



## THE CITY OF SAN DIEGO

March 14, 2013

Mark Hoekstra  
Heritage Group  
1241 State Street  
San Diego, CA 92101

Reference: Management and Marketing Services Agreement

Dear Mr. Hoekstra:

Enclosed please find the executed original of the above-referenced document for your files.

Thank you for your cooperation in this matter. If you have any questions, I can be reached at (619) 236-6766.

Sincerely,

Patti D. Phillips  
Supervising Property Agent

PDP/cb

Enclosures

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### Real Estate Assets

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199  
Tel (619) 236-6020 Fax (619) 236-6706

**MANAGEMENT AND MARKETING SERVICES AGREEMENT  
BETWEEN THE CITY OF SAN DIEGO AND  
HERITAGE REAL ESTATE ADVISORS, INC.**

THIS management services agreement ("Agreement") is made and entered into between the City of San Diego, a municipal corporation ("CITY"), and Heritage Real Estate Advisors, Inc., a California Corporation ("MANAGER") to provide management services to CITY for the real property ("Property").

**RECITALS**

- A. The Property consists of a strip retail center consisting of approximately 83,000 sf located at 3340 – 3360 Sports Arena Blvd. San Diego, California, 92110 known as "Sports Arena Square". The legal description for the Property is attached as Exhibit A.
- B. On March 4, 2013, CITY's Purchasing and Contracting Department approved CITY's Real Estate Asset Department's request to sole source an agreement contract for the Property to the MANAGER that is valid through June 30, 2013. Approval is attached as Exhibit B.

NOW THEREFORE, based on these facts, CITY and MANAGER agree as follows:

**ARTICLE 1 - DEFINITIONS**

The following terms shall have the respective meanings set forth below:

Operating Account - As defined in Section 6.2.

Buildings - All buildings, structures and improvements now or hereafter located on the Property, including fixtures such as plumbing, electrical, ventilating, heating, and air conditioning systems.

Effective Date - The date which is the later of (1) March 1, 2013, or (2) the date upon which this Agreement is executed by all of the parties and approved by the City Attorney.

Impositions - All taxes, assessments, water, sewer or other rents, rates and charges, levies, license fees, all common area charges, permit fees, inspection fees, and any other authorization fees and charges, which at any time may be assessed, levied, confirmed or imposed on the Property, including real estate and personal property taxes (except as limited by Section 2.7).

“MANAGER” – Shall include Heritage Real Estate Advisors, Inc., a California Corporation, its officers, agents, representatives, affiliates and employees (but unless authorized by a court of competent jurisdiction, the officers, agents, representatives, affiliates and employees shall have no liability under this Agreement).

Management Fees - As defined in Section 4.1.

Management Services - All aspects of operation and management of the Property including but not limited to: maintenance, repair, security, accounting, billing, collection, contracting for needed services including HVAC operation and maintenance, payment of expenses, handling of tenant issues and complaints, tenant legal compliance services, litigation support, and all other services necessary to the operation of the Property. The Management Services are specifically described in Article 2 of this Agreement.

Operating Budget - The annual budget of expenditures for management and operation of the Property approved by CITY as set forth in Section 6.1.

Operating Equipment - All furniture, furnishings, fixtures and equipment required for the operation of the Property including, but not limited to: carpeting and floor coverings, draperies, communication equipment, window coverings, common area lighting, grounds maintenance equipment, and all other fixtures, equipment and apparatus needed for such purpose. All Operating Equipment is the property of the CITY and may not be taken from the Property without the prior written consent of CITY.

Operating Period - Period commencing on the Effective Date and terminating upon the termination of this Agreement.

Operating Year - The period from the Effective Date through and including the first June 30th thereafter, and each twelve (12) month period thereafter.

Property - The real property 3340-3360 Sports Arena Blvd., San Diego, California, 92110 as more specifically described in the legal description attached to this Agreement as Exhibit A, and all Buildings and improvements, together with all entrances, exits, rights of ingress and egress, easements and appurtenances belonging or appertaining to the property.

## **ARTICLE 2 - MANAGEMENT SERVICES**

- 2.1 Property Management. CITY hereby retains MANAGER and MANAGER agrees to supervise and direct the management and operation of the Property (“Management Services”) at the direction of CITY. MANAGER agrees to devote

all necessary time and effort to management and operation of the Property pursuant to this Agreement.

- 2.2 Manager's Control and Discretion. Subject to the terms of this Agreement, MANAGER shall have all reasonable control and discretion in the operation, management and supervision of the Property for the purpose of carrying out the terms of this Agreement, except MANAGER shall obtain CITY's written consent before incurring any expense not contained in the approved Operating Budget where the amount payable exceeds two thousand dollars (\$2,000.00). No prior CITY consent shall be required, however, with regard to the following:
- a. Emergencies. In the event of an emergency, MANAGER shall make a reasonable effort to secure CITY'S approval before undertaking any necessary repairs or maintenance ; and
  - b. Payment of standard commercial utilities as required for the Property pursuant to this Agreement.
- 2.3 Industry Standards. MANAGER shall use its best efforts to operate and maintain the Property in a safe, clean, and aesthetically-acceptable condition. MANAGER agrees that the Management Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional property management firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by CITY is required, it is understood to be general approval only and does not relieve MANAGER of responsibility for complying with all applicable laws, codes, and good property management practices. With respect to tenant relations, MANAGER shall maintain businesslike relations with all tenants. Complaints or requests related to the management, operation and maintenance of the Property shall be received, considered and responded to in a systematic manner. Complaints or requests of a serious or substantial nature in terms of safety or habitability of the Property shall be reported to the CITY with appropriate recommendations. MANAGER shall be available on a 24-hour basis to respond to an emergency.
- 2.4 City Modification of Management Services. CITY may, without invalidating this Agreement, order changes in the scope of the Management Services by altering, adding to, or deducting from the Management Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in MANAGER's cost of, or the time required for, the performance of any of the Management Services, MANAGER shall so notify CITY. If appropriate, an equitable adjustment to MANAGER's compensation may be made, provided that any adjustment must be approved by both Parties in writing. The Mayor or his designee is authorized to provide approval on behalf of CITY for the changes

contemplated by this Section. If (a) any change made by CITY pursuant to this section is unacceptable to MANAGER, or (b) the adjustment to MANAGER's compensation (or a lack of adjustment) regarding the change is unacceptable to MANAGER, then MANAGER may terminate this Agreement.

- 2.5 Service Contracts. MANAGER shall (on behalf of and as an agent for CITY) negotiate and enter into service contracts required in the ordinary course of business in operating the Property, including, without limitation, contracts for electricity, gas, telephone, extermination, water heater maintenance, sanitary sewer maintenance, utility meter reading, landscaping and grounds keeping, security services, preventive and corrective maintenance services, lot preparation, emergency repairs and all other maintenance contractors that MANAGER deems advisable. MANAGER shall also ensure that all contractors are properly and adequately licensed and insured. Expenses for all such routine Service Contracts shall be paid in accordance with Article 4 without surcharge or mark-up.
- 2.6 Collection of Rents. MANAGER shall take all reasonable steps to bill and collect rent and other charges due CITY from tenants in accordance with the applicable leases.
- 2.7 Payment of Utilities. MANAGER shall pay, for and on behalf of and at the expense of CITY and without need of further authorization from CITY, all costs actually incurred for utilities on the Property including gas, electrical, water, and sewer in accordance with Article 4 without surcharge or mark-up.
- 2.8 Payment of Taxes. MANAGER shall pay, for and on behalf of and at the expense of CITY, all property taxes, if any, due for property in accordance with Section 4.2 provided that MANAGER shall first consult with CITY with regard to any property tax or assessment notice received and obtain City's written consent to make payment.
- 2.9 Purchase of Operating Supplies. MANAGER shall purchase or arrange for the purchase of all supplies, inventories, provisions, and Operating Equipment which in the normal course of business are necessary to maintain and operate the Property properly, subject to Section 2.10, below. CITY shall be credited with the full amount of any discounts or commissions obtained by MANAGER on any of such purchases.
- 2.10 Repairs and Maintenance. MANAGER shall cause to be made, on behalf of CITY, all reasonable repairs, replacements, alterations, additions and improvements to the Property necessary for the continued operation of the Property. MANAGER shall obtain CITY's written consent before entering into any contract or agreement for such repairs and improvements if the amount payable exceeds two thousand dollars (\$2,000.00) and has not previously been approved as part of the Operating Budget and not already included as part of

management services provided under this Agreement and included in MANAGER's fee. If any of the work required is caused by the failure, default or deficiency of labor or materials provided or performed by past contractors (prior to this Agreement) as to which any guarantees or warranties exist in favor of CITY, then MANAGER will notify CITY in writing of this fact and then invoke said guarantees or warranties, and seek to enforce them.

If MANAGER determines that: (a) a dangerous condition exists at the Property; (b) repairs, alterations or replacements are required to assure the continued safe operation of the Property or to comply with any applicable legal or insurance requirements; or (c) expenditures are required arising out of fire or other like or unlike casualty or other emergency; then MANAGER shall immediately notify CITY of the situation, and then MANAGER, in consultation with CITY, may take all reasonable steps and make such expenditures necessary to cure such condition, and may make such repairs or alterations or replacements or actions otherwise so required. CITY agrees to reimburse MANAGER from the Operating Account for all such expenses reasonably incurred within thirty days of receipt and/or a computation statement for same.

- 2.11 Licenses and Permits. MANAGER shall apply for and obtain and maintain in the name and at the expense of CITY, if required, all licenses and permits required of CITY or MANAGER in connection with the management and operation of the Property. CITY shall execute and deliver any and all applications and other documents, and otherwise cooperate to the fullest extent with MANAGER in applying for, obtaining, and maintaining such licenses and permits. MANAGER shall maintain all applicable licenses and permits and is responsible for updating said information with the governing authorities, institutions and agencies.
- 2.12 Transactions. MANAGER shall establish lease rates and fees to be charged at the Property and the form of lease agreement subject to CITY approval. MANAGER shall negotiate all leases, lease renewals upon terms approved by CITY. All documents in connection with the foregoing shall be signed by CITY and maintained in MANAGER'S files. City shall direct all lease inquires to MANAGER.
- 2.13 Laws and Ordinances. MANAGER shall make all reasonable efforts at CITY'S expense to comply with all applicable laws, rules, regulations, requirements and ordinances of any federal, state or municipal authority. MANAGER is not responsible for compliance of the Property with the requirements of any City, County, State or Federal ordinances, laws, rules, or regulations relating to the disposal of solid, liquid, or gaseous wastes or existence of hazardous, toxic or radioactive materials, to the extent such conditions existed at the Property prior to the effective date of this Agreement; however, MANAGER shall comply with all such applicable ordinances, laws, rules or regulations with respect to MANAGER's operations for, at and on the Property pursuant to this Agreement.

- 2.14 Reports. Monthly reports regarding maintenance, security and financials for each month are due to CITY by MANAGER on or before the fifteen (15<sup>th</sup>) day of the month following the reporting period. MANAGER will deliver a monthly report of resident complaints, of a serious nature, the response by MANAGER and any outstanding issues. MANAGER will deliver to CITY a profit and loss statement showing results of the Property's operation for the previous calendar month and fiscal Operating year-to-date and adherence to the Operating Budget, including a computation of the Management Fee and explanation of variances from budget greater than ten percent (10%) or one thousand dollars (\$1,000) of the year-to-date budget for any line item.

### **ARTICLE 3 - DURATION OF AGREEMENT**

- 3.1 Term. The term of this Agreement shall commence on its Effective Date and terminate on the one (1) year anniversary date.
- 3.2 Renewal. This Agreement may be extended at CITY's option by giving written notice to MANAGER not less than sixty (60) days prior to the one (1) year anniversary date stating that CITY elects to extend the term through and until \_\_\_\_\_, 2014, or such earlier date as CITY may specify, subject to earlier termination in accordance with any other provision of this Agreement.
- 3.3 Termination for Convenience. CITY and MANAGER agree that either party may terminate this Agreement upon ninety (90) days written notice to the other party, beginning upon receipt of the notice. Such notice shall be delivered by certified mail with return receipt. After termination of this Agreement, MANAGER shall complete any and all additional work necessary for the orderly closing of MANAGER's Management Services under this Agreement. Notwithstanding the foregoing, on the Termination date CITY shall pay MANAGER one (1) month of the average management fee paid during the last twelve (12) month period prior to the Termination (to compensate MANAGER for the performance of its tasks required after Termination).
- 3.4 Termination for Default. If MANAGER fails to perform or adequately perform any obligation required by this Agreement, MANAGER's failure constitutes a default. If MANAGER fails to satisfactorily cure a default within fifteen (15) calendar days of receiving written notice from CITY specifying the nature of the default, CITY may immediately cancel and/or terminate this Agreement, and terminate each and every right of MANAGER (other than MANAGER's rights under Article 7 and Section 10.4), and any person claiming any rights by or through MANAGER under this Agreement. The rights and remedies of CITY enumerated in this Section are cumulative and shall not limit, waive, or deny any of CITY's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing

as of the date of this Agreement or hereinafter enacted or established, that may be available to CITY against MANAGER. If CITY fails to perform or adequately perform any obligation required by this Agreement, CITY's failure constitutes a default. If CITY fails to satisfactorily cure a default within fifteen (15) calendar days of receiving written notice from MANAGER specifying the nature of the default, MANAGER may immediately cancel and/or terminate this Agreement, and terminate each and every right of CITY (other than CITY's rights under Article 7 and Section 10.4), and any person claiming any rights by or through CITY under this Agreement. The rights and remedies of MANAGER enumerated in this Section are cumulative and shall not limit, waive, or deny any of MANAGER's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to MANAGER against CITY.

- 3.5 Force Majeure. If a default is the result of delays in the performance of the Management Services caused by unforeseen events beyond the control of both Parties, such delay may entitle MANAGER to a reasonable extension of time, but such delay shall not entitle MANAGER to damages or additional compensation. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of MANAGER's work; inability to obtain materials, equipment or labor; or other specific reasons agreed to between CITY and MANAGER; provided, however, that this provision shall not apply to an inability to perform caused by the acts or omissions of MANAGER.

#### **ARTICLE 4 – COMPENSATION**

- 4.1 Management Fees. As compensation for the Management Services rendered by MANAGER pursuant to this Agreement, MANAGER will be paid monthly as follows:
- a. Management Fee: The greater of \$3,300 per month or 5% of all minimum rents and additional rents (CAM, parking, late charges, etc.). Said Management Fee shall be paid to MANAGER at the end of each month from proceeds generated by the property, or from the CITY should the property bank account lack sufficient funds; and
  - b. Leasing Fee: In the event MANAGER negotiates and secures execution of a new lease agreement for any new tenant at the Property, CITY shall pay MANAGER a leasing fee of (100%) of the first month's base rent under said new lease, or \$500, whichever is greater. No such leasing fee shall be paid for any amendment to or modification of any tenant

agreement in existence at the Property on the Effective Date. In the event MANAGER is authorized to negotiate new leases or lease renewals for longer than a month-to-month term, MANAGER and the CITY will agree in advance on a market commission schedule which will be equal to what other commercial real estate firm are charging for similar retail properties and retail lease transactions. Leasing fee will be paid half (½) upon full execution of the lease and the other half (½) upon occupancy of the premises.

- 4.2 Services Included in MANAGER's fee. MANAGER agrees that the following services are the responsibility of MANAGER and included in the compensation to be paid in accordance with Section 4.1: commercial leasing; pre-litigation eviction activities; supervision and management of staff; collection of rents and fees; tenant relations; operating budget and bank account management, accounting and reporting; all costs of insurance to be provided by MANAGER as required by this Agreement. Nothing in this section requires MANAGER to employ attorneys or to engage in litigation or other enforcement procedures.
- 4.3 Additional Services. The CITY agrees to pay the MANAGER at MANAGER's current billable rates for its employees, for additional work required by the CITY. These additional services may include, but are not limited to, tenant improvement and capital improvement coordination, asbestos research or abatement issues, legal research, court appearances, interrogatories, depositions, preparation and delivery of estoppels and other activities due to sale or potential sale or refinancing of the property, market research, feasibility studies, consulting work, property appraisal, special accounting items, extra work resulting from other non-management related activities. MANAGER agrees to obtain prior written authorization from CITY prior to incurring any of these additional charges.
- 4.4 Major Repairs. In the event CITY elects to employ MANAGER to supervise and manage a major repair, CITY will pay MANAGER a 15% overhead and service fee. CITY is under no obligation to use MANAGER's construction management services. Major repairs are jobs which cost in excess of \$2,500 such as repairing or replacing the roof, wood siding, air conditioning and repainting the building. Routine Service Contracts shall be procured and managed without any overhead, service fee, surcharge or mark-up.
- 4.5 Financial Obligations. Except as otherwise expressly agreed herein, all debts and expenses arising from the operation of the Property in accordance with this agreement are those of the CITY and are to be paid by the MANAGER from collection of rent. In no event will MANAGER be required to bear any loss or advance any of its funds for the operation of the Property; except however, if MANAGER does so it will be entitled to be reimbursement by CITY. Without limiting the scope of this section, all payments made by MANAGER under

Article 4 of this Agreement are subject to the provisions of this section and are to be paid from collected rents.

## **ARTICLE 5 - CONTRACT ADMINISTRATION**

- 5.1 Contract Administrator. The Real Estate Assets Department is the contract administrator for this Agreement. MANAGER shall provide Management Services under the direction of the Director of the Real Estate Assets Department and designees. The Director and designees will communicate with MANAGER on all matters related to the administration of this Agreement and MANAGER's performance of the Management Services rendered hereunder. When this Agreement refers to communications to or with CITY, those communications will be with the Director or other person designated by the Director, unless the Agreement specifies otherwise.
- 5.2 Confidentiality of Services. All Management Services performed by MANAGER, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by MANAGER, pursuant to this Agreement, are for the sole use of CITY, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of CITY.

## **ARTICLE 6 - FINANCIAL AND LEGAL MATTERS**

- 6.1 Annual Operating Budget. MANAGER shall submit to CITY on an annual basis a budget itemizing all monthly revenues and operating expenses for the Property estimated by MANAGER for the forthcoming Operating Year. For each line item MANAGER shall provide detail sufficient to the CITY to determine how the budgeted amount was derived. The Operating Budget for the partial first year of this Agreement is due to CITY prior to execution of this Agreement. Thereafter, MANAGER shall submit the annual Operating Budget by April 1 of each year, for the period of July 1 through June 30 thereafter. The CITY shall review each Operating Budget with MANAGER, and both parties shall endeavor to resolve any differences so that a mutually satisfactory budget can be agreed upon. CITY shall make every effort to approve a budget by July 1 for the following Operating Year.

The various expense categories in the approved Operating Budget shall be reviewed by CITY and MANAGER monthly for possible revision upward or downward. Any revisions shall be mutually agreed upon in writing by the parties.

- 6.2 Operating and Security Deposit Accounts. MANAGER shall deposit in a state or national banking institution whose deposits are insured by the FDIC, selected by MANAGER, in a separate account in the Property's name ("Operating Account"),

all monies furnished by MANAGER and/or CITY as working capital and all monies received by MANAGER for or on behalf of CITY and will disburse and pay the same as required in connection with the ownership, maintenance and operation of the Property, to include: taxes (as limited by section 2.7), and all costs and expenses of maintaining, operating and supervising the operation of the property, Impositions, compensation for MANAGER, and expenses incurred by CITY on behalf of the Property. Monies received by MANAGER in the operation of the Property shall not be commingled with MANAGER'S own funds. Net income from the Operating Account shall be handled as provided in section 6.3. MANAGER shall retain all tenant security deposits, including those tenant security deposits possessed and maintained by MANAGER on the Effective Date, in a state or national banking institution whose deposits are insured by the FDIC, selected by MANAGER in a separate account in the Property's name ("Security Deposit Account"). MANAGER shall refund tenant security deposits when applicable.

- 6.3 Payment to CITY. MANAGER shall pay to CITY all net rental income, calculated by deducting from all gross Property revenue and income, including without limitation all tenant rents and fees, the total amount of all authorized expenses and reserves relating to the operation and management of the Property, including compensation to MANAGER under Article 4 and any amounts requested by CITY as reserve working capital for the operation of the Property. Payment shall be made on or before the last day of the calendar month following the calendar month in which the rents were received.
- 6.4 Manager Not to Pledge City's Credit. MANAGER shall not pledge CITY's credit and shall not, in the name of CITY, borrow any money or execute any promissory note or other encumbrance without the prior consent of CITY.
- 6.5 Maintenance of Books and Records. MANAGER shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of Management Services for the Property, throughout the performance of the Management Services and until turned over to CITY.
- 6.6 City's Right of Inspection and Review. MANAGER shall, upon reasonable notice, accord to CITY and its accountants, attorneys and agents, the right at reasonable times during the term of this Agreement to inspect the Property and to examine and make copies of the Property's books and records. Such inspections and examinations shall be at reasonable times and shall be done with as little disruption to the business of the Property as possible. Upon the termination of this Agreement, all such books and records shall forthwith be turned over to CITY so as to insure the orderly continuation of the operation of the Property; provided, however, all such books and records shall thereafter be available to MANAGER at the Property for inspection, audit, examination and extracting, at all reasonable times upon reasonable notice. Nothing herein shall be construed to require

MANAGER to provide an audit of the books and records for the Property. Any such audit shall be prepared, at the expense of the CITY, by such independent accountants as CITY may select.

- 6.7 Unlawful Detainer/Legal Action Consent. MANAGER must receive CITY'S prior written consent and leave of court as may be required before instituting legal action or proceedings to collect charges for rent, resident charges and other costs, to evict residents or their guests, or to cancel or terminate residencies for breach or default.
- 6.8 Legal Actions for Default. MANAGER shall institute, in its own name or in name of CITY, but at the expense of CITY, legal actions or proceedings to collect rent and other charges, to evict Property residents or their guests with the written consent of the CITY.
- 6.9 Other Court Actions. MANAGER must receive CITY'S prior written consent and leave of court as may be required before instituting other court actions.
- 6.10 Independent Contractor. MANAGER and any subcontractors employed by MANAGER shall be independent contractors of the CITY. Any provisions of this Agreement that may appear to give CITY any right to direct MANAGER concerning the details of performing the Management Services, or to exercise any control over such performance, shall mean only that MANAGER shall follow the direction of CITY concerning the end results of the performance.

## **ARTICLE 7 - RISK MANAGEMENT**

- 7.1 Indemnification.
  - a. MANAGER agrees to defend, indemnify, protect, and hold the CITY, its elected officials, officers, agents, representatives, and employees harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities, deficiencies, fines, and penalties, , including, but not limited to attorneys fees and costs of suit, incurred directly or indirectly, for liability asserted or liability established for damages or injuries to any person or property, to the extent the foregoing are caused by MANAGER'S (including MANAGER'S officers, agents, representatives and employees) willful misconduct, wrongful acts, negligent acts, errors or omissions, to the extent that any such acts were not authorized or ratified by the CITY. Provided, however, MANAGER'S duty to indemnify and hold the CITY harmless shall not include any claims or liability arising from the gross negligence, or willful misconduct of the CITY, its elected officials, representatives, agents, officers, or employees.

- b. In addition to, and not as a limitation of any other obligations, the CITY agrees to indemnify, defend and hold MANAGER (and, unless authorized by a court of competent jurisdiction, MANAGER's officers, agents, representatives, affiliates and employees) harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities, deficiencies, fines, and penalties, including, but not limited to attorneys fees and costs of suit, incurred directly or indirectly, for liability asserted or liability established for damages or injuries to any person or property, resulting from or arising out of any acts or inaction by MANAGER which are authorized or ratified by the CITY, are in accordance with the terms of this Agreement, or which are not subject to MANAGER's duty to indemnify the City as described in paragraph 7.1a above.

In addition, the CITY's obligations under this Agreement shall be joint and several, as to the CITY, and any and all of its divisions and agencies, to the extent permitted by law or Court order. Furthermore, with regard to the indemnification under this Agreement, MANAGER shall be named as an additional insured under any insurance policies maintained and/or obtained by the CITY, or self insurance maintained by for matters in which CITY must indemnify and defend MANAGER as described above. However, nothing in this section seeks to relieve MANAGER from the requirements of carrying the minimum insurance that provides coverage for acts listed in 7.1a in the amounts listed in 7.3 through 7.7 through the life of the management contract.

- c. With regard to the indemnifications under Paragraphs (a) and (b), the indemnifying party shall be obligated, at the sole expense of the indemnifying party, to provide legal counsel selected by the indemnifying party and approved by the indemnified party, to provide defense for and on behalf of the indemnified party.
- d. The obligations to indemnify, defend, and hold harmless, as provided in this Agreement, shall continue on or after the termination of this Agreement as to acts and events occurring before expiration of the Agreement. Furthermore, MANAGER and the CITY acknowledge and agree that the indemnity provisions contained herein are a result of the CITY's inability or unwillingness to acquire otherwise commercially available insurance, or the CITY's determination, in the future, to self-insure rather than to carry liability insurance, even if such insurance is commercially available.

## 7.2 CITY'S Insurance.

- a. CITY certifies that it is self insured for public liability and property damage claims up to \$2 million dollars per occurrence subject to an

aggregate of \$2 million, in compliance with California Government Code Section 11007.4.

- b. Furthermore, CITY reserves the right to procure and maintain a separate Commercial General Liability policy at any time during the term of this Agreement.

7.3 MANAGER's Insurance. MANAGER shall procure and maintain, at all times during the term of this Agreement, a minimum of the insurance set forth below:

- a. Professional Liability Insurance. MANAGER will keep in full force and effect a professional liability policy with liability coverage of no less than one million dollars (\$1,000,000) for each claim for real estate services professional and personal injury liability.
- b. Workers' Compensation. For all of MANAGER's employees who are subject to this Agreement and to the extent required by the State of California, MANAGER shall keep in full force and effect, a workers compensation policy. That policy shall also provide employers liability coverage with limits of one million dollars (\$1,000,000), and MANAGER shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents and representatives.
- b. Fidelity Bond. MANAGER shall keep in full force and effect fidelity bond for all on-site Property employees. The fidelity bond shall provide a minimum of one million dollars (\$1,000,000) coverage and shall cover the loss of client funds, including rental income and fee payments.
- c. Commercial Automobile Liability. For all of MANAGER's automobiles including owned, hired and non-owned automobiles, MANAGER shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile. The CITY shall be named as an additional insured, but only for liability arising out of Management Services performed under this Agreement.

7.4 Rating Requirements. All insurance required by express provision of this Agreement shall be carried only by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Rating Guide and have been approved by CITY.

7.5 Deductibles and/or Self-Insured Retentions. All deductibles and/or self-insured retentions on any policy obtained pursuant to Section 7.3 shall be the

responsibility of the Manager. In addition, all deductibles and/or self-insured retentions under Section 7.3 in excess of ten thousand dollars (\$10,000.00) shall be disclosed to and approved by City at the time evidence of insurance is provided.

7.6 Specific Provisions Required. Each insurance policy required under this Article shall expressly provide, and an endorsement shall be submitted to CITY, that reflects the following:

- a. Except as to Workers Compensation insurance, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. CITY's Additional Insured status must be reflected on an additional insured endorsement form CG 20 10 (11/85) or equivalent, which shall be submitted to CITY.
- b. The policies shall include a waiver of any rights of subrogation.
- c. The policies are primary and non-contributory to any insurance that may be carried by the CITY, as reflected in an endorsement which shall be submitted to the CITY.
- d. The policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by MANAGER to the CITY by certified mail, except for non-payment of premium, in which case ten days notice will be provided.
- e. Before performing any Management Services, the MANAGER shall provide the CITY with all Certificates of Insurance accompanied by all endorsements.
- f. MANAGER shall not modify any policy or endorsement which increases the CITY's exposure to loss for the duration of this Agreement.

7.7 Waiver. Neither MANAGER nor CITY shall assert against the other and each does hereby waive with respect to the other any claims for any losses, damages, liabilities and expenses (including attorney's fees and disbursements) incurred or sustained by it on account of damage or injury to persons or property arising out of the ownership, operation or maintenance of the Property, to the extent that same are (1) covered as prescribed herein and (2) further to the extent that any such losses are in fact reimbursed by said insurance.

7.8 Accident Reports. MANAGER shall promptly investigate and make a full written report to CITY as to all material accidents involving bodily injury and/or claims for property damage relating to the ownership, operation, and maintenance of the Property, including the estimated cost of repair. All such accident reports shall be

delivered to CITY within forty-eight (48) hours. MANAGER's obligations under this section shall only commence when MANAGER becomes aware of the events identified in this section.

- 7.9 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of or relates in any way to the Management Services provided under this Agreement or out of the commercial use of or cessation of commercial use on the Property, upon CITY's request, MANAGER, its agents, officers, and employees agree to assist in resolving the dispute or litigation. MANAGER's assistance includes, but is not limited to, providing professional consultations, providing records and documents, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation. MANAGER's obligation to provide mandatory assistance shall survive the term of this Agreement.

If mandatory assistance is rendered by MANAGER after expiration of the term of this Agreement, then CITY shall compensate MANAGER for its time incurred in providing Mandatory Assistance in the amount of \$500 per day for corporate officers. For other employees of MANAGER, CITY shall reimburse MANAGER for the time spent at the employee's regular wages. If, however, it is established through resolution of the third party dispute or litigation that liability is solely attributable to the acts or omissions of MANAGER, its agents, officers, and employees, then MANAGER shall reimburse CITY.

## ARTICLE 8 - NOTICES

- 8.1 Delivery of Notice. All notices, demands and requests which may or must be given by either party to the other shall be in writing and shall be personally delivered or sent by facsimile and United States certified mail to the address of the party set forth below. Any notice or other document delivered hereunder shall be deemed to have been delivered effective upon delivery, if delivered personally or by facsimile, and within seventy-two (72) hours following the mailing of notice.

Notice to the MANAGER shall be addressed to:

Mark E. Hoekstra  
Heritage Real Estate Advisors, Inc.  
1240 State Street  
San Diego, CA 92101

Notice to CITY shall be addressed to:

City of San Diego  
Real Estate Assets Department  
ATTENTION: Director  
1200 Third Avenue, Suite 1700 (MS-51A)  
San Diego, California 92101

- 8.2 Required Notice. Notice shall be provided in the event of an occurrence which would give MANAGER or CITY the right to terminate this Agreement, or any event which, after notice or lapse of time or both, would constitute such an event.

## ARTICLE 9 - ADDITIONAL REQUIREMENTS

- 9.1 Drug-Free Workplace. MANAGER agrees to comply with CITY's Drug Free Workplace requirements set forth in Council Policy 100-17, adopted by Council Resolution No. R-277952 and incorporated into this Agreement by this reference. MANAGER shall certify to CITY that it will provide a drug-free workplace by submitting a MANAGER Certification for a Drug-Free Workplace form.
- a. MANAGER's Notice to Employees. MANAGER shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition. MANAGER shall post the drug-free policy in a prominent place.
  - b. Drug-Free Awareness Program. MANAGER shall establish a drug-free awareness program to inform employees about all of the following:
    - 1. The dangers of drug abuse in the work place.
    - 2. The policy of maintaining a drug-free work place.
    - 3. The penalties that may be imposed upon employees for drug abuse violations.
  - c. Subcontractor's Agreements. MANAGER further ensures that each contract for subcontractor services for the Property shall contain language that binds the subcontractor to comply with the provisions of Section 9.1 of this Agreement. MANAGER and any subcontractors shall be individually responsible for their own drug-free work place program.

- 9.2 Americans with Disabilities Act Statement. MANAGER agrees to comply with CITY's American with Disabilities Act (ADA) requirements set forth in Council Policy 100-04, adopted by Council Resolution No. 282153 and incorporated into this Agreement by this reference. MANAGER shall certify to CITY that it will comply with the ADA by adhering to the following:
- a. Title I - Employment Mandates. "No contractor may discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, disciplines, layoffs, and terminations of employment."
  - b. Title II - State and Local Government. "No qualified individual with a disability may be excluded on the basis, from participation in, or be denied the benefits of services, programs, or activities by contractors or subcontractors providing services to CITY."
  - c. Post a Statement. MANAGER shall post a statement addressing the requirements of the ADA in a prominent place at the worksite.
  - d. Subcontractor Agreements. MANAGER further certifies that any subcontract for providing management services for the Property shall contain language that binds the subcontractor to comply with Section 9.2 of this Agreement. MANAGER and subcontractors shall be individually responsible for their own ADA employment programs.
- 9.3 Disabled Access. MANAGER shall ensure that all repairs and construction on the property comply with CITY's disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of CITY.
- 9.4 Equal Opportunity. MANAGER shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. MANAGER shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. MANAGER shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Agreement so that such provisions will be binding upon each sublessee and contractor. MANAGER shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request,

MANAGER shall submit a current Workforce Report. MANAGER acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 9.5 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by MANAGER pursuant to this Agreement is or is not a public record subject to disclosure under the California Public Records Act. MANAGER shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the California Public Records Act.
- 9.6 Product Endorsement. MANAGER acknowledges and agrees to comply with the provisions of CITY's Administrative Regulation 95-65, concerning product endorsement. Any advertisement identifying or referring to CITY as the user of a product or service requires the prior written approval of CITY.
- 9.7 Conflict of Interest. MANAGER is subject to all federal, state and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq. CITY may determine that a conflict of interest code requires MANAGER to complete one or more statements of economic interest disclosing relevant financial interests. Upon CITY's request, MANAGER shall submit the necessary documentation to CITY.

MANAGER shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

MANAGER's personnel employed on the Property shall not accept gratuities or any other favors from any current or potential subcontractors, vendors, or suppliers. MANAGER shall not recommend or specify any product, supplier, or contractor with whom MANAGER has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

If MANAGER violates any conflict of interest laws or any of these conflict of interest provisions, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects MANAGER to liability to CITY for attorney's fees and damages sustained as a result of the violation.

- 9.8 Best Management Practices. MANAGER and each of its subcontractors shall comply with any Storm Water Pollution Prevention Plan or Best Management Practices adopted for the Property in performing Management Services.

## ARTICLE 10 - GENERAL PROVISIONS

- 10.1 Non-Assignment. MANAGER shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without CITY's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of this Agreement, at the sole discretion of CITY. In no event shall any putative assignment create a contractual relationship between CITY and any putative assignee.
- 10.2 Compliance with Controlling Law. MANAGER shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to MANAGER in the performance of the Management Services under this Agreement. In addition, MANAGER shall comply immediately with all directives issued by CITY or its authorized representatives under authority of any laws, statutes, ordinances, rules, regulations and Court orders. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 10.3 Jurisdiction and Venue. The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.
- 10.4 Rights Upon Termination. Except as otherwise provided herein, upon termination of this Agreement, the following shall apply:
- a. All amounts due and owing between the parties shall become immediately due and payable.
  - b. All Operating Equipment and supplies including telephones, fax machines, desks, computers, computer software and programs, billing systems, chairs, file cabinets, landscaping and maintenance equipment, and all other equipment and supplies purchased or reimbursed by CITY is CITY Property and shall remain on-site.
  - c. MANAGER shall have the right to remove all of its personal property from the Property in a peaceful and orderly manner.

- d. MANAGER shall transfer to CITY all books and records pertaining to the Property which have been in the custody and control of MANAGER.

These rights shall be in addition to and not in exclusion of any and all other rights of the parties.

- 10.5 No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between CITY, its successors and assignees, on the one part, and MANAGER, its successors and assignees, on the other part.
- 10.6 Integration; Modifications. This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties.
- 10.7 No Warranty. MANAGER makes no guarantee, warranty, or representation that there will be profits or that there will not be losses from the operation of the Property.
- 10.8 Headings. The article and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit; or describe the scope or intent of any provision of this Agreement.
- 10.9 Approval or Consent. Except as otherwise herein provided, whenever under any provision of this Agreement the approval or consent of either party is required, such consent or approval shall be in writing, duly executed by an authorized officer or agent of the party granting such consent or approval, and shall not be unreasonable withheld. Whenever consent of CITY is required under this Agreement, the City Manager or his designee is authorized to provide such consent.
- 10.10 Partial Invalidity. In the event that any one or more phrases, sentences, clauses or paragraphs contained in this Agreement shall be declared invalid by the final and unappealable order, decree or judgment of any court or arbitrator, this Agreement shall be construed as if such phrases, sentences, clauses or paragraphs had not been inserted.
- 10.11 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations

created by this Agreement shall be vested and binding on any Party's successor in interest.

- 10.12 Waiver of Provisions. The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy herein contained, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term of provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.
- 10.13 Third Parties. Subject to other provisions of this Agreement; it is agreed that none of the obligations hereunder of either party shall run to, or be enforceable by, any party other than the other party to this Agreement.
- 10.14 Property Interest. This Agreement shall not be deemed at any time to be an interest in real estate or a lien or security interest of any nature against the Property, including, without limitation any Furniture and Equipment; inventory, motor vehicles, contracts, documents, accounts, notes, drafts, acceptances, instruments, chattel papers, general intangibles or other personal property existing or that may be hereafter acquired or entered into with respect to the Property or the construction or development or operation thereof. This Agreement is for the operation of the Property only, and does not create any possessory interest.
- 10.15 Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of CITY as a chartered city of the State of California.
- 10.16 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 10.17 Legal Actions. Any legal action in connection with this Agreement shall be filed and maintained in San Diego County.

## ARTICLE 11 - SIGNATURES

- 11.1 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.
- 11.2 Signing Authority. The representative for each party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other party or parties hereto harmless if it is later determined that such authority does not exist.

*[Remainder of Page Intentionally Blank]*

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

Dated this 13 day of MARCH, 2013.

THE CITY OF SAN DIEGO

By

Bob Filner  
Mayor

James F. Barwick, Director  
Real Estate Assets Department

I HEREBY CERTIFY I can legally bind Heritage Real Estate Advisors, Inc., and that I have read all of this Agreement, this 5<sup>th</sup> day of March, 2013.

HERITAGE REAL ESTATE ADVISORS, INC.

By

[Signature]

Mark Hoekstra, President

I HEREBY APPROVE the form and legality of the foregoing Agreement this 14<sup>th</sup> day of March, 2013.

JAN I. GOLDSMITH City Attorney

By

[Signature]

Deputy City Attorney

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Exhibit "A"

SECTION 9: EXHIBITS

9.1 Legal Description.

CRAKE LEGAL DESCRIPTION

Those portions of Pueblo Lots 313 and 338 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the map thereof made by James Pascoe recorded in the Office of the County Recorder of said County as Miscellaneous Map No. 36,"described as follows:

Beginning at a 3/4-inch iron pipe marked L.S. 2412 monumenting a point in the Northerly line of Sports Arena Boulevard, 115.00 feet wide, distant along said line North 77°55'15" West 220.45 feet from a 3/4-inch iron pipe marked L.S. 2412 monumenting the Westerly terminus in said line of a tangent curve having a radius of 1,019.93 feet and being concave Southwesterly; thence along said Northerly line North 77°55'15" West 277.95 feet; thence leaving said Northerly line at right angles North 12°04'45" East 476.12 feet; thence North 36°05'50" East 239.90 feet to the Southwesterly line of Kurtz Street, 57.00 feet wide, said line being also a line parallel with and distant Southwesterly 7.00 feet measured at right angles from the Northeasterly line of said Pueblo Lot No. 338; thence along said Southwesterly line South 53°59'00" East 375.32 feet to a 3/4-inch iron pipe marked L.S. 2412 monumenting a point in said line; thence leaving said Southwesterly line South 35°56'45" West 222.00 feet to a 3/4-inch iron pipe marked L.S. 2412; thence South 24°11'14" West 347.69 feet to the point of beginning; containing 4.994 acres, more or less.

CITY OF SAN DIEGO  
M E M O R A N D U M

DATE: March 4, 2013  
TO: James F. Barwick, Director  
FROM: Ed Plank, Interim Purchasing Agent  
SUBJECT: Sole Source Request for Sports Arena Square- Sole Source

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Your Sole Source Request for the above subject with Sports Arena Square was approved and is valid through 6/30/2013. In order for a Purchase Order to be issued, your department has to submit a purchase requisition. In the internal header notes of the requisition, please reference Sole Source Case Number 2876. For questions, please contact Pam Glover at x65554.



Ed Plank  
Interim Purchasing Agent

EP/br

**SOLE SOURCE DOCUMENTATION**  
**Sole Source, Single Seller Requirement**  
SDMC §22.3016

1. **Requested from the Department of Real Estate Assets Date Received:** Feb. 26, 2013
2. **Requesters name:** James Barwick **Date:** Feb. 21, 2013
3. **Requested Supplier/Vendor:** Heritage Real Estate Advisor, Inc. as Property Management Company for Sports Arena Square
4. **Describe or attach the supporting documentation submitted by the department:**  
Attached
5. **Cost Estimate:** \$3,300 monthly or 5% (whichever greater) of all minimum rents and additional rents (CAM, parking, late charges, etc.) of the rent amount (between \$104,000 and \$236,688 yearly) the City currently receives from sublease agreements for Sports Arena Square. Sole source designation to be for a period of four (4) months while a solicitation is conducted and contract awarded.
6. **Explain why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would be undesirable, impractical or impossible:**  
The City's current Lessee (AEG Management SD, LLC (AMSD)) has notified the City they are terminating the Sports Arena Square lease agreement effective February 28, 2013. To avoid a gap in managing the property, losing rent revenue, minimizing disruption to the sub-tenants, and allow time for the City to issue a Request for Proposal and award a property management contract, it is recommended that Heritage Real Estate Advisor, the company currently managing the sub-tenants for AMSD, be designated as sole source provider for a period of four (4) months while an RFP solicitation is released and awarded.
7. **The reason the Department is using a sole source\* purchasing method is because (check at least one):**
  - ☐ Efficient utilization of existing property management services to avoid a gap in managing the property, minimize disruption to the sub-tenants and receipt of revenue by the City, and allow time for the City to issue an Request for Proposal and award a property management contract.

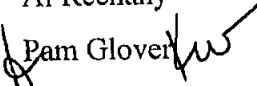
8. What necessary feature(s) does this vendor provide which are not available from any other source?

Heritage is familiar with the sub-tenants and their requirements, the sub-lease terms, the Sports Arena Square facility, and can provide immediate continuity for revenue generation at the facility, without loss of sub-tenant revenue or increased liability. No other property manager provider could step in by March 1, 2013, bridge the gap between termination of the lease and award of the RFP without potential loss of revenue from the sub-tenants or loss of the increased revenue derived from management services pass through as stated in the attached supporting documentation.

It is recommended that Heritage Real Estate Advisor, the company currently managing the sub-tenants for AMSD, be designated as sole source provider of Sports Arena Square property management for a period of four (4) months while an RFP solicitation is released via Purchasing & Contracting and a contract awarded.

9. Buyer: \_\_\_\_\_ Date: \_\_\_\_\_
10. PPS: Karan Wot \_\_\_\_\_ Date: 2/28/13
11. Purchasing Agent: \_\_\_\_\_ Date: 2/28/13

CITY OF SAN DIEGO  
M E M O R A N D U M

DATE: 2/28/2013  
TO: Al Rechany  
FROM: Pam Glover   
SUBJECT: Sole Source Request — Sports Arena Square for Sports Arena Square-  
Sole Source

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Negotiated Total: \$39,600.00  
Dept. Est. Total: \$39,600.00  
Vendor: Sports Arena Square  
Expiration Date: 6/30/2013  
Recommendation: **Approved**

The City's current Lessee (AEG Management SD, LLC (AMSD)) has notified the City they are terminating the Sports Arena Square lease agreement effective February 28, 2013. To avoid a gap in managing the property and losing rent revenue, minimize disruption to the sub-tenants, and allow time for the City to issue a Request for Proposal and award a property management contract, it is recommended that Heritage Real Estate Advisor (Heritage), the company currently managing the sub-tenants for AMSD, be designated as sole source provider for a period of four (4) months while an RFP solicitation is released and awarded.

Heritage is the only property manager that can provide efficient utilization of existing property management services to avoid a gap in managing the property, minimize disruption to the sub-tenants and receipt of revenue by the City, and allow time for the City to issue an Request for Proposal and award a property management contract.

Heritage is familiar with the sub-tenants and their requirements, the sub-lease terms, the Sports Arena Square facility, and can provide immediate continuity for revenue generation at the facility, without loss of sub-tenant revenue or increased liability. No other property manager provider could step in by March 1, 2013, bridge the gap between termination of the lease and award of the RFP without potential loss of revenue from the sub-tenants or loss of the increased revenue derived from management services pass through as stated in the attached supporting documentation.

It is recommended that Heritage Real Estate Advisor, the company currently managing the sub-tenants for AMSD, be designated as sole source provider of Sports Arena Square property management for a period of four (4) months while an RFP solicitation is released via Purchasing & Contracting and a contract awarded.