living Wage Ordinance (“LWO”), codified at SDMC sections 22.4201 through 22.4245. Among other things, the LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each Contractor to fill out and file a living wage certification with the City within thirty (30) days of execution of the Contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Applicable contracts must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Contractor agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

14.1 Highest Wage Rate Applies. Manager is required to pay the highest applicable wage rate where more than one wage rate applies.

15. Prevailing Wages. Manager shall comply with, and shall ensure that its contractors and subcontractors comply with, the Prevailing Wages laws for services provided pursuant to this

Agreement, when applicable. The City of San Diego's Prevailing Wages requirements are set forth in the attached Schedule 5.

16. Assignment. Except as specifically provided herein, Manager shall not assign or transfer any of its interest in, or delegate any of its duties under this Agreement without the prior written consent of Master Tenant, and any attempted assignment or delegation without consent shall be void. This Agreement is binding upon and inures to the benefit of Master Tenant's successors and assigns.

17. Notices. Any notice, request, demand, instruction, document or other communication to be given hereunder to any party shall be in writing and be effective upon receipt or refusal to accept delivery. The initial delivery addresses for the parties are as follows. The parties' addresses and addressees may be changed by giving written notice given as provided above.

If to MASTER TENANT:	City of San Diego Attn: Director, Real Estate Assets Department 1200 Third Avenue Suite 1700 San Diego, CA 92101
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If to MANAGER:	CBRE, Inc. Attn: Mark E. Butcher, Associate Managing Director, Asset Services 4365 Executive Drive, #1600 San Diego, CA 92121 Fax 858.646.4747
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18. Miscellaneous

18.1 Governing Law. This Agreement shall be governed by the laws of the state where the Property is located.

18.2 Interpretation. This Agreement is not for the benefit of any third party, and shall not be deemed to confer any right or remedy to such party, whether referred to herein or not. The pronouns used in this Agreement referring to Manager or to Master Tenant shall be understood and construed to apply, whether Manager or Master Tenant be an individual, partnership, corporation or an individual or individuals doing business under a firm or trade name; the masculine or neuter pronouns shall each include the other and may be used interchangeably with the same meaning; and when the context requires, the singular shall mean the plural and the plural shall mean the singular. The headings in this Agreement are inserted for convenience and identification only and are in no way intended to describe, define or limit the scope, intent or interpretation of this Agreement or any provision hereof. Whenever in this document the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular to refer to and include the plural. No language or provision of this Agreement shall be interpreted either for or against any party by virtue of any party or any attorney of any party having drafted such language or provision.

18.3 Entire Agreement. This Agreement contains the entire agreement of the parties concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements and agreements, written or oral. Each of the parties acknowledges that no other party, nor any agent or attorney of any other party, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement to induce it to execute this Agreement.

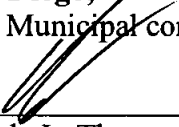
18.4 Survival. All provisions of this Agreement that require one party to insure or to defend, reimburse or indemnify another party shall survive any termination of this Agreement.

18.5 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

18.6 Indirect Damages. Notwithstanding anything to the contrary contained herein, except to the extent resulting from a party's gross negligence or willful misconduct, neither Master Tenant nor Manager shall be liable for any indirect, consequential, special, incidental, punitive or other exemplary losses or damages, whether in tort, contract or otherwise, regardless of the foreseeability or the cause thereof, that would not otherwise be covered under the standard liability or property insurance forms required of the parties hereunder.

MASTER TENANT:

City of San Diego,
a California Municipal corporation

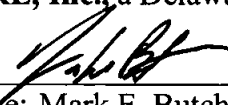
By:  _____

Name: Cybele L. Thompson, RPA, FMA, CCIM,
LEED AP

Title: Director, Real Estate Assets Department

MANAGER:

CBRE, Inc., a Delaware corporation

By:  _____

Name: Mark E. Butcher

Title: Associate Managing Director, Asset Services

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:

This Property Management Agreement is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b)(5), as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c)(3), is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required.

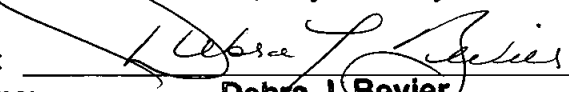
Date: 1 | 5 | 17

BY: 

Name: Alyssa Muto
Title: Deputy Director, Planning
Dept.

Approved as to form this 5th day of
January, 20 17.

MARA W. ELLIOTT, City Attorney

BY: 
Name: Debra J. Bevier
Title: Deputy City Attorney

SCHEDULE 1

THE PROPERTY is the land and improvements commonly known as 101 Ash Street, located at **101 Ash Street**, containing **314,545** square feet respectfully (the “Property”).

SCHEDULE 2

MANAGEMENT AND CONSTRUCTION MANAGEMENT COMPENSATION

Management Fee:

\$6,000.00 per month.

Management staff to be reimbursed by Master Tenant Prior to Master Tenant Occupancy:

<u>Name</u>	<u>Title</u>	<u>Annual Salary</u>
Mary Blagg	Senior Real Estate Manager	\$46,134 + 20% annual bonus

Management staff to be reimbursed by Master Tenant 60 days prior to Master Tenant Occupancy:

<u>Name</u>	<u>Title</u>	<u>Annual Salary</u>
TBD	Real Estate Manager	\$65,000 + 10% bonus
TBD	RESA	\$44,000 + 0% annual bonus
Mary Blagg	Senior Real Estate Manager	\$23,067 + 20% annual bonus

An overhead rate not to exceed 35% shall be applied to the above salaries and represents all Costs of Employment.

Engineering staff to be reimbursed by Master Tenant and to be determined by start date of January 3rd, 2017.

Construction Management:

Manager shall be paid a Construction Management fee in accordance with this Agreement and the following schedule:

Fee based on Hard Costs of construction excluding sales tax:

0.0% of Hard Costs less than \$25,000
5.0% of Hard Costs between \$25,001 and \$125,000
3.0% of Hard Costs above \$125,001

SCHEDULE 3

REIMBURSABLE EXPENSES

Master Tenant shall reimburse Manager for reasonable direct expenses incurred by Manager within the applicable line items of the Budget and which are incurred within Manager's authority. Reimbursable Expenses shall not include any overhead of Manager such as personnel costs, office supplies, office rent, or travel costs, other than those expenses outlined in the budget.

Notwithstanding the reimbursable costs noted above, Reimbursable Expenses shall not include the following:

- (1) office equipment and supplies other than those located at the Property and used exclusively for the Property;
- (2) any overhead expense of Manager incurred in its general offices with the exception of on-site employee overhead allocation, if applicable;
- (3) expenses for accounting, bookkeeping, reporting, check writing software, software training, and electronic data processing services;
- (4) compensation of executive and supervisory personnel of Manager;
- (5) compensation and expenses applicable to time spent on matters other than the Property; and
- (6) compensation of any personnel other than personnel located at the property site, with the exception of roving maintenance personnel (including Manager's Chief Engineer, if any) who may be needed at the Property from time to time.

SCHEDULE 4
REPORTING REQUIREMENTS

ANNUAL BUSINESS PLAN AND BUDGET REQUIREMENTS

1. Executive Summary
2. Property Analysis
3. Operating Budget
4. Capital Budget

MONTHLY REPORTING REQUIREMENTS

1. A review of operations for the preceding month, including a summary describing leasing, tenant issues, property operations, and key events.
2. A summary showing subtenant requests and Manager's actions to those requests.
3. Actual monthly and year-to-date statements and reports in the same format as the Operating Budget, a schedule of accounts receivable, a balance sheet as of the end of the month, as well as any information reasonably requested by Owner or Member. The statements and reports should include the associated monthly, quarterly and year-to-date budget figures and calculated comparisons.
4. Manager shall provide a commentary on any items which vary from the Operating Budget by more than 5% on a year-to-date basis.
5. A General Ledger statement for the month.
6. Rent Roll
7. Expense Disbursement Report
8. Check Register
9. Aging Report
10. Calculation of management fee and payments to Manager as a result of Manager's involvement with the Property for the period, together with supporting documentation.
11. Monthly statement of subtenant billings, collections, unpaid balances, vacancies and adjustments made the prior month.
12. Bank Statements
13. Copies of all invoices paid on the check register for that month

SCHEDULE 5

PREVAILING WAGE REQUIREMENTS

By signing this Contract, Manager (also referred to as “Bidder” in this Schedule 5) certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing services.

A. PREVAILING WAGES. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, the bidder and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code sections 22.4201 through 22.4245. Bidder must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the bidder and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Bidder and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to

this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

2. Penalties for Violations. Bidder and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

3. Payroll Records. Bidder and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Bidder shall require its subcontractors to also comply with section 1776. Bidder and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Bidder is responsible for ensuring its subcontractors submit certified payroll records to the City.

3.1 In addition to submitting weekly certified payroll records to the City, for contracts entered into on or after April 1, 2015, Contractor and their subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. Apprentices. Bidder and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Bidder shall be held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. Bidder and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. Required Provisions for Subcontracts. Bidder shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. Bidder in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, bidder certifies that "I am aware of the provisions of Section

3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no Contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or enter into any Contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of subcontractor registration to the City upon request.

9.1.A. Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

9.1.B. Living Wages. This Contract is subject to the City's Living Wage Ordinance (LWO), codified at SDMC sections 22.4201 through 22.4245. The LWO requires payment of minimum hourly wage rates and other benefits unless an exemption applies. SDMC section 22.4225 requires each Bidder to fill out and file a living wage certification with the City Manager within thirty (30) days of Award of the Contract. LWO wage and health benefit rates are adjusted annually in accordance with SDMC section 22.4220(b) to reflect the Consumer Price Index. Service contracts, financial assistance agreements, and City facilities agreements must include this upward adjustment of wage rates to covered employees on July 1 of each year. In addition, Bidder agrees to require all of its subcontractors, sublessees, and concessionaires subject to the LWO to comply with the LWO and all applicable regulations and rules.

9.1.C Exemption from Living Wage Ordinance. Pursuant to SDMC section 22.4215, this Contract may be exempt from the LWO. For a determination on this exemption, Contractor must complete the Living Wage Ordinance Application for Exemption.

9.1.D. Highest Wage Rate Applies. Contractor is required to pay the highest applicable wage rate where more than one wage rate applies.

SCHEDULE 6

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE

Attached on following page

**EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE**



For additional information, contact:
CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
202 C Street, MS 8A, San Diego, CA 92101
Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION		
Company Name:	Contact Name:	
Company Address:	Contact Phone:	
	Contact Email:	
CONTRACT INFORMATION		
Contract Title:	Start Date:	
Contract Number (if no number, state location):	End Date:	
SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS		
The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply: ■ Contractor shall offer equal benefits to employees with spouses and employees with domestic partners. ▪ Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit. ▪ Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner. ■ Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods. ■ Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements. ■ Contractor shall submit <i>EBO Certification of Compliance</i>, signed under penalty of perjury, prior to award of contract. NOTE: Full text of the EBO and its Rules are posted at www.sandiego.gov/purchasing/programs/equalbenefits.		
CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION		
Please indicate your firm's compliance status with the EBO. The City may request supporting documentation. ☐ I affirm compliance with the EBO because my firm (<i>contractor must select one reason</i>): ☐ Provides equal benefits to spouses and domestic partners. ☐ Provides no benefits to spouses or domestic partners. ☐ Has no employees. ☐ Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired. ☐ I request the City's approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners. It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)] Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.		
Name/Title of Signatory	Signature	Date
FOR OFFICIAL CITY USE ONLY		
Receipt Date:	EBO Analyst:	☐ Approved ☐ Not Approved – Reason:

LWP-002 (Rev. 7-1-2014)