



## EXECUTIVE SUMMARY

### HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: November 12, 2021

HCR21-103

SUBJECT: Approve an Agreement with Marcus and Millichap to Provide On-Call Real Estate Broker Services to the San Diego Housing Commission

COUNCIL DISTRICT(S): Citywide

ORIGINATING DEPARTMENT: Real Estate Division

CONTACT/PHONE NUMBER: Emily Jacobs (619) 578-7423

**REQUESTED ACTION:**

Approve an agreement with Marcus and Millichap to provide on-call real estate broker services to the San Diego Housing Commission.

**EXECUTIVE SUMMARY OF KEY FACTORS:**

- The San Diego Housing Commission (Housing Commission) acquires real estate in accordance with its Policy for Acquisition and or Purchase of Real Estate, Policy PO-RED-374.02, to provide affordable rental housing in the City of San Diego.
- On April 15, 2021, the Housing Commission issued a Request for Qualifications (RFQ) for real estate agents, licensed by the State of California's Department of Real Estate, to provide real estate broker services to the Housing Commission on an "on-call" basis.
- The RFQ highlighted the requirement for each selected broker to execute, file and submit to the Housing Commission a Statement of Economic Interests Form (Form 700) upon the execution of the brokerage agreement, and to provide subsequent disclosures of financial and ownership interests that might create a conflict of interest at three different times.
- The Housing Commission received five responses. An Evaluation Committee (Committee) evaluated, scored, and ranked the responses.
- The top three respondents were invited for an interview, with two accepting the invitation to negotiate for a real estate brokerage agreement with the Housing Commission and one withdrawing from the process.
- The Committee commenced negotiations and discussions with Marcus & Millichap and Colliers International. During the negotiations, Colliers elected to withdraw from consideration.
- After extensive negotiations, an agreement was reached with Marcus & Millichap, and the negotiations team recommends entering into the agreement.
- The amount of commission to be paid to the broker by the Housing Commission for each individual purchase will be the subject of subsequent staff reports, which would be subject to review and/or approval by the Housing Authority of the City of San Diego (Housing Authority) in accordance with the requirements of San Diego Municipal Code (SDMC) 98.0301(e)(1)-(4).
- Payment of a commission to Marcus & Millichap will not be permitted until such time as separate actions are approved by the Housing Commission Board of Commissioners, subject to review and/or approval by the Housing Authority in accordance with the requirements of SDMC 98.0301(e)(1)-(4).



## REPORT

**DATE ISSUED:** November 4, 2021

**REPORT NO:** HCR21-106

**ATTENTION:** Chair and Members of the San Diego Housing Commission  
For the Agenda of November 12, 2021

**SUBJECT:** Approve an Agreement with Marcus and Millichap to Provide On-Call Real Estate Broker Services to the San Diego Housing Commission

**COUNCIL DISTRICT:** Citywide

### **REQUESTED ACTION**

*Seven-day advance notice of San Diego Housing Commission hearing of the following matter has been provided to the Housing Authority Members pursuant to the provisions of San Diego Municipal Code Section 98.0301(e)(4)(A)(ii).*

Approve an agreement with Marcus and Millichap to provide on-call real estate broker services to the San Diego Housing Commission.

### **STAFF RECOMMENDATION**

That the San Diego Housing Commission (Housing Commission) take the following actions:

- 1) Approve a partial-year contract, ending on June 30, 2022, with Marcus & Millichap for the term of approximately seven months, with four one-year options to renew, to provide real estate broker services to the Housing Commission, in accordance with the terms of the proposed contract, which is attached to this report as Attachment 2. The amount of commission to be paid to the broker by the Housing Commission for each individual purchase will be the subject of subsequent staff reports, which would be subject to review and/or approval by the Housing Authority of the City of San Diego (Housing Authority) in accordance with the requirements of San Diego Municipal Code 98.0301(e)(1)-(4). This action does not authorize the expenditure of any Housing Commission funds; and
- 2) Authorize the President & Chief Executive Officer (President & CEO), or designee, to execute all necessary documents and instruments that are necessary and/or appropriate to implement these approvals, in a form approved by General Counsel, and to take such actions necessary and/or appropriate to implement these approvals.

### **SUMMARY**

The Housing Commission acquires real estate in accordance with its Policy for Acquisition and or Purchase of Real Estate, Policy PO-RED-374.02, to provide affordable rental housing in the City of San Diego for individuals and families with low income and/or experiencing homelessness.

On April 15, 2021, the Housing Commission issued a Request for Qualifications (RFQ) for real estate agents, licensed by the State of California's Department of Real Estate, to provide real estate broker services to the Housing Commission on an "on-call" basis. The RFQ highlighted the requirement for each selected broker to execute, file and submit to the Housing Commission a Statement of Economic Interests Form (Form 700) upon the execution of the brokerage agreement and to provide subsequent disclosures of financial and ownership interests that might create a conflict of interest at three different times—once before the execution of any Letter of Intent (LOI); thereafter, prior to the execution of any Purchase and Sale Agreement (PSA); and finally, prior to the close of any escrow to purchase any specific parcel of real estate—all as is set forth in the attached Broker Agreement.

Additional requirements specified in the RFQ included but were not limited to:

1. The selected firm(s) would be State of California-licensed local agent(s) who will be accessible and available to work closely with the Housing Commission in a variety of real estate transactions.
2. The selected firm(s) would have proven knowledge, familiarity and experience in the city and county of San Diego real estate market and would be responsible for assisting the Housing Commission in the due diligence aspect of property evaluation, the drafting of Letters of Intent for the purchase of the chosen real estate properties, providing advice concerning deal points in the negotiation of the Purchase and Sale Agreements, and being responsible for all aspects of the negotiation, subject to review and necessary approvals by Housing Commission staff, the Housing Commission Board of Commissioners, and the Housing Authority, as requested pursuant to the applicable provisions of San Diego Municipal Code Section 98.0301.
3. The selected firm(s) would be capable of offering a variety of marketing tools and methodologies for the acquisition of multifamily residential properties, including but not limited to extended-stay hotels and motels.
4. The selected firm(s) would be required to provide services including, but not limited to, reviewing and preparing purchase agreements and providing comparable sales reports, which will be provided to and reviewed with the Housing Commission either by telephone conference, video conference, or in person, as required by the Housing Commission.
5. To ensure the Housing Commission has the opportunity to make competitive offers, the selected firm(s) would be required to notify the Housing Commission of all newly listed or non-listed available properties that meet applicable program requirements as soon as is reasonably feasible.
6. The selected firm(s) would notify the Housing Commission of all purchase offers made by eligible buyers within 24 hours of receipt.
7. The selected firm(s) would show proven competence in the Housing Commission's Core Values, which are: service to SDHC's clients with equity, dignity, and respect; commitment to excellence and innovation; and belief in transparency and being good financial stewards.
8. The selected firm(s) must at all times during the rendition of services pursuant to the resulting agreement be a real estate agent licensed by the State of California's Department of Real Estate.
9. The selected firm(s) will provide the Housing Commission with services generally provided by a real estate broker in connection with the Housing Commission's acquisition of multifamily residential and commercial real properties in the City of San Diego.

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10. The selected firm(s) will provide such other real estate-related brokerage services as may be requested by the Housing Commission, within the scope of their respective expertise and experience.

The RFQ was posted on both the City of San Diego's and the Housing Commission's PlanetBids vendor portal systems. Notifications were sent to 340 registered vendors and firms.

At the RFQ's closing on May 6, 2021, the Housing Commission received five responses. An Evaluation Committee (Committee) evaluated, scored, and ranked the responses based on the following criteria: Respondents' Profile, Capacity & Readiness, and Qualifications, Experience & Interest. After the initial scoring and ranking, the top three respondents were invited for an interview, with two accepting the invitation to negotiate for a real estate brokerage agreement with the Housing Commission and one withdrawing from the process. Prior to inviting respondents for an interview, a search on the Register of Actions Notice was conducted to identify any current Civil (including small claims) and Probate cases that would preclude them from being further considered. This information was reviewed by legal counsel. A debarment search was also conducted to ensure respondents were not on the Debarment List.

The Committee commenced negotiations and discussions with the two respondents listed below:

- Marcus & Millichap
- Colliers, International

Each of the respondents had excellent qualifications and capabilities that are believed to fit the Housing Commission's requirements for the current engagement.

The negotiations process began in late June and included discussions regarding proposed fee structures, Housing Commission conflict of interest requirements, proposed turnaround times, and the Housing Commission's requirement to provide written notices of properties as they became listed and the need for avoidance of any and all conflicts of interest. After extensive negotiations, an agreement was reached with Marcus & Millichap, and the negotiations team recommends entering into the attached agreement, of which all terms and conditions have been accepted by Marcus & Millichap, for services. The firm has participated in hotel and apartment complex acquisitions for other governmental entities.

During the negotiations, Colliers elected to withdraw from competition for the current contract. The Housing Commission was advised their withdrawal was because of the volume of work that Colliers was currently undertaking.

### **Discussion of Key Provisions of the Proposed Contract**

Many of the important provisions of the Broker Agreement are identified and discussed in the Summary and Discussion of Contract Provisions, Attachment 1.

In addition, the entire Broker Agreement with Marcus & Millichap is attached hereto so that the Housing Commission Board members can read each of the provisions, to allow them to ask questions

concerning the Broker Agreement, Attachment 2.

**FISCAL CONSIDERATIONS**

The proposed funding sources and uses were not included in the Housing Commission's Fiscal Year 2022 Housing Authority-approved budget. Payment of a commission to Marcus & Millichap will not be permitted until such time as separate actions are approved by the Housing Commission Board of Commissioners, which would be subject to review and/or approval by the Housing Authority of the City of San Diego (Housing Authority) in accordance with the requirements of San Diego Municipal Code 98.0301(e)(1)-(4).

**EQUAL OPPORTUNITY CONTRACTING (EOC) AND EQUITY ASSURANCE**

Marcus & Millichap is a national company with local branch offices. It will submit the required EOC forms and Workforce Report prior to contract execution.

**ENVIRONMENTAL REVIEW**

This activity is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b)(5), as it is an administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c)(3), is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required. In January 2020, the City of San Diego signed a National Environmental Policy Act (NEPA) determination confirming this action was determined to be categorically excluded and converts to Exempt, per 58.34 because there are no circumstances which require compliance with any of the federal laws and authorities cited at 58.5.

Respectfully submitted,



Emily S. Jacobs  
Executive Vice President, Real Estate  
San Diego Housing Commission

Approved by,



Jeff Davis  
Deputy Chief Executive Officer  
San Diego Housing Commission

Attachments: 1) Summary and Discussion of Contract Provisions  
2) Draft Agreement

Docket materials are available in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org).

## **ATTACHMENT 1**

### **SUMMARY AND DISCUSSION OF CONTRACT PROVISIONS**

**This summary is not a substitute for reading the entire Broker Agreement but is provided to give a summary of important provisions within the Broker Agreement**

**Section 103, Time of Performance.** The initial term of the Agreement, which will end on June 30, 2022. The Commission has the right to exercise (4) separate one year options to extend the Agreement. Nothing requires the Commission to exercise any of the options.

**Section 104. Compensation** will be established at the time of the approval of the purchase and sale transaction by the Housing Authority of the City of San Diego. The method of establishing the amount of compensation per purchase transaction, is set forth in Contract Attachments No. 2 and No. 3. Amount of payment for each purchase will be approved by the Commission Board, subject to review and/or approval by the Housing Authority of the City of San Diego in accordance with to the requirements of San Diego Municipal Code 98.0301(e)(1)-(4). At the time of the approval of the first purchase and sale agreement an action requesting an amendment of the FY 22 SDHC Budget will be requested to cover the cost of the payment of the commission, if any, by the Commission. For instance, for exclusively listed properties the Commission will pay no real estate commission but will be apprised of the amount of the commission before the PSA is executed.

**Section 104.c. Method of Payment,** indicates that the purchase price or any commission shall not be paid until the close of each escrow. However, refundable deposits will be made that will remain refundable until such time as the Housing Commission removes contingencies, which can only occur after approvals of the purchase and sale agreements and commissions by the Housing Commission Board of Commissioners and/or Housing Authority.

**Contract Attachment No. 1** is entitled General Provisions, which is section 200 of the Agreement.

**Section 203** is entitled Non-Disclosure, prohibits the Broker from disclosing any information concerning the representation without the consent and approval of the Commission.

**Section 204** is entitled Conflict of Interest, and subsection (c) contains a requirement that the Broker make written disclosures to the Commission of any direct or indirect financial interests and/or ownership interest that it may have in the property in questions at three separate times:

- 1. Before the execution of any Letter of Intent [LOI] to purchase a property;**
- 2. Before the execution of any Purchase and Sale Agreement [PSA] to purchase a property; and,**
- 3. Immediately before the close of any escrow to purchase a property.**

**Section 204 allows the Commission to determine where there are any prohibited conflicts of interest before it takes any of the steps to execute an LOI, a PSA or to close escrow on any property.**

**If there is a conflict, the Broker is prohibited from representing the Commission, and the Broker will receive no compensation for any work performed, and the Commission may proceed to purchase the property without a broker, or with any broker chosen by the Commission.**

**Section 206 is entitled Insurance and requires that the Broker carry \$5,000,000 of General Liability and Automobile Insurance. In addition, the Broker must provide a certificate of insurance showing that it is covered by \$5,000,000 of professional errors and omissions coverage.**

**Section 214 entitled termination allows the Commission to terminate the contract at any time for convenience upon 30 days written notice without any cause, and, in addition, for lack of funding. It may also terminate the contract for a breach of the contract upon a (10) day notice to cure, which is not cured within the stated cure period.**

**Because the Commission would have to go through some type of procurement if the Broker wanted to terminate the contract, the Broker may only terminate for convenience upon 180 days' notice to the Commission. This time period should be sufficient to procure the services of another broker.**

**There is an attorney's fees clause in the contract, among other boilerplate provisions.**

**Section 226 is entitled Statement of Economic Interest Disclosure Form. The section requires the Broker to provide the Commission with fully completed forms for each principal that is involved in the performance of the work. Prior to the execution of the contract the Broker is required to provide the Commission with fully executed forms, so that the Commission can determine that there is no known conflict of interest that exists before the execution of the contract. This requirement is beyond what is required by state law. State law requires that the form be executed and filed with the City Clerk's office within 30 days of the consultant assuming its responsibilities under a contract with a public agency. That is also required in the contract. That is, within 30 days of executing the Broker Agreement, the Broker must file the Form 700 electronically with the City Clerk of the City of San Diego.**

**In addition, forms are required annually before April 1 of each year, and, within 30 days after the Agreement, departure, or termination of a principal that is providing services under the terms of the Broker Agreement.**

**CONTRACT ATTACHMENT NO. 2 is entitled Scope of Work. It describes the work which the Broker will be required to perform, which includes the location and acquisition of motel, hotel, multifamily residential real estate, or any other classification of property that may meet the needs of the Commission.**

**The contract contemplates properties that are presented to the Commission, may be**

**located by Retained Brokers, which include Marcus & Millichap, and the contract anticipates that there may be more than one broker representing the Commission at any one time.**

**The contract also contemplates that properties presented to the Commission for consideration may include listed properties, unlisted properties, and off-market properties.**

**Contract Attachment No. 3 is the compensation schedule. The schedule is graduated depending upon the value of the property purchased. [The properties will be appraised by state certified appraisers, in good standing, at Fair Market Value, at highest and best use, taking into consideration the effects of COVID, if any. That appraiser will be reviewed through a peer review by another state certified appraiser].**

**An example of how the fee is calculated is set forth in Paragraph 1, of Contract Attachment No. 3.**

**Paragraph 2 of Contract Attachment No. 2, provides that for a listed property no commission will be paid by the Commission, except in cases where the listed property is listed by Marcus & Millichap.**

**Paragraph 3 sets forth how the fee is calculated and paid when properties are unlisted with third party brokers or by the owner of the property. In those cases, either the third party broker or the seller will pay the commission. Or, if they are not willing to pay the commission, the Commission may elect to proceed with the purchase of the property and pay a fee, in accordance with the provisions of Paragraph 1 of the Attachment No. 3. The appraisal procedures referenced above will be completed in connection with each purchase and sale which is the subject of a proposed sale to be presented to the Housing Commission Board and the Housing Authority Board. Full copies of those appraisals will be provided to Board members, in confidence before, the matters are heard by the Housing Commission and Housing Authority Boards.**

**Importantly, the Broker must disclose all fees obtained or to be obtained from the seller or the co-operating broker, any sale where the fees will be paid by the seller and/or the co-operating broker. This disclosure must be made before the Commission signs a PSA for any property.**

**Finally, the Commission will seek approval from the appropriate approval level, as set forth in the Procurement Policy, approved by the Housing Authority and as set forth in San Diego Municipal Code Section 98.0301, which at the election of the Housing Authority will include the approval of the transaction by the Housing Authority of the City of San Diego.**



**SAN DIEGO HOUSING COMMISSION**

**AGREEMENT FOR**

**ON CALL BROKER SERVICES**

**WITH**

**MARCUS & MILLICHAP**

Contract No. RED-21-34

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

between the Commission:

SAN DIEGO HOUSING COMMISSION  
1122 Broadway, Suite 300  
San Diego, California 92101  
(619) 231-9400

and the Contractor:

MARCUS & MILLICHAP  
5001 Spring Valley Road  
Suite 100W  
Dallas, TX 75244  
(972) 755-5302

is as follows:

As used herein, the terms MARCUS & MILLICHAP and Contractor shall be deemed to include Marcus & Millichap Real Estate Investment Services, Inc., Marcus & Millichap Real Estate Investment Services of Nevada, Inc., and Marcus & Millichap's other related affiliated entities and subsidiaries.

**101. DESCRIPTION OF WORK**

Contractor shall provide as needed real estate broker services to the Commission in connection with the Commission's acquisition of real property in the City of San Diego as generally described in the Specifications/Scope of Work attached hereto.

**102. CONTRACT ATTACHMENTS**

The above services shall be performed in accordance with the following listed documents which are attached hereto and made a part hereof:

1. General Provisions, Contract Attachment No. 1
2. Specifications/Scope of Work, Contract Attachment No. 2
3. Compensation Schedule, Contract Attachment No. 3

#### 103. TIME OF PERFORMANCE

a. Initial Term

All services required pursuant to this Agreement shall commence effective \_\_\_\_\_, 2021, through June 30, 2022.

b. Option to Extend Term

The President and Chief Executive Officer of the Commission, or his or her designee, may at his/her election extend the term of the Agreement to the Contractor for four (4) additional one-year terms, by giving written notice of the election to extend the Agreement to the Contractor, in accordance with the provisions set forth as set forth in Section 225. Only one (1) option may be exercised at any one time during any term of the Agreement. The option to extend the Agreement may be granted by the Commission in its sole discretion and is dependent upon the availability of funds and budget approval by the Housing Authority of the City of San Diego ("Housing Authority"). The compensation to be paid the Contractor during any optional terms shall be the compensation set forth in Contract Attachment No. 3.

Nothing contained in this Agreement shall require the Commission to exercise any or all of the options to extend the term of the Agreement. The options exist in favor of the Commission, at its sole option. All other terms and conditions of the Agreement during the option period(s) shall be as set forth in the Agreement and shall be unamended by the exercise of any option granted herein. The options granted herein are in addition to the ninety (90) day option to extend set forth in Section 225 herein.

#### 104. COMPENSATION AND METHOD OF PAYMENT

a. Rates

Total compensation paid under each term of this Agreement must be approved by the President & Chief Executive Officer of the Commission, Board of Commissioners, and/or Housing Authority as set forth in SDMC Section 98.0301 and the Commission's Procurement Policy. Payment may not be tendered until such necessary approval is obtained. Contractor acknowledges that the Commission is under no obligation to compensate Contractor for services rendered or expenses accrued unless and until such necessary approval is obtained.

Further, the Commission may cancel the Agreement, without cause, by written notice to the Contractor at any time during the term of the Agreement, or any extension thereto, in the event that the Commission and/or the Housing Authority of the City of San Diego ("Housing Authority") fails

to appropriate funds for the rendition of services set forth in this Agreement. This right to cancel is in addition to the rights of the Commission to terminate the Agreement as set forth in Section 214 of this Agreement.

c. Method of Payment

Contractor payment will be made at the close of escrow for the purchase of real property for which Contractor provided services to the Commission pursuant to this Agreement.

105. NOTICES

Notices to the parties shall, unless otherwise requested in writing, be sent to the Commission and the Contractor at the addresses given above.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

**Contractor:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Commission:**

SAN DIEGO HOUSING COMMISSION

By: \_\_\_\_\_

**Jeff Davis**  
**Deputy Chief Executive Officer**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Emily Jacobs**  
**Executive Vice President, Real Estate**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Debra Fischle-Faulk**  
**Sr. Vice President, Compliance & Equity Assurance**

Date: \_\_\_\_\_

**Approved as to Form:**  
Christensen & Spath LLP

By: \_\_\_\_\_  
Charles B. Christensen  
General Counsel  
San Diego Housing Commission

Date: \_\_\_\_\_

DRAFT

## CONTRACT ATTACHMENT NO. 1

### 200. GENERAL PROVISIONS

#### 201. Status of Contractor

This Agreement calls for the performance of the services of the Contractor as an independent contractor. Contractor will not be considered an employee of the Commission for any purpose.

#### 202. Ownership of Materials and Documents

Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the Commission from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. However, the Contractor shall have the right to make duplicate copies of such materials and documents for his own file, or for other purposes as may be authorized in writing by the Commission.

#### 203. Non-Disclosure

The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the Commission. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the Commission during the term of this Agreement or at any time thereafter except as authorized by the Commission.

#### 204. Conflict of Interest

- (a) The Contractor acknowledges that the Commission, and by virtue of Contractor entering into this Agreement, the Contractor and its individual brokers and employees, are legally bound by certain Federal, State and local laws, rules and regulations with respect to conflicts of interest.
- (b) In the event Contractor represents the owner or owners of property which the Contractor believes may be suitable for the Commission's consideration [Potential Sellers], the Contractor shall provide the Commission with a written disclosure notice stating the address of the property, the owner of the property and names of all persons employed by or otherwise working for Contractor with respect to such property, and any and all prior business or personal relationships between the Contractor (including its individual agents, brokers and employees) and the Potential Sellers. This disclosure shall include all financial interests set forth in Government Code Section 87103, and all regulations promulgated pursuant to such code section. In addition, said disclosure shall report any and all potential violations of Government Code Section 1090.
- (c) In addition to section 204(b) above, Contractor shall disclose in writing to

Commission any direct or indirect financial interests and/or ownership interests the Contractor or any of its individual agents, brokers and employees may have in any property it presents to Commission for consideration. This disclosure of any direct or indirect financial interests and/or ownership interests in the property must be updated in writing immediately before the execution of a Letter of Intent, immediately before the execution of a Purchase and Sale Agreement, and again immediately before the close of any and all escrows. Time is of the essence in this regard.

- (d) The Commission will thereafter determine, in its sole discretion, whether the Contractor's representation of the Commission with respect to the acquisition of such property or interest in the property and/or seller is prohibited or is likely prohibited by and Federal, State or local law, rule or regulation. If the Commission determines that such dual-representation or other financial, business or other interests **are not prohibited** by any Federal, State or local law, rule or regulation, then the Contractor shall represent the Commission with respect to the potential acquisition of such property. Provided, however, if either: (i) the Commission determines that such dual-representation or other interests are **prohibited** by any Federal, State or local law, rule or regulation; or (ii) Contractor represents any seller with respect to a property, then the Contractor shall not represent the Commission with respect to the potential acquisition of such property and the Contractor consents to the Commission's acquisition of such property utilizing another broker or without a broker and the Contractor waives the right to receive a commission or other compensation of any kind whatsoever with respect to the Commission's acquisition of such property; provided, however, nothing contained herein shall prohibit or otherwise limit the Contractor's right to compensations from the owner of the property, which compensation shall be disclosed to the Commission, in writing, prior to the execution of the purchase and sale agreement for the property. The Commission's determination under this section must be in writing and signed by the designated officer of the Commission.
- (e) The Commission also acknowledges that the Contractor, through one or more of its employees, may represent other principals interested in the acquisition of property in which the Commission is interested, and the Commission consents to the same. However, the Contractor shall not disclose the confidential information of the Commission to any person.

#### 205. Contractor's Liability

(a) The Contractor and the Commission shall each be responsible for all injuries to persons and for all damages to real or personal property, caused by or resulting from the negligence of themselves, their employees, or their agents during the progress of or connected with the rendition of services hereunder.

(b) Contractor shall indemnify, hold harmless, and defend, with counsel of the Indemnitee's choosing, at Indemnitor's sole cost and expense, the Commission, the Housing Authority, the City of San Diego, and all commissioners, officers, employees, members, council

members and agents of each public agency (hereinafter collectively referred to as the “Indemnitees” or individually as an “Indemnitee”) from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor’s employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnitee.

206. Insurance

(a) Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the Commission. Contractor shall obtain a single limit general liability insurance and automobile liability insurance in the minimum amount checked and initialed below:

	Initials		Initials
<input checked="" type="checkbox"/> General Liability \$5,000,000.00	_____	<input checked="" type="checkbox"/> Workers Compensation \$1,000,000.00	_____
<input checked="" type="checkbox"/> Automobile Liability \$500,000.00	_____	<input type="checkbox"/> Other: \$	_____

(b) This coverage is in addition to workers compensation insurance and other insurance coverages required by law. The Commission, the Authority, and the City of San Diego (“City”), shall be named as certificate holders on all insurance policies and shall be named as additional insured on all general liability and automobile policies. The policies shall provide that coverage on all policies may not be canceled, amended, terminated or otherwise modified without thirty (30) days advance written notice to the Commission, the Authority, and the City. Coverage shall remain in full force and effect during the entire term of the policy and for such term thereafter as the Commission shall determine.

(c) If the box shown below, marked “Errors and Omissions” is checked and initialed, then professional errors and omissions liability coverage is also required in the amount stated below:

	Initials
<input checked="" type="checkbox"/> Errors and Omissions \$5,000,000.00	_____

(d) For any claims arising out of or in connection with Contractor’s performance under

this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the Commission, the Housing Authority and/or the City of San Diego.

(e) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to waive all rights of subrogation against the Commission, the Housing Authority, the City of San Diego, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

207. Intentionally omitted.

208. Equal Opportunity Programs

During the performance of this Agreement, the Contractor agrees as follows:

(a) Contractor shall comply with all applicable local, state and federal Equal Opportunity Programs, as well as any other applicable local, state and federal law. Each month, the Contractor will report to the project manager, payments made to all vendors by month, contract to date and percentage of overall contract value.

(b) Contractor and each subcontractor, if any, shall fully comply with and shall submit a Report of San Diego County Work Force Report and Certificate of Compliance with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal and State law and regulations hereinafter enacted.

(c) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin or any other basis prohibited by law. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin or any other basis prohibited by law.

(d) If any underrepresentation is found after submission of Contractor's workforce report, the Commission may request an Equal Employment Opportunity Plan (EEOP). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEOP has been approved by the Commission, the Contractor must adhere to said plan. In the case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEOP updates as requested.

(e) Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, the Contractor may, at the election of the Commission, be barred from participating in Commission projects for not less than one (1) year.

209. Cost Records



In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Commission or to the appropriate federal agencies after reasonable notice, and at reasonable times.

210. Subcontracting

(a) No services covered by this Agreement will be subcontracted. In the event Contractor nevertheless determines a need to subcontract any services, Contractor shall obtain the prior written consent of the Commission, and shall otherwise comply with the Commission's standard terms and conditions pertaining to Subcontracting.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the Commission. Once this list has been approved, no changes to the list will be allowed except by written approval of the Commission.

(c) The Contractor shall be as fully responsible to the Commission for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, Commission requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the Commission and/or labor surplus areas are used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

211. Assignability

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission.

(b) Claims for money due or to become due to the Contractor from the Commission under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission.

212. Changes

The Commission may, from time to time, request changes in the Specifications/Scope of Work of the Agreement to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon, by and between the Commission and the Contractor, shall be incorporated into this Agreement.

213. Documents and Written Reports

The Contractor, when preparing any document or written report for or under the direction of the Commission, the Housing Authority, or the City of San Diego, shall comply with the provisions of Government Code Section 7550; to wit,

(a) Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of such contracts and subcontracts relating to the preparation of such document or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

(b) When multiple documents or written reports are the subject or product of the Agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

(c) Any document or written report prepared under this Section 213 shall be prepared by Contractor only in the event the Commission decides not to use Contractor for any acquisition, but nevertheless asks Contractor to advise Commission on price and terms, for which Contractor will be compensated on an hourly basis, as set forth in this Agreement, pursuant to Contract Attachment No. 2, Specifications/Scope of Work, and in accordance with the Compensation Schedule set forth on Contract Attachment No. 3.

#### 214. Termination

(a) For Convenience. The Commission, thirty (30) days after mailing written notice to Contractor, or Contractor, one-hundred and eighty (180) days after mailing written notice to the Commission, may terminate this Agreement, in whole or in part, when it is in their interest. If this Agreement is terminated, the Commission shall be liable only for payment under the payment provisions of this Agreement for services rendered and/or supplied before the effective date of termination.

(b) For Lack of Funding. This Agreement may be terminated without notice, by the Commission, upon the cessation of funding of the state, local or federal program, which funds this Agreement.

(b) For Default. Contractor's failure to timely and satisfactorily perform any obligations under this Agreement shall constitute a default. If Contractor fails to cure a default within ten (10) calendar days of receiving written notice from Commission specifying the nature of the default, the Commission may immediately terminate the right of the Contractor to proceed under the terms of this Agreement. If the Commission terminates the right to proceed under this Agreement, the Commission may procure equivalent services, and Contractor shall be liable to the Commission for any extra costs incurred by the Commission. These rights are in addition to any other rights and remedies provided by law or under this Agreement. In the event that the termination is for violation of conflict of interest laws, the right to proceed under the contract may be terminated immediately, without a right to cure, by written notice to the Contractor.

#### 215. Attorneys' Fees and Costs

If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

#### 216. Entire Agreement

This Agreement represents the sole and entire agreement between the Commission and Contractor and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly

authorized representative of both the Commission and Contractor.

217. Partial Invalidity

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

218. Contract Governed by Laws of State of California

This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

219. Interest of Member of Congress

No member or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

220. Interest of Current or Former Members, Officers, Employees

No member, officer or employee of the Commission, no member of the governing body of the locality in which the work is situated, no member of the governing body in which the Commission was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the assignment of work, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this section shall result in unilateral and immediate termination of this Agreement by the Commission.

221. Drug-free Workplace

Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

(a) Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

(b) Establish a drug-free awareness program to inform employees about all of the

following:

- (i) The dangers of drug abuse in the workplace.
- (ii) The Contractor's policy of maintaining a drug-free workplace.
- (iii) Any available drug counseling, rehabilitation and employee assistance programs.
- (iv) The penalties that may be imposed upon employees for drug abuse violations.

(c) Post the statement required by subdivision 221(a) in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

222. Intentionally omitted.

223. Labor Provisions

It is the responsibility of the Contractor and the Contractor shall be fully aware of and shall comply with each and every requirement of State, Federal and Local law concerning the provision of labor concerning this Agreement, including but not limited to, the payment of applicable wage rates, if any.

☐ If checked, additional state prevailing wage terms are contained in Attachment No. 6.

☐ If checked, additional federal prevailing wage terms are contained in Attachment No. 6.

224. Contract Work Hours and Safety Standards Act

In the event Contractor's performance of this Agreement entails the use of laborers or mechanics, and the Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

225. Extension of Contract Term

(a) Provided, that the Contractor is not in default under the terms of this Agreement, the Chief Executive Officer of the Commission, may extend the terms of the Agreement for a period, not to exceed ninety (90) days, on the same payment schedule, terms and conditions, in effect on the date that the Agreement would otherwise have terminated, including the option period, if any. The option to extend the Agreement shall be at the Commission's discretion only, and may not be exercised by the Contractor.

(b) The Agreement may not be extended for an aggregate period of more than ninety (90)

days, but may be exercised in multiple “Notices of Extension”, of not less than seven (7) days in duration, for each such notice. The Agreement may be extended by the Commission by delivery of a Notice of Extension in writing to the Contractor and that the stated terms and conditions of the Agreement shall be adhered to by the Contractor and the Commission during the term of the extension.

(c) Nothing contained herein, however, shall require the Commission to exercise any option to extend the Agreement. During the extension of the Agreement, the Contractor shall provide the Commission with additional certificates of insurance, if necessary, covering the term(s) of the extension.

(d) Notice of Extension may be served by the Commission upon the Contractor not earlier than sixty (60) days before the original termination date of the Agreement and not later than eighty-three (83) days after the original termination date of the Agreement. Nothing contained herein shall be construed as granting the Contractor a right to compel the Chief Executive Officer of the Commission to exercise the option to extend the Agreement.

(e) The Commission and Housing Authority hereby delegate the authority to the Chief Executive Officer of the Commission to pay compensation to Contractor, during the option period, on a prorata basis, for any extension period, based upon the contract rate in effect on the date of the exercise of the extension.

(f) All contracts which are approved by the Commission and/or Housing Authority and include options for renewal may be renewed by the Chief Executive Officer or his/her designee at the previously stated terms for renewal. The Chief Executive Officer’s authority to execute the option for renewal includes authorization to execute the required documents, identify appropriate funding source and authorize payment of funds for the continuation of services identified in the Scope of Services.

## 226. Statement of Economic Interest Disclosure Form

Contractor shall assure that each principal of the Contractor that is supervising the Contractor’s work under this Agreement shall file a completed and executed Statement of Economic Interest Disclosure Form (Form 700) with the City Clerk’s Office of the City of San Diego at the following times:

(a) Within thirty (30) days of execution of the Agreement [however, the completed forms shall be submitted to the Commission upon the execution of the Agreement to allow the Commission to verify that there are no conflicts existing at the commencement of the term of the Agreement].

(b) Annually on or before April 1 of each year;

(c) Within thirty (30) days after completion of the Agreement or departure, reassignment, or termination of principal.

Filing may be submitted electronically, through the City Clerk's Office electronic filing system [eFile San Diego](#). Contractor shall email a copy of the filed Form 700, for each filer, to Maurcell Gresham, Director of Procurement at [maurcell@sdhc.org](mailto:maurcell@sdhc.org) within five (5) business days of filing in accordance with the requirements of General Provision 31 (a), (b) or (c) as applicable.

227. Conflict between Agreement and Attachments

To the extent that the provisions of the Agreement and the Attachments and Schedules conflict, the following order of construction shall apply:

(a) To the extent that the Agreement and any Attachments or Schedules conflict, the terms and conditions of the Agreement shall prevail; and,

(b) To the extent that any Contract Attachment and any Schedule conflicts, the Contract Attachment shall prevail.

228. Section 3 Contract Clauses

The parties to this Agreement agree to comply and effectuate the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3), implemented at 24 C.F.R. Part 75. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which Federal assistance is spent. Consistent with existing federal, state and local laws and regulations, Contractor shall ensure that training and employment opportunities generated by HUD financial assistance or arising in connection with housing rehabilitation, housing construction, or other public construction projects are provided to Section 3 Workers, and provided in the order of priority set forth at 24 C.F.R. Part 75.9 and Part 75.19.

229. Audit Requirements

Where this Agreement is funded by federal funding, 24 CFR 84.26 requires that nonprofit institutions and institutions of higher education shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996, and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." All entities other than non-profit institutions shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document.

Where this Agreement is funded by non-federal funds, Contractor shall be subject to audit requirements as set forth in the award document, if it exists. Otherwise Contractor shall adhere to those requirements as set forth in the Single Audit Act Amendments of 1996 and revised OMB Circular A-133.

230. Lobbying Provisions

Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the agreement, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(c) Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and

(d) Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 U.S.C. 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

231. Energy Conservation.

Provided this Agreement uses Federal funds, Contractor hereby certifies compliance with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

232. Disputes.

Unless otherwise required by applicable law, all disputes arising under or relating to this Agreement shall be resolved under the terms of this clause by litigation in State Court. All disputes shall be resolved by litigation in San Diego County Superior Court, Downtown Branch, after first attempting resolution of the dispute through non-binding mediation through JAMS.

233. Contractor Evaluation Program.

An essential component of public works contract administration is the regular evaluation and documentation of contractor performance. During the course of the Agreement, the Commission shall conduct performance evaluations to document the Contractor's record of meeting the various



terms of the Agreement. Commission shall proactively monitor and manage the performance of the Contractor during the term of the Agreement, and shall create an objective record of performance that can and may be utilized when evaluating the Contractor as a responsible bidder for future bid and proposal submissions, contract extension or renewal consideration, or termination of the contract due to unsatisfactory performance. Contractor Evaluation program and appeal procedures are located on the Commission website at [www.sdhc.org](http://www.sdhc.org) and are included by reference as a provision of this Agreement.

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## **CONTRACT ATTACHMENT NO. 2**

### **SPECIFICATIONS/SCOPE OF WORK**

The Contractor is, at all times during the rendition of services pursuant to this Agreement shall be, a real estate agent(s) licensed by the State of California's Department of Real Estate who will assist the Commission in the location and acquisition of motel, hotel, multifamily residential real property any other classification of property that may meet the needs of the Commission, the City of San Diego, and within five miles of the boundary of the City of San Diego, when permitted under the provisions of the California Health and Safety Code regulating housing authorities and housing commissions. Contractor shall provide the Commission with services normally provided by real estate brokers in connection with the Commission's acquisition of multifamily residential real properties in the City of San Diego, in accordance with the standard of care normally exercised by such brokers within the City and County of San Diego, at the time of the provision of such services.

**A. Retained Brokers:**

1. The broker relationship between the Contractor and Commission will be a non-exclusive representation. Contractor is one of multiple brokers retained, or to be retained, by the Commission for the services which are the subject of this Agreement ("Retained Broker"). For the purposes of this Agreement, the Commission will refer properties to a Retained Broker as set forth below on a rotating basis, or based on experience of the particular broker, as determined by the Commission in its sole discretion. The Commission shall keep Contractor regularly apprised of all Retained Brokers engaged by the Commission so as to avoid any unnecessary interference, conflict, or disruption to Contractor's services to the Commission under this Agreement.

Contractor acknowledges that the Commission is engaging other Retained Brokers, who will or may provide the same or substantially similar services to those provided by the Contractor. Therefore, it is possible the Contractor may present a property to the Commission which is the same property presented to the Commission by such other agents and/or brokers. The Commission will maintain a log of properties presented to the Commission, which will include the name of the agent and/or broker that first presented the same to the Commission and such agent or broker will be the only agent or broker entitled to compensation with respect to the acquisition of such property. Contractor agrees that the aforementioned log will be binding for purposes of determining the agent or broker entitled to compensation with respect to any property and Contractor waives the right to receive a commission or other compensation of any kind whatsoever with respect to the Commission's acquisition of any property if Contractor is not shown on such log as the originating agent or broker. Blanket submission of lists of properties that have not been vetted by Contractor shall not be utilized for determining the right to compensation.

**B. Processes based on Property Status:**

1. Listed Properties:
  - a. Where listed opportunities are submitted to Commission by a listing agent, unless the listing agent is an affiliate of Contractor, in which case Contractor will not

advise the Commission on price and terms and will withdraw as the Commission's representative or otherwise forego such representation, the Commission will refer properties to a Retained Broker through the process set forth above, or represent itself, at its sole discretion. In the event the Commission wishes to acquire the property, the Contractor shall be paid as set forth in this Agreement in Contract Attachment No. 3, Paragraph 2.

- b. If the Commission decides not to use Contractor for any acquisition of a property that was not listed or presented to the Commission by an affiliate of Contractor, Contractor may still advise the Commission on price and terms, on an hourly basis, in the unlikely event such services are needed, but not represent the Commission, allowing the Commission to continue to pursue the transaction without a broker. Services provided under this section shall be billed at an hourly rate. The amount of the hourly rate will be determined in accordance with the terms of the Housing Authority approved Procurement Policy, which includes obtaining separate quotations from brokers as to the fair market value of such services, at the time that the services are rendered. In the event the Commission decides not to use Contractor for any acquisition of a property that was either listed or presented to the Commission by an affiliate of Contractor, the Commission understands and agrees that Contractor will not advise the Commission on price and terms, whether on an hourly basis, or otherwise.

2. Unlisted Properties:

- a. Where unlisted opportunities are submitted to the Commission by an owner or non-retained broker, the Commission will refer properties to a Retained Broker through the process set forth above. Contractor shall be paid as set forth in this Agreement in Contract Attachment No. 3, Paragraphs 3.
- b. If the Commission decides not to use Contractor for any such acquisition of a property that was not presented to the Commission by an affiliate of Contractor, Contractor may still advise the Commission on price and terms, on an hourly basis, but not represent Commission, allowing Commission to continue to pursue the transaction without a broker. Services provided under this section shall be billed at an hourly rate. The amount of the hourly rate will be determined in accordance with the terms of the Housing Authority approved Procurement Policy, which includes obtaining separate quotations from brokers as to the fair market value of such services, at the time that the services are rendered. In the event the Commission decides not to use Contractor for any acquisition of a property that was presented to the Commission by an affiliate of Contractor, the Commission understands and agrees that Contractor will not advise the Commission on price and terms, whether on an hourly basis, or otherwise.

3. Off-market:

- a. Where off market opportunities are available, unless any such off market opportunities have been presented to the Commission by an affiliate of Contractor,

in which case Contractor will not advise the Commission on price and terms and will withdraw as the Commission's representative or otherwise forego such representation, the Commission will refer properties to a Retained Broker through the process set forth above or represent itself in connection with the purchase of the property. Except as otherwise set forth in the preceding sentence, Contractor will provide expertise in valuation, market trends, negotiations, and strategy. Contractor will provide Broker Opinions of Value (BOV) to the Commission for properties which are shortlisted based on Commission acquisition criteria. Contractor shall act as a single point of contact for the Commission, sort through opportunities, provide guidance as to what opportunities are worth in an open market, and give insights as to the best approach/tactic to acquire desired properties. In the event the Commission wishes to acquire the property, Contractor shall first attempt to negotiate an acceptable fee arrangement with the seller, which arrangement shall be disclosed to the Commission in writing. It is the intent of the parties that the Seller pay all brokerage commissions. If Contractor is unable to negotiate an acceptable fee arrangement with the seller, then the Commission may pay the negotiated fee not to exceed that described in this Agreement in Contract Attachment No. 3, Paragraph 1.

Contractor further agrees to and acknowledges and shall strictly comply with the obligations set forth in Section 203 Non-Disclosure and Section 204 Conflict of Interest of the General Provisions.

### **CONTRACT ATTACHMENT NO. 3**

#### **COMPENSATION SCHEDULE**

1. In the event Contractor procures an off market opportunity that Commission desires to acquire, and seller is unwilling to pay a commission, then Commission may elect, in its sole discretion to proceed, in which case, the Commission will agree to pay a commission to Contractor on the following basis:

a) Pay a commission to Contractor on individual transactions, a negotiated fee not to exceed the following amounts:

- I. Up to \$10M – 2.00%
- II. \$10M-\$15M – 1.50%
- III. \$15M-\$25M – 1.25%
- IV. \$25M-\$50M – 1.0%
- V. \$50M+ - .85%

For sake of example, \$12,500,000 sales price will generate a negotiated commission not to exceed the amount calculated as follows: (2% of \$10,000,000 = \$200,000) plus (1.5% of \$2,500,000 = \$37,500) so the entire commission is \$237,500 in commission as set forth above.

2. In the event Contractor procures properties exclusively listed by brokers other than Contractor's agents:

- a) Commission will not be liable for any fees
- b) Contractor will collect from seller per exclusive listing agreement

3. In the event Contractor procures opportunities unlisted with third party brokers or by sellers:

- a) Third party broker or the seller shall pay Contractor's fee; or
- b) If the third party broker or seller does not pay Contractor's fee, then Commission shall pay Contractor per Section 1(a), above.

Contractor will disclose all fees obtained and to be obtained from seller or Co-Operating brokers in writing to Commission, prior to the execution of the purchase and sale agreement for each transaction.

The Commission will seek appropriate approvals from the President and CEO, San Diego Housing Commission Board, or the Housing Authority as required by the Commission's Procurement Policy and SDMC Section 98.0301 prior to the payment of any funds under this Agreement.

