

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
DEPARTMENT OF ASSET MANAGEMENT**

AGENDA ITEM NO. **30**

TO: Mayor and City Council

FROM: Rebecca Waldman, Director, Department of Asset Management

THROUGH: Terry M. Brechtel, City Manager

COPIES: Erik J. Walsh, Assistant to the City Manager

SUBJECT: Commercial Real Estate Brokerage Services

DATE: September 9, 2004

SUMMARY AND RECOMMENDATIONS

An ordinance authorizing the execution of a Professional Services Agreement – Brokerage with Providence Commercial Real Estate Services, Inc. to provide commercial real estate brokerage services for an initial term of three (3) years beginning October 7, 2004 with two (2) one (1) year renewal options subject to future City Council approval; and reallocating an amount not to exceed \$25,000 for miscellaneous expenses, as approved under Ordinance # 90552 dated September 23, 1999.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

An existing contract for commercial real estate brokerage services will expire on October 6, 2004. This contract, between the City and Providence Commercial Real Estate Services, Inc. and the Weitzman Group, was originally approved by City Council on September 23, 1999 (Ordinance #90552) for a three (3) year term. Two (2) one (1) year renewal options were subsequently approved by City Council on October 3, 2002 and October 2, 2003. There are no further renewal options available under the contract.

The City has a continuing need for real estate brokerage services in connection with property marketing and sales at the Southwest Business & Technology Park and leasing of retail space available on the ground floor of the St. Mary's Street Parking Garage. In addition to working on these City-owned projects, required services include completing assessments of space/property needs, marketing other City-owned properties that may become available for sale or lease, providing analysis of the proposed transactions, assisting with contract negotiations, and performing other duties typically provided by full service real estate brokerage firms. Therefore, on July 4, 2004, staff issued a Request for Proposals (RFP) to solicit submissions from qualified real estate brokers with the organization and experience to provide brokerage services. On August 4, 2004, staff received proposals from the following firms:

1. Bradfield Properties (Bradfield)
2. Grubb & Ellis Company (Grubb/Ellis)
3. Providence Commercial Real Estate Services, Inc. (Providence)

Staff from the departments of Asset Management, Economic Development, Parks and Recreation, and Public Works participated on the evaluation committee and reviewed the proposals according to the following evaluation criteria and scoring system:

1. Ability to Provide Services (20%)
2. Proposed Marketing Plans (20%)
3. References/Qualifications (20%)
4. Responsiveness to the RFP (5%)
5. Proposed Fee Schedule (15%)
6. Small Business Economic Development Advocacy (SBEDA) Program (20%)

On the basis of an initial scoring of the proposals, both Grubb and Providence were interviewed. The committee determined that Providence should be recommended to the City Council for consideration based on Providence's strengths, which include: 1) industrial park marketing/sales, 2) over 100 years of combined experience in the San Antonio commercial real estate market, 3) the principals will be directly responsible for providing services, and 4) a commitment to provide between 10% and 20% of the work to a qualified sub-contractor with retail leasing expertise. In the final scoring, Providence ranked highest, not only in overall score, but also based on the SBEDA Program requirements. A summary of the final scores is attached as Attachment I.

Providence has signed a contract and it is attached as Attachment II. Services will be provided for the City as a buyer, tenant, or owner. Project assignments will be given to Providence by the City on an as needed basis.

POLICY ANALYSIS

This action is consistent with City Council direction to sell/lease property in the Southwest Business and Technology Park, to generate/maximize revenue through the leasing of City-owned properties as well as provide departments with professional assistance in real estate matters.

FISCAL IMPACT

An exact value for this contract is difficult to determine because the number of projects to be assigned to Providence and the dollar amount of the potential transactions which may result from those transactions varies greatly. However, fees/commissions for the various types of transactions which may occur under the contract are fixed and a schedule of same is attached as Attachment III. City Council will authorize payment of commissions at the time leases or sales are approved. Commissions will be determined and paid based on the dollar amount of each lease or sales transaction where the City is the owner of the property. In the case of lease transactions, 50% of the commissions will be paid at the time the lease is executed and all contingencies fulfilled and the other 50% will be paid at the time the lease commences. Commissions for building/land sales transactions will be funded as part of the sales transaction and will be paid at closing. In those situations where the City is buying or leasing property from another entity, the commissions should generally be paid by the seller/lessor. For assigned projects which do not relate to commissionable work, the contract establishes an hourly rate of \$150.00.

Funding for miscellaneous expenses related to this contract, which are anticipated expenditures and do not exceed current budgeted items, will be from the Department of Asset Management budget. The recommended ordinance will reallocate \$25,000, which was appropriated for miscellaneous expenses under the current contract when it was approved on September 23, 1999. The funds will be authorized to reimburse Providence for various expenses such as specialized advertising, marketing materials, facility management and maintenance consultant services, development studies, real estate consultant services, or for payment of commissions.

COORDINATION

This item has been coordinated with the following departments: City Attorney's Office, Economic Development, Finance, Parks and Recreation, and Public Works.

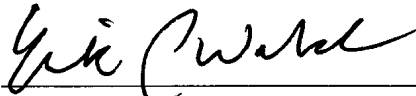
SUPPLEMENTARY COMMENTS

The required Ethics Ordinance Disclosure Statement is attached as Attachment IV.



Rebecca Waldman, Director
Department of Asset Management

Approved by:



Erik J. Walsh
Assistant to the City Manager



Terry M. Brechtel
City Manager

ATTACHMENT I

Summary of Scores

	Maximum Points	Grubb	Providence
Ability to Provide Requested Scope of Services	20	16.8	17.8
Proposed Marketing Plan	20	16.3	18.2
References and Qualifications	20	13.5	17.8
Responsiveness to the Request for Proposal	5	4.3	4.5
Proposed Fee Schedule	15	10.5	10.0
Local Business Enterprise	10	6.0	10.0
Historically Underutilized Enterprise	5	2.5	5.0
Compliance w/SBEDA Policy	5	3.0	3.0
TOTAL SCORE	100.0	73.0	86.3

ATTACHMENT II
STATE OF TEXAS
PROFESSIONAL SERVICES AGREEMENT -
BROKERAGE
COUNTY OF BEXAR

This PROFESSIONAL SERVICES AGREEMENT-BROKERAGE ("AGREEMENT") is made and entered into by and between the City of San Antonio ("CITY"), a Texas municipal corporation, acting by and through its City Manager or designee, pursuant to Ordinance No. _____ passed and approved on _____, 2004 and Providence Real Estate Services, Inc., a Texas Corporation, acting by and through its Secretary/President, hereto duly authorized, ("BROKER"). CITY and BROKER shall also be referred to herein as a PARTY or collectively as the PARTIES.

WITNESSETH

WHEREAS, CITY desires to secure brokerage services for a wide range of real estate needs including but not limited to leasing, purchasing and disposing of properties; and

WHEREAS, after conducting an extensive "Request for Proposals" process, CITY's Evaluation Committee, following careful and objective consideration of the responses received from numerous vendors, selected BROKER to provide the needed services; and

WHEREAS, BROKER has agreed to provide such services under the terms and conditions hereinafter provided;

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the PARTIES hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

PURPOSE

The purpose of this AGREEMENT is to set out the terms and conditions under which BROKER will perform certain real estate brokerage services for CITY. These services may involve the marketing, sale and/or leasing of the Southwest Business and Technology Park; the marketing and leasing of certain retail space at the St. Mary's Street Parking Garage; locating and leasing of space to meet CITY's needs; acquisition and/or disposition of properties for CITY; conducting property searches; and assisting in and/or conducting sale/lease negotiations.

I. TERM

1.1 The term of this AGREEMENT (the "INITIAL TERM") shall commence on October 7, 2004 (the "COMMENCEMENT DATE") and shall expire on October 6, 2007 (the "EXPIRATION DATE"), unless sooner terminated in accordance with the provisions of this AGREEMENT.

1.2 Provided BROKER is not in default at the end of the INITIAL TERM set forth in Section 1.1, this AGREEMENT may be renewed and extended for a period of one (1) consecutive additional year from October 7, 2007 to October 6, 2008 (the "RENEWAL TERM"), subject to CITY Council approval. BROKER must request the 1-year renewal and extension in writing to the Director, CITY's Department of Asset Management, (the "DIRECTOR"), no later than sixty (60) days prior to the end of the INITIAL TERM hereof.

1.3 Provided BROKER is not in default at the end of the RENEWAL TERM, set forth in Section 1.2, this AGREEMENT may be further renewed and extended for a consecutive additional one (1) year from October 7, 2008 to October 6, 2009 (the "ADDITIONAL

RENEWAL TERM”), subject to CITY Council approval. BROKER must request the additional 1-year renewal and extension in writing to the DIRECTOR no later than sixty (60) days prior to the end of the RENEWAL TERM. Hereinafter, any reference to “the TERM” or “any TERM” shall mean the INITIAL TERM, the RENEWAL TERM and the ADDITIONAL RENEWAL TERM.

II. SCOPE OF SERVICES

2.1 BROKER, in accordance and compliance with the terms, provisions and requirements of this AGREEMENT shall manage, perform and provide all activities and services set out in CITY’s Request for Proposals – Commercial Real Estate Brokerage Services, a copy of which is attached hereto and incorporated herein verbatim for all purposes as **EXHIBIT “A”**, and the BROKER’s Response to CITY’s Request for Proposals, a copy of which attached hereto and incorporated herein verbatim for all purposes as **EXHIBIT “B”**.

2.2 As needed, CITY will assign projects (“Project” or “Projects”) to BROKER. For each Project assigned to BROKER under this AGREEMENT, CITY and BROKER will establish agreed upon goal(s).

2.3 BROKER agrees to work closely with the DIRECTOR and appropriate CITY officials and shall perform any and all tasks related to assigned Projects in order to fulfill the purposes of this AGREEMENT and the goal(s) of each Project in a timely manner.

2.4 BROKER agrees to fully cooperate with CITY and deliver all sales agreements, lease agreements, data/reports (as requested), and documents which result from BROKER’s services to CITY in such form as is satisfactory to CITY.

2.5 To the extent such services do not duplicate those services referenced and set forth in **Section 2.1** and **EXHIBITS “A”** and **“B”**, BROKER agrees to the following:

- A.** BROKER understands that BROKER has no authority to bind CITY to any sales agreement or lease agreement; and further that any and all agreements are subject to CITY’s approval, as evidenced by the passage of a future CITY ordinance for each such agreement procured in connection herein. Further, **BROKER IS NOT** authorized to execute any documents in the name of or on behalf of CITY.
- B.** BROKER shall not represent to any third party that it has authority to sign for or in any way bind CITY to any legal relationship.
- C.** BROKER agrees to perform duties associated with this AGREEMENT based on the terms herein set forth.
- D.** BROKER is authorized by CITY, at BROKER’s sole cost and expense, to advertise the property involved, as applicable, place signage on the property, prepare a comparative market analysis to determine value, disseminate information about a property to other brokers or their salespersons and authorize other brokers, or their salespersons, inspectors, appraisers and repair personnel to enter any property as previously approved and directed by CITY. Prior to advertising, BROKER will provide CITY with advertisement copy for review and approval.

2.6 BROKER warrants and certifies that BROKER and any other person designated to provide services hereunder, including, to the best of BROKER’s knowledge and belief, salespersons sponsored by BROKER (also referred to herein as “BROKER’s salespersons”), cooperating brokers and their salespersons, and any broker or salesperson with whom BROKER has entered into a subcontract with to perform brokerage services hereunder, have the requisite training/experience, license, and/or certification to provide said services, specifically including, but not limited to, a current Texas Real Estate Broker’s License, and, as required, a current Texas Real Estate Salesperson’s License, as may be required for BROKER’s salespersons and the

salespersons of cooperating brokers, and any broker or salesperson with whom BROKER has entered into a subcontract with to perform brokerage services hereunder (alternately referred to herein as a "BROKER's subcontractor", "subcontractor" or "subcontractors"), or such brokers' or salespersons' licensure, other than Texas, recognized and allowed under what is commonly known as "The Real Estate License Act" (of Texas) by the Texas Real Estate Commission to practice real estate in Texas.

III. COMPENSATION AND COSTS

3.1 For services rendered as herein described, CITY agrees to pay and BROKER agrees to accept the compensation as set out in **EXHIBIT "C"** – Schedule of Broker's Commissions and Fees attached hereto and incorporated herein verbatim as if fully set out.

3.2 Unless provided otherwise by this AGREEMENT, BROKER understands and agrees that all costs and expenses incurred by BROKER under this AGREEMENT, including but not limited to labor, supervision of work, report reproduction, typing, travel, insurance, communication, advertising, computer access, materials, supplies, subcontractor costs, postage, telephone, stationary, rent and any and all other costs and expenses necessary to complete Projects shall be borne by BROKER.

3.3 BROKER understands and agrees that any Commission, as identified in **EXHIBIT "C"**, will be payable by CITY as follows:

A. UNIMPROVED LAND SALE OR IMPROVED LAND SALE (BUILDING)

BROKER shall be paid any Commission at the time of closing on the transaction and such disbursements shall be and hereby are authorized to be made by the escrow agent/Title Company.

B. NEW LEASE/GROUND LEASE

1. One-half (1/2) of the Commission will be paid at the time the lease agreement is fully executed (all parties have signed) and all contingencies fulfilled, including approval by passage of a future CITY Ordinance and appropriation of funds by CITY, as necessary.
2. One-half (1/2) of the Commission will be paid at the time the term of the lease agreement commences, including appropriation of funds by CITY, as necessary.

C. LEASE RENEWAL

In the event of a lease renewal, now or in the future, BROKER understands and agrees that a Commission will not be paid to BROKER, unless BROKER is an active participant in the renewal process, as solely determined by CITY. If CITY determines that BROKER was an active participant in such renewal process, then payment of the Commission will be made by CITY to BROKER in the same manner as provided for under **Section 3.3 B.** for a new lease or ground lease.

3.4 Any Commission CITY pays to BROKER may be shared by separate agreement with BROKER's salespersons or a cooperating broker and/or the cooperating broker's salespersons, or any broker or salesperson with whom BROKER has entered into a subcontract with to perform brokerage service hereunder, but CITY will not pay any additional Commission to BROKER's salespersons, the cooperating broker, or the cooperating broker's salespersons or any broker or salesperson with whom BROKER has entered into a subcontract with to perform brokerage service hereunder. Under no circumstances will any broker or salesperson with whom BROKER has entered into a subcontract with to perform brokerage services hereunder ("BROKER's subcontractor") be considered a cooperating Broker or salesperson for purposes of payment of a commission pursuant to Exhibit "C"- SCHEDULE OF BROKER's COMMISSIONS AND FEES.

3.5 The PARTIES hereto agree and understand that BROKER will look to CITY for payment of a Commission on transactions being consummated under this AGREEMENT only when CITY is either (1) the Seller/Owner of the real property being sold or (2) the Landlord under a lease agreement. Further, in those transactions in which CITY is the Buyer or Tenant and therefore is not responsible for payment of the commission, it is agreed and understood that BROKER shall look to and be paid by the other party (ies) involved in the transaction, unless otherwise agreed to by CITY.

3.6 BROKER understands and agrees that this AGREEMENT **DOES NOT** provide BROKER with exclusive rights to provide brokerage services to CITY, but that CITY reserves the right to perform such services itself, or acting by and through another broker under a separate Professional Services-Agreement-Brokerage.

3.7 **HOURLY FEE.** BROKER understands and agrees that certain Projects may be assigned which will require that an hourly fee be charged by BROKER in lieu of a Commission. The PARTIES agree that the scope, fees, and billing frequency will be agreed upon by the PARTIES at the time the Project is assigned, subject to the approval of the DIRECTOR and CITY Council, if required. Under no circumstances, however, shall the fee exceed \$150.00 per hour.

3.8 **BROKER'S COMMISSION @ BELOW FAIR MARKET VALUE OR FAIR RENTAL VALUE.** In the event CITY executes a sales agreement as Seller or a lease agreement as Landlord, pursuant to a Project assigned to BROKER, at a rate less than 75% of the fair market value of the property to be sold or less than 75% of the fair market rental of the property to be leased, BROKER can request CITY to pay the Commission based on 75% of the fair market value of the property to be sold or 75 % of the fair market rental of the property to be leased. Fair market value of the property to be sold or fair market rental of the property to be leased shall be agreed to between CITY and BROKER prior to determination of the BROKER's Commission and payment will be subject to approval by passage of a future CITY Ordinance and appropriation of funds.

IV. OWNERSHIP OF DOCUMENTS

4.1 Any and all writings, documents or information, including, but not limited to, all sales agreements, lease agreements, and data/reports, in whatever form and character produced by BROKER pursuant to the provisions of this AGREEMENT are the exclusive properties of CITY, and no such writing, document or information shall be the subject of any copyright or proprietary claim by BROKER.

4.2 BROKER understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, CITY has the right to use all such writings, documents and information as CITY desires, without restriction.

4.3 All published materials and written reports and/or studies conducted or submitted pursuant to this AGREEMENT shall be originally developed, unless otherwise provided herein. If material not originally developed is included in a report or study, said material shall have its source identified, either in the body of the report or by footnote, regardless of whether the material is in a verbatim or extensive paraphrase format.

V. RECORDS RETENTION

5.1 BROKER and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to CITY at their respective offices, at all reasonable times and as often as CITY may

deem necessary during any TERM of this AGREEMENT, and the record retention period and resolution period established in **Section 5.2** below, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.

5.2 BROKER shall retain any and all documents produced as a result of services provided hereunder for a period of five (5) years (hereafter referred to as "retention period") from the date of termination of the AGREEMENT. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, BROKER shall retain the records until the resolution of such litigation or other such questions ("resolution period"). BROKER acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period and resolution period. CITY may, at its election, require BROKER to return said documents to CITY prior to or at the conclusion of said retention or resolution, if later in time.

5.3 BROKER shall notify CITY, immediately, in the event BROKER receives any requests for information from a third party, which pertain to the documentation and records referenced herein. BROKER understands and agrees that CITY will process and handle all such requests.

VI. TERMINATION

6.1 "Termination" of this AGREEMENT shall mean termination by expiration of the AGREEMENT under **ARTICLE I. TERM** or earlier termination pursuant to any of the provisions hereof.

6.2 **Termination Without Cause.** Except as otherwise provided in this AGREEMENT, CITY has a right to terminate this AGREEMENT, without cause and without liability to BROKER for such Termination Without Cause, with thirty (30) days prior written notice to BROKER in accordance with **ARTICLE XVIII. NOTICES**. BROKER has a right to terminate this AGREEMENT, without cause with ninety (90) days prior written notice to BROKER in accordance with **ARTICLE XVIII. NOTICES**.

6.3 **Termination for Cause – Default with Opportunity to Cure.** Should BROKER default in the performance of this AGREEMENT in any of the following:

- A.** Failure to comply with the terms and conditions stated in **ARTICLE XII. SBEDA**, as solely determined by CITY;
- B.** Bankruptcy or selling substantially all of BROKER's individual assets or the assets of BROKER's company;
- C.** Failing to perform or failing to comply with any covenant herein required, including abandonment by BROKER of this AGREEMENT or any Projects, with each failing as solely determined by CITY; or
- D.** Performing unsatisfactorily, as solely determined by CITY;

then same shall be considered an event of default. CITY shall deliver written notice of said default specifying such matter(s) in default. BROKER shall have fifteen (15) calendar days after receipt of the written notice, in accordance with **ARTICLE XVIII. NOTICES** to cure such default. If BROKER fails to cure the default within such fifteen (15) day cure period, CITY shall have the right, without further notice, to terminate this AGREEMENT in whole or in part as CITY deems appropriate, and to contract with another broker to complete the work required in this AGREEMENT. CITY shall also have the right to offset the cost of securing the services of a new broker and new Agreement with a new broker against BROKER's future or unpaid invoice(s) for BROKER's Commissions and/or Fees.

6.4 Termination For Cause – Default without Opportunity to Cure. Upon prior written notice, which notice shall be provided in accordance with **ARTICLE XVIII. NOTICES**, CITY may terminate this AGREEMENT as of the date provided in the notice, in whole or in part, prior to the EXPIRATION DATE of any TERM hereof, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

- A. The sale, transfer, pledge, conveyance or assignment of this AGREEMENT by BROKER without prior approval as provided in **ARTICLE X. ASSIGNMENT AND SUBCONTRACTING**.
- B. Prior release of protected information under the Texas Open Information Act.

6.5 Termination by Law. If any state or federal law or CITY ordinance or Bexar County ordinance or rule or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.

6.6 Regardless of how this AGREEMENT is terminated, BROKER shall affect an orderly transfer to CITY or to such person(s) or firm(s) as CITY may designate, at no additional cost to CITY, all completed or partially completed sales agreements, lease agreements, data, documents, papers, records, charts, reports, and any other materials or information produced as a result of, or pertaining to, the services rendered by BROKER, or provided to BROKER, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by BROKER in accordance with **ARTICLE V. RECORDS RETENTION**. Any record transfer shall be completed within thirty (30) calendar days after a written request by CITY and shall be completed at BROKER's sole cost and expense. Payment of BROKER's Commissions and/or Fees is conditioned upon delivery of all such documents, if requested.

6.7 Upon receipt of notice to terminate, BROKER shall cease all operations of work being performed by BROKER, its salespersons, cooperating brokers, cooperating brokers' salespersons, or any of BROKER's contractors or subcontractors and shall cancel, withdraw, or otherwise terminate any activities taken under the terms of this AGREEMENT. CITY shall not be liable to BROKER nor BROKER's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of termination, unless otherwise provided herein.

6.8 The provisions of **Section 6.7** notwithstanding, if at the time of termination a fully executed sales agreement or lease agreement to consummate a transaction under this AGREEMENT is pending, but has been approved by passage of a CITY Ordinance, then this AGREEMENT will continue in effect with regard thereto until one of the following occurs, as applicable: (1) the closing and funding of the transaction described in a sales agreement, (2) the termination of a sales agreement in a manner therein provided or (3) execution and commencement of a lease agreement.

6.9 Within thirty (30) calendar days after the EXPIRATION DATE or effective date of termination of this AGREEMENT, BROKER shall submit to CITY its claims, in detail, for the monies owed by CITY for services performed and payable under this AGREEMENT, pursuant to **Section 3.7**, through the EXPIRATION DATE or effective date of termination, whichever applies. Failure by BROKER to submit its claims within said thirty (30) calendar days shall negate any liability on the part of CITY and constitute a Waiver by BROKER of any and all right or claims to collect moneys that BROKER may rightfully be otherwise entitled to for services performed.

6.10 Protection Period. If within ten (10) days after expiration or termination of this AGREEMENT, BROKER provides to CITY written notice specifying the names of active prospects identified through a Project assigned to BROKER and within thirty (30) days after the effective date of expiration or termination (the "protection period"), CITY enters into sales

agreement to dispose of property, or lease agreement to lease property or otherwise transfer a legal or equitable interest in real property to any of such active prospects then subject to an appropriation of funds by CITY Council, CITY will pay BROKER a commission as provided herein. To qualify, the activity performed must be more than merely targeting a prospect with marketing materials. The prospect interest must be shown by written documentation to qualify under this **Section 6.10**. However, if during this protection period the disposition of such property occurs while assigned to another licensed real estate broker hired by CITY, then this **Section 6.10** shall have no force or effect.

6.11 Termination not Sole Remedy. In no event shall CITY's action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue BROKER for any default hereunder or other action.

VII. AGENCY RELATIONSHIP

7.1 BROKER shall exclusively represent CITY, limited to negotiations and any other activities performed under the terms of this AGREEMENT only, unless BROKER obtains CITY's prior written consent, after full and complete disclosure, authorizing BROKER to act as an Intermediary, as defined and as applicable under what is commonly known as "The Real Estate License Act" (of Texas), as amended from time to time.

7.2 If CITY approves the BROKER to act as an Intermediary, BROKER must, under all circumstances, make appointments and provide CITY with a broker from whom it may receive the most accurate and complete information available in the transaction. If BROKER cannot fulfill this task, BROKER agrees to refuse the Project.

VIII. INDEMNIFICATION

8.1 BROKER covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to BROKER'S activities under this AGREEMENT, including any acts or omissions of BROKER, any agent, officer, director, representative, employee, BROKER or subcontractor of BROKER, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT BROKER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

8.2 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. BROKER shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or BROKER known to BROKER related to or arising out of BROKER's activities under this AGREEMENT.

8.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by BROKER in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. BROKER shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this AGREEMENT. If BROKER fails to retain defense counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and BROKER shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

8.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of BROKER, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for BROKER or any subcontractor under worker's compensation or other employee benefit acts.

IX. INSURANCE

9.1 Any and all salespersons, employees, representatives, agents or volunteers of BROKER or other cooperating brokers or cooperating brokers' salespersons, or BROKER's contractors or subcontractors working with BROKER while engaged in the performance of any work required by CITY, including, but not limited to, any work related to a lease or rental of space or sale of property or any other activities and services to be managed, performed or provided by BROKER under this AGREEMENT with CITY shall be considered salespersons, employees, representatives, agents or volunteers of BROKER or other cooperating brokers or cooperating brokers' salespersons, or BROKER's contractors or subcontractors working with BROKER only and not of CITY. Any and all claims that may result from any obligation for which BROKER may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of BROKER.

9.2 Prior to the commencement of any work under this AGREEMENT, BROKER shall furnish an original completed Certificate(s) of Insurance to CITY's DIRECTOR, and which shall be clearly labeled "*Commercial Real Estate Brokerage Services for the Department of Asset Management*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to CITY's DIRECTOR, and no officer or employee, other than CITY's Risk Manager, shall have authority to waive this requirement.

9.3 CITY reserves the right to review the insurance requirements of this **ARTICLE IX. INSURANCE** during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT, but in no instance will CITY allow modification whereupon CITY may incur increased risk.

9.4 A BROKER's financial integrity is of interest to CITY; therefore, subject to BROKER's right to maintain reasonable deductibles in such amounts as are approved by CITY, BROKER shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any

extension or renewal hereof, at BROKER's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Worker's Compensation (if applicable)	Statutory with a waiver of subrogation in favor of CITY.
2. Employer's Liability (if applicable)	\$500,000/\$500,000/\$500,000 with a waiver of subrogation in favor of CITY.
3. Commercial General (public) Liability Insurance to include coverage for the following: (a) Premises/Operations (b) Independent Contractors (c) Broad Form Contractual Liability (d) Products/completed operations (e) Personal Injury (f) Broad Form Property Damage, to include fire legal liability [if (f) is applicable]	<u>AMOUNT</u> For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent umbrella or excess liability coverage. \$50,000.
4. Professional Liability (Claims Made Form) (a) Owned/leased vehicles (b) Non-owned vehicles (c) Hired vehicles	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
5. Business Automobile Liability (if applicable)	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence or its equivalent.

9.5 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or rule or regulation binding upon either of the PARTIES hereto or the underwriter of any such policies). Upon such request by CITY, BROKER shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the costs thereof.

9.6 BROKER agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- A. Name CITY and its elected officials, employees, officers, directors, volunteers, and representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
- B. Provide for an endorsement that the "other insurance" clause shall not apply to the CITY of San Antonio where CITY is an additional insured shown on the policy.

9.7 BROKER shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice

must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

City of San Antonio
Department of Asset Management
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

9.8 If BROKER fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under this AGREEMENT. Procuring of said insurance by CITY, however, is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of BROKER to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon BROKER's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order BROKER to stop work hereunder, and/or withhold any payment(s) which become due to BROKER hereunder until BROKER demonstrates compliance with the requirements hereof.

9.9 Nothing herein contained shall be construed as limiting in any way the extent to which BROKER may be held responsible for payments of damages to persons or property resulting from BROKER's or its contractor's or subcontractors' performance of the work covered under this AGREEMENT, including, but not limited to, the performance of BROKER's salespersons, cooperating brokers and their salespersons.

9.10 It is agreed that BROKER's insurance shall be deemed primary with respect to any insurance or self insurance carried by CITY for liability arising out of operations under this AGREEMENT.

X. ASSIGNMENT AND SUBCONTRACTING

10.1 Except as otherwise stated herein, BROKER may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without complying with the requirements of Section 12.4 which include seeking the prior consent of the Director, Department of Asset Management and seeking the approval of the Economic Development Department for additions or deletions to subcontracting. As a condition of such consent, if such consent is granted, BROKER shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor BROKER, assignee, transferee or subcontractor, unless released in writing by CITY.

10.2 Any attempt to transfer, pledge or otherwise assign this AGREEMENT without said written approval, shall be void *ab initio* and shall confer no rights upon any third person. Should BROKER sell, assign, pledge, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this AGREEMENT, CITY may, at its option, terminate this AGREEMENT and all rights, titles and interests of BROKER shall thereupon cease and terminate, in accordance with **ARTICLE VI. TERMINATION**, notwithstanding any other remedy available to CITY under this AGREEMENT. The violation of this provision by BROKER shall in no event release BROKER from any obligation under the terms of this AGREEMENT, nor shall it relieve or release BROKER from the payment of any damages to CITY, which CITY sustains as a result of such violation.

10.3 Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by written contract or contract and, unless specific waiver is granted in

writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractors with this AGREEMENT shall be the responsibility of BROKER.

10.4 Despite CITY approval of a subcontract, CITY shall in no event be obligated to any third party, including any salesperson, agent, officer, director, representative, employee, cooperating broker, cooperating broker's salesperson, contractor or subcontractor of BROKER, or any broker or salesperson with whom BROKER has entered into a subcontract with to perform brokerage service hereunder for performance of work or services, nor shall CITY funds ever be used for payment of work or services extending beyond the EXPIRATION DATE or early termination date of this AGREEMENT, except as otherwise provided herein.

XI. INDEPENDENT CONTRACTOR

11.1 BROKER covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of CITY; that BROKER shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its salespersons, agents, officers, directors, representatives, employees, cooperating brokers, cooperating brokers' salespersons, cooperating brokers' salespersons, BROKER's contractors, and BROKER's subcontractors; that the doctrine of respondent superior shall not apply as between CITY and BROKER, its salespersons, agents, officers, employees, cooperating brokers, cooperating brokers' salespersons, BROKER's contractors, and BROKER's subcontractors; and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between CITY and BROKER. The PARTIES hereto understand and agree that CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by BROKER under this AGREEMENT and that the BROKER has no authority to bind CITY.

11.2 BROKER as an independent contractor, may take such actions to perform duties under this AGREEMENT as BROKER may deem advisable at BROKER's sole cost and expense.

11.3 BROKER acknowledges that any salesperson working under the sponsorship of BROKER, unless otherwise agreed to by BROKER and such salesperson in writing, and any cooperating brokers and their salespersons, unless otherwise agreed to by BROKER and said cooperating brokers and their salespersons in writing, are also independent contractors and may take such actions to perform duties under this AGREEMENT as they may deem advisable at their sole cost and expense.

XII. SBEDA

12.1 BROKER hereby acknowledges that it is the policy of City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by CITY. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

12.2 BROKER shall implement the Good Faith Effort Plan (hereafter "Plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this AGREEMENT, thereby meeting the percentages for participation of those groups as submitted in **EXHIBIT "B"**. BROKER shall be in full compliance with this **ARTICLE XII. SBEDA** by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this AGREEMENT, and shall remain in compliance throughout the term of this AGREEMENT. BROKER further agrees to continue to

make every effort to utilize businesses for subcontracting and supplying during the duration of this AGREEMENT, as may be approved pursuant to this AGREEMENT, which will meet the percentages submitted in its proposal.

12.3 BROKER shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to inspection by CITY or its authorized agent at all reasonable times. Should CITY find that BROKER is not in compliance with this **ARTICLE XII. SBEDA**, CITY shall give notice of non-compliance to BROKER. BROKER shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this **ARTICLE XII. SBEDA**. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this AGREEMENT, for which this AGREEMENT may be terminated in accordance with **ARTICLE V. TERMINATION**.

12.4 In all events, BROKER shall comply with CITY's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 96754, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

XIII. CONFLICT OF INTEREST

13.1 BROKER acknowledges that it is informed that the Charter of City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

13.2 Pursuant to **Section 13.1** above, BROKER warrants and certifies, and this AGREEMENT is made in reliance thereon, that BROKER, BROKER's salespersons, agents, officers, employees, cooperating brokers, cooperating brokers' salespersons, BROKER's contractors and subcontractors are neither officers nor employees of CITY. BROKER further warrants and certifies that BROKER has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code and, if requested by CITY to do so, BROKER will require any broker or salesperson with whom BROKER subcontracts to perform brokerage services hereunder to provide to CITY such Discretionary Contracts Disclosure Statement.

13.3 No member of CITY's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this AGREEMENT shall:

- A.** participate in any decision relating to this AGREEMENT which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; and
- B.** have any direct or indirect personal interest in this AGREEMENT or the proceeds thereof.

XIV. CHANGES IN LAW, ETC.

14.1 It is understood and agreed by the PARTIES hereto that changes in local, state and federal laws, or CITY ordinances or Bexar County ordinances, rules, or regulations applicable hereto may occur during any TERM of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XV. ENTIRE AGREEMENT, AGREEMENT DOCUMENTS AND AMENDMENTS

15.1 The terms and conditions of this AGREEMENT, together with its authorizing ordinance and its exhibits constitute the final and entire understanding and agreement by and between the PARTIES hereto and contain all of the terms and conditions agreed upon. No statements, promises, conditions, understandings, inducements, or representations, oral or written, expressed or implied, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind the PARTIES hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the PARTIES, in the form of an amendment to said AGREEMENT or exhibits, if determined necessary by the DIRECTOR, and in accordance with the provisions of **Section 15.2** below.

15.2 **AMENDMENTS**. Amendments to this AGREEMENT and any exhibits may be made only pursuant to prior notification and written approval of the CITY Council.

15.3 Except as may be otherwise provided herein, should there be any conflict between the AGREEMENT and the two exhibits identified in **Section 2.1**, the controlling provision shall be, in descending order, (1) this AGREEMENT, (2) **EXHIBIT "A"**, the Request for Proposals ; and (3) **EXHIBIT "B"** - BROKER's Response to the CITY's Request for Proposals.

15.4 Any conflict between the AGREEMENT and any exhibits regarding BROKER's compensation shall be controlled by **EXHIBIT "C"** to the extent applicable.

XVI. SEVERABILITY

16.1 If any clause or provision of this AGREEMENT is held invalid, illegal or unenforceable under present or future laws, then and in that event it is the intention of the PARTIES hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this AGREEMENT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the PARTIES hereto that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal, or unenforceable, and to the extent permitted by law, there be added as a part of the AGREEMENT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVII. LICENSES/CERTIFICATIONS

17.1 BROKER warrants and certifies that BROKER and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVIII. NOTICES

18.1 Except where the terms of this AGREEMENT expressly provide otherwise, any election, notice or communication required or permitted to be given under this AGREEMENT shall be in writing and deemed to have been duly given and presumed delivered to the other PARTY if and

when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or five (5) days after sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either PARTY may from time to time designate in writing.

If intended for City, to: City of San Antonio
Attn: DIRECTOR
Department of Asset Management
114 W. Commerce Street, Second Floor
San Antonio, TX 78205

With a copy to:

City Clerk
City of San Antonio, Texas
P.O. Box 839966
San Antonio, TX 78283-3966
Street address:
City Hall
100 Military Plaza- 2nd Floor
San Antonio, TX 78205

If intended for Broker, to: Providence Real Estate Services, Inc.
Attn: Steven W. Garza, Secretary/President
100 NE Loop 410, Suite 950
San Antonio, TX 78216

XIX. COMPLIANCE

19.1 BROKER shall provide and perform all services required under this AGREEMENT in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

20.1 Unless otherwise specifically provided for in this AGREEMENT, a waiver by either PARTY of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either PARTY to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either PARTY hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the PARTY to be charged. In case of CITY, such changes must be approved by DIRECTOR or CITY Council, as detailed in **Section 15.2 AMENDMENTS**. No act or omission by a PARTY shall in any manner impair or prejudice any right, power, privilege, or remedy available to that PARTY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE

PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this AGREEMENT shall be heard and determined in City of San Antonio, Bexar County, Texas.

21.3 BROKER covenants and agrees that BROKER, its salespersons, agents, officers, directors, representatives, employees, cooperating brokers, cooperating brokers' salespersons, BROKER's contractors, subcontractors, and invitees will observe and comply with all laws of the United States of America, the State of Texas, City Charter and City and County ordinances as well as all applicable orders, rules and regulations, specifically including, but not limited to, what is commonly known as "The Real Estate License Act" (of Texas) and related rules or regulations.

XXII. LEGAL AUTHORITY

22.1 The signer of this AGREEMENT for BROKER represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of BROKER and to bind BROKER to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

23.1 This AGREEMENT shall be binding on and inure to the benefit of the PARTIES hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XXIV. GENDER

24.1 Words of any gender used in this AGREEMENT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXV. CAPTIONS

25.1 The captions contained in this AGREEMENT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this AGREEMENT.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

XXVI. MEDIATION

26.1 Prior to filing a lawsuit to enforce any provision of this AGREEMENT, the PARTIES agree to first attempt to settle the matter through negotiation and if that fails then by mediation. If the need for mediation arises, the PARTIES shall choose a mutually acceptable mediator and shall equally share the cost of the mediation.

CITY:

**CITY OF SAN ANTONIO,
a Texas Municipal Corporation**

BROKER:

**PROVIDENCE REAL ESTATE SERVICES, INC
A TEXAS CORPORATON**

BY: _____

BY: _____

NAME: _____

NAME: Steven W. Garza_

TITLE: _____

TITLE: Secretary/President

DATE SIGNED: _____, 2004

DATE SIGNED: _____, 2004

ATTEST:

ATTEST:

City Clerk

APPROVED AS TO FORM:

NAME: _____

TITLE: _____

BY: _____
City Attorney

ATTACHMENTS

**Exhibit "A": CITY's Request for Proposals – Commercial Real Estate Brokerage
Services**

Exhibit "B": BROKER's Response to CITY's Request for Proposals

Exhibit "C": Schedule of BROKER's Commissions and Fees

ATTACHMENT III **SCHEDULE OF BROKER'S COMMISSIONS AND FEES** **(FOR PROPERTIES OWNED BY CITY)**

Type of Transaction	Fee w/out Cooperating Broker	Fee W/ Cooperating Broker
Unimproved Land Sale	<ul style="list-style-type: none"> • 5% of contract price. 	<ul style="list-style-type: none"> • 6% of contract price.
Improved Land Sale (Building)	<ul style="list-style-type: none"> • 5% of 1st \$1,000,000 in gross consideration. • 3% of gross consideration between \$1,000,001 and \$3,000,000. • 2% of gross consideration between \$3,000,001 and \$10,000,000. • 1% of gross consideration in excess of \$10,000,001. 	<ul style="list-style-type: none"> • 6% of 1st \$1,000,000 in gross consideration. • 4% of gross consideration between \$1,000,001 and \$2,000,000. • 3% of gross consideration between \$2,000,001 and 5,000,000. • 2% of gross consideration between \$5,000,001 and \$20,000,000. • 1% of gross consideration in excess of \$20,000,001.
Ground Lease	<ul style="list-style-type: none"> • 4% of total lease consideration for 1st 10 years of lease term. • 2% of total lease consideration for remainder of lease term up to maximum of 20 years. 	<ul style="list-style-type: none"> • 6% of total lease consideration for 1st 10 years of lease term. • 4% of total lease consideration for remainder of lease term up to maximum of 20 years.
New Lease	<ul style="list-style-type: none"> • 4% for 1st 5 years of lease term. • 2% for remainder of lease term to a maximum of 20 years. 	<ul style="list-style-type: none"> • 6% for 1st 5 years of lease term. • 4% for remainder of lease term to a maximum of 20 years.
Lease Renewal (If Broker participates in transaction according to Section 3.3, C of the Contract.)	<ul style="list-style-type: none"> • 1.5% for lease term up to a maximum of 25 years. 	<ul style="list-style-type: none"> • 3.5% for lease term up to a maximum of 25 years.

Hourly Fee for Non-Commission Related Projects	\$ 150.00/Hour
Maximum % of below Market Value/Rental on which Commission may be paid	75%

ATTACHMENT IV

City of San Antonio

Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Steve Garza	Dan Gostylo
Art Gonzalez	Phil Crane

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

Providence Commercial Real Estate Services, Inc.
--

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

Subcontractor to be identified at a later date, subject to this disclosure form among other criteria
--

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

None

¹ A **business entity** means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None

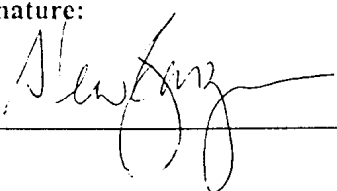
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Carroll Schubert	\$150.00	June 22, 2004

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

None		
Signature: 	Title: President Company: Providence Commercial Real Estate Services, Inc.	Date: 7/26/04

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.