

**AGREEMENT FOR BROKERAGE SERVICES**

**by and between**

**CITY AND COUNTY OF SAN FRANCISCO**

**and**

**COLLIERS INTERNATIONAL CA, INC.**

(Tenderloin – District 3 Property Search)

**December 6, 2021**

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**LIST OF EXHIBITS**

- Exhibit A – Certification
- Exhibit B – Summary of Scope of Work
- Exhibit C – Map of Neighborhoods

## **AGREEMENT FOR BROKERAGE SERVICES**

This Agreement for Brokerage Services (this "**Agreement**"), dated for reference purposes as of December 6, 2021, is made and entered into by and between the City and County of San Francisco, a municipal corporation ("**City**"), acting through the Director of Real Property (the "**Director**"), and Colliers International CA, Inc., a Delaware corporation ("**Broker**"), and with reference to the following facts and circumstances:

### **RECITALS**

A. City desires to identify vacant and available parcels of land in The Tenderloin Neighborhood and the vicinity north east, including Nob Hill, Russian Hill and the North Beach Neighborhood of San Francisco, California, as outlined on the map, attached to this Agreement as **Exhibit C** and incorporated into this Agreement by this reference, for use as open space and recreational park use for San Francisco residents.

B. Broker possesses the requisite skill and expertise in locating such parcels.

C. City and Broker now desire to enter into this Agreement to allow City to hire Broker to locate desirable vacant and available parcels in the neighborhoods noted above for City's intended use, on the terms and conditions set forth in this Agreement.

### **AGREEMENT**

NOW THEREFORE, for and in consideration of the foregoing Recitals, which are incorporated into this Agreement by this reference, the mutual covenants and obligations of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

#### **1. Employment of Broker**

In connection with the Real Estate Division's Broker panel program, City, on behalf of its Recreation and Parks Department, agrees to engage Broker, and Broker agrees to perform the services and work hereinafter described on the terms and conditions set forth below.

#### **2. Scope of Work**

The scope of work to be performed by Broker under this Agreement is as detailed in the attached **Exhibit B**. Without limiting the foregoing, Broker shall include the following in the scope of work:

(a) **Property Criteria.** Identifying properties which fit the criteria for prospective recreation and park use and potential acquisition:

(i) Location: The Tenderloin Neighborhood and the vicinity north east, including Nob Hill, Russian Hill and the North Beach Neighborhood of San Francisco, as outlined on the map attached to this Agreement as **Exhibit C** and incorporated into this Agreement by this reference.

- (ii) Size: 10,000 square feet, more or less
- (iii) Type: Vacant land or nominal, non-residential improvements.
- (iv) Price Range: \$5 million or less

**(b) Property Evaluation.** Broker shall perform property evaluations, which will include, but not be limited to, reviewing Broker's list of 55+ open space parcels to determine current applicability, combining reconnaissance field work with additional parcel search, determining building ownership, evaluating development and sale motivation and providing a forecasting analysis of any future development site in the immediate area.

**(c) Initial Reporting.** Broker shall provide a report that will include, but not be limited to, a matrix analysis summarizing potential site characteristics, an aerial map highlighting each site opportunity and an estimate of pricing.

**(d) Final Analysis and Submissions.** Within fifteen (15) to thirty (30) days following City's review of the initial reporting Broker will edit and refine final submissions in coordination with the City.

**(e) Standards.** Broker shall complete the services in the highest professional manner consistent with best practices in the brokerage community and consistent with customary practices for the locating and finding of parcels of land.

### **3. Purpose of Brokerage**

The purpose of the brokerage activities to be performed pursuant to this Agreement is to provide the City's Real Estate Division with brokerage services, including, but not limited to, expert advice, negotiations, and tactics necessary to identify vacant parcels and parcels with nominal, non-residential improvements acceptable to the City for park and recreational uses. Broker understands and agrees that City may rely on the Broker's brokerage-related advice for purposes of determining next appropriate steps relative to the properties. Notwithstanding this, the City acknowledges that the data, documentation, and assumptions derived from information supplied by the City, any subcontractor, published information prepared by Broker in the regular course of its business, and other industry sources will not be independently verified by Broker for purposes of this Agreement; provided, however, that if Broker becomes aware of the falsity of any such information, Broker shall inform the City of same without representation or warranty. Broker will not be responsible for the accuracy of such data and information, nor for any assumptions derived therefrom. However, Broker's performance will be based on Broker's professional evaluation of all such available sources of information.

### **4. Compensation**

**(a) Fees.** Broker shall receive a fee in an amount not to exceed Nine Thousand Two Hundred Dollars (\$9,200.00) as full compensation for the work performed under this Agreement, payable after Broker submits report consisting of list of properties, property evaluation and analysis as specified in Exhibit B to City's reasonable satisfaction. The above

amount includes all of Broker's allowable costs and profits for the work to be performed hereunder, and subcontractor's costs, if any, and there shall be no additional amounts payable and no additional reimbursements under this Agreement. Broker estimates the number of hours to complete the work to be performed under this Agreement to be 27 hours. Broker shall submit a monthly report to City that describes the work performed and the number of hours worked for the prior month; provided, that the final report shall cover the prior month and then current month. Upon completion of the work, as evidenced by Broker having met the City's conditions above, Broker shall submit an invoice for payment due in a form reasonably acceptable to City's Controller.

**(b) Approval of Work.** City shall neither incur any charges under this Agreement for the work nor shall any payments become due to Broker for the work until the conditions for compensation in Section 4(a) have been met.

**(c) No Interest or Late Charges.** In no event shall City be liable for interest or late charges for any late payments.

**(d) Independent Opinion.** The compensation to be paid to Broker for the performance of the work contemplated under this Agreement is not in any way contingent upon the opinions or value conclusions of Broker. Broker is specifically directed by City not to deliver any opinion of value other than its own independently determined opinions produced by its own investigation, using acceptable professional standards.

**5. Method of Payment**

Payment for fees shall be paid directly to the Broker upon the terms set forth in Section 4(a) above.

**6. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budgetary and fiscal provisions of the City's Charter. Charges will accrue only after the Controller has certified the availability of funds for payment under this Agreement. Any amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and the period stated in such advance certification.

**7. Effective Date of Agreement; Term**

This Agreement shall become effective on the date the parties have fully executed and delivered this Agreement. The term of this Agreement shall continue until Broker completes all work required hereunder or this Agreement is sooner terminated, as provided herein.

**8. Broker Representations and Warranties**

Broker represents and warrants to City that Broker:

- (a) has all required licenses to perform the services contemplated by this Agreement;

(b) possesses the requisite skill and experience and is qualified to perform the services required by this Agreement;

(c) that it is familiar with recognized brokerage practices and with the standards for acting as a commercial real estate broker in San Francisco; and

(d) that it is duly organized, validly existing, and is in good standing and qualified to do business in the State of California and in the City of San Francisco (and covenants to maintain such status throughout the term of this Agreement).

## **9. Personnel**

(a) All work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of Broker. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under State and local law to perform such work if authorization, licensing or certification is required.

(b) The responsible personnel for Broker shall be John Jensen. Any change in the responsible personnel must have the prior written approval of the Director.

(c) Broker shall not subcontract any work to be performed under this Agreement unless Broker first obtains the written approval of the Director. Any subcontract work to be performed under this Agreement shall not obligate Broker to be responsible for the acts or performance of such subcontractors so long as Broker requires the subcontractor to indemnify the City for any third-party claims arising out of the subcontractor's acts or omissions and the City is named a third-party beneficiary under any subcontract entered into by Broker and such subcontractor.

## **10. Incomplete Work**

Neither the performance of any work by Broker nor City's acceptance of any work produced by Broker shall relieve Broker from the obligation to correct any inaccurate or incomplete work. Broker shall promptly remedy all inaccurate or incomplete work, on demand, without cost to City.

## **11. Ownership of Documents**

All documents and reports prepared by Broker pursuant to this Agreement shall be and remain the property of City and shall be delivered by Broker to City upon completion of the work hereunder; provided, that Broker may retain and use copies of such reports for reference and as documentation of its experience and capabilities. Any documents and reports shall be used solely for the internal purposes of the City.

## **12. Changes in Scope of Work**

City may, from time to time, require changes in the scope of the work to be performed by Broker hereunder. Such changes that City and Broker may mutually agree to, including any

increases or decreases in the amount of Broker's compensation, shall be set forth in written amendments to this Agreement and will be subject to the provisions of the City's Charter.

### **13. Termination**

City shall have the right, at its sole option, to terminate this Agreement at any time, with or without cause. Termination shall be effective immediately upon Broker's receipt of written notice of termination, and thereupon Broker shall have no further rights under this Agreement. City shall be under no further obligation to Broker monetarily or otherwise; provided, that the termination of this Agreement shall not affect Broker's right to compensation for work performed but not paid up to the date of termination. Broker shall be compensated at the hourly rate of Three Hundred Forty-Five Dollars (\$345), for such unpaid work, which shall be payable to Broker upon delivery to City of the deliverables associated with such work. Notwithstanding the foregoing, in no event will such payment exceed the fee set forth in Section 4 (a) above.

### **14. Bankruptcy**

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force or effect, and any property or rights of such other party, tangible or otherwise, shall be immediately returned to it.

### **15. Indemnification**

(a) Broker shall indemnify and hold harmless City, its officers, agents and employees from and, if requested, shall defend them (with counsel acceptable to City), against any and all loss, damage, injury, liability, and claims brought by a third party, resulting directly or indirectly from Broker's default under this Agreement and any negligent act or failure to perform under this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City. Broker specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within the indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Broker by City and continues at all times thereafter.

(b) Broker shall indemnify and hold City harmless from and against all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark of any person or persons as a consequence of the use by City, or any of its officers, agents or employees, of any work or services to be supplied by Broker in the performance of this Agreement.

(c) Broker's obligations hereunder shall survive any termination of this Agreement.



## 16. Liability Limit

**EACH PARTY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 4 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT. THIS LIMITATION ON LIABILITY SHALL NOT IMPACT OR LESSEN ANY ATTORNEYS' FEES DUE AND OWING UNDER THIS AGREEMENT.**

## 17. Insurance

(a) Without in any way limiting Broker's indemnifications obligations pursuant to Section 15 of this Agreement, Broker shall maintain in force, during the full term hereof, insurance in the following amounts and coverage:

(b) Workers' Compensation, with Employers' Liability limits not less than One Million Dollars (\$1,000,000) each accident.

(i) Commercial General Liability Insurance with limits of One Million Dollars (\$1,000,000) each occurrence/Two Million Dollars (\$2,000,000) annual aggregate Combined Single Limit Bodily Injury and Property Damage, including Contractual Liability as provided in the current ISO CGL policy form 00 01, Personal Injury, Products and Completed Operations coverages.

(ii) Non-Owned Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit Bodily Injury and Property Damage, including non-owned and hired auto coverage, as applicable.

(iii) Professional Liability insurance with limits of One Million Dollars (\$1,000,000) each claim/annual aggregate with respect to negligent acts, errors and omissions.

(c) Comprehensive General Liability Insurance and Comprehensive Automobile Liability Insurance policies shall be endorsed to provide the following:

(i) Name as Additional Insured, under blanket endorsement the City and County of San Francisco, its officers, agents and employees.

(ii) To the extent of Broker's insurable indemnities agreed in the Agreement, such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(d) Contractor shall provide thirty (30) days' advance written notice to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City via mail or email to the following addresses:

Director of Property  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
[Andrico.Penick@sfgov.org](mailto:Andrico.Penick@sfgov.org)

Risk Management General Services Agency  
City and County of San Francisco  
25 Van Ness Avenue, Suite 750  
San Francisco, California 94102

(e) Certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City evidencing the coverage above shall be furnished to City before commencing any work under this Agreement (including any entry onto any property); with complete copies of policies upon City request in instances of a dispute concerning coverage.

(f) Approval of the insurance by City shall not relieve or decrease the liability of Broker hereunder.

## **18. Assignment**

The services to be performed by Broker hereunder are personal in character. Accordingly, neither this Agreement nor any duties or obligations on the part of Broker hereunder shall be assigned or delegated by Broker, without the prior written approval of the Director.

## **19. Independent Contractor**

Broker or any agent or employee of Broker shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Broker, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Broker or any agent or employee of Broker shall neither have employee status with City nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Broker or any agent or employee of Broker is liable for the acts and omissions of itself, its employees and its agents. Broker shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Broker's performing services and work, or any agent or employee of Broker providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City

and Broker or any agent or employee of Broker. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Broker's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Broker performs work under this Agreement. Broker agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Broker's compliance with this Section. Should City determine that Broker, or any agent or employee of Broker, is not performing in accordance with the requirements of this Agreement, City shall provide Broker with written notice of such failure. Within five (5) business days of Broker's receipt of such notice, and in accordance with Broker policy and procedure, Broker shall remedy the deficiency. Notwithstanding the foregoing, if City believes that an action of Broker, or any agent or employee of Broker, warrants immediate remedial action by Broker, City shall contact Broker and provide Broker in writing with the reason for requesting such immediate action.

## **20. Conflicts of Interest**

Through its execution of this Agreement, Broker acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that if it becomes aware of any such fact during the term of this Agreement, Broker shall immediately notify the City.

## **21. Confidential Information of City**

Broker understands and agrees that in the performance of the work under this Agreement or in contemplation thereof, Broker may have access to private or confidential information that may be owned or controlled by City, or may be in the possession of City by virtue of its agreement with the owner of a property, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Broker agrees that all information disclosed by City to Broker shall be held in confidence and used only in the performance of this Agreement. Broker shall exercise the same standard of care to protect such information as a reasonably prudent Broker would use to protect its own proprietary data.

## **22. Copyright**

No reports or other documents produced in whole or in part under this Agreement shall be the subject of any application for copyright by or on behalf of Broker.

## **23. Audit and Inspection of Records**

Broker shall maintain and make available to City, during regular business hours, accurate books and accounting records relative to its activities under this Agreement. Broker shall permit City to audit, examine, and make excerpts and transcripts from data and records of Broker relating to carrying out this Agreement. Broker shall maintain such data and records in an accessible location and condition for two (2) years after completion or other termination hereof or until a final audit has been resolved, whichever is later. The State of California or any federal

agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

#### **24. Analysis Coordination**

Broker shall coordinate its work hereunder with the Director or any other agents or contractors of City designated by the Director.

#### **25. Non-Discrimination in City Contracts and Benefits Ordinance**

**(a) Broker Shall Not Discriminate.** In the performance of this Agreement, Broker agrees not to discriminate against any employee of Broker, any City employee working with Broker, or applicant for employment with Broker, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in any business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**(b) Subcontracts.** Broker shall incorporate by reference in all Subcontracts relating to the work to be performed under this Agreement the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Broker's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**(c) Non-Discrimination in Benefits.** As of the date of this Agreement, Broker does not, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) Condition to Contract.** As a condition to this Agreement, Broker shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

**(e) Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties entering into contracts with City are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Broker shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including, but not limited to, the remedies provided in such

Chapters. Without limiting the foregoing, Broker understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Broker and/or deducted from any payments due Broker.

## **26. Local Business Enterprise Utilization; Liquidated Damages**

### **(a) The LBE Ordinance**

Broker shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “**LBE Ordinance**”). Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this Section. Broker’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Broker’s obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Broker shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

### **(b) Compliance and Enforcement**

If Broker willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Broker shall be liable for liquidated damages in an amount equal to Broker’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “**Director of CMD**”) may also impose other sanctions against Broker authorized in the LBE Ordinance, including declaring the Broker to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Broker’s LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Broker acknowledges and agrees that any liquidated damages assessed by the Director of CMD shall be payable to City upon demand. Broker further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Broker on any contract with City. Broker agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

**27. MacBride Principles - Northern Ireland**

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Broker acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**28. Tropical Hardwoods and Virgin Redwood Ban**

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwoods, tropical hardwoods wood product, virgin redwood or virgin redwood wood product except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

**29. Drug-Free Workplace Policy**

Broker acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City property. Broker agrees that any violation of this prohibition by Broker, its employees, agents or assigns will be deemed a material breach of this Agreement.

**30. Resource Conservation Liquidated Damages**

Chapter 5 of the San Francisco Environment Code is incorporated herein by reference. Failure by Broker to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

In the event Broker fails to comply in good faith with any of the provisions of Chapter 5, Broker will be liable for liquidated damages in an amount equal to Broker's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Broker acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Broker from any contract with City.

**31. Sunshine Ordinance**

In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this Section will be made available to the public upon request.

### **32. Taxes**

Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement or the services delivered pursuant hereto, shall be the obligation of Broker.

### **33. Notification of Limitations on Contributions**

Through execution of this Agreement, Broker acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) a City elected official if the contract must be approved by that official, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for that City elective office, or (3) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for the contract or twelve (12) months after the date the City approves the contract. Broker acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Broker further acknowledges that (i) the prohibition on contributions applies to each prospective party to the contract; each member of Broker's board of directors; Broker's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Broker; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Broker; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Broker is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Broker certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

### **34. Requiring Minimum Compensation for Covered Employees**

(a) Broker agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance ("MCO"), as set forth in San Francisco Administrative Code Chapter 12P ("Chapter 12P"), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at <http://www.sfgov.org/olse/mco>. A partial listing of some of Broker's obligations under the MCO is set forth in this Section. Broker is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(b) The MCO requires Broker to pay Broker's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Broker is obligated to keep informed of the then current requirements. Any subcontract entered into by Broker shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual

obligations substantially the same as those set forth in this Section. It is Broker's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Broker.

(c) Broker shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within ninety (90) days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(d) Broker shall maintain employee and payroll records as required by the MCO. If Broker fails to do so, it shall be presumed that the Broker paid no more than the minimum wage required under State law.

(e) The City is authorized to inspect Broker's job sites and conduct interviews with employees and conduct audits of Broker.

(f) Broker's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Broker fails to comply with these requirements. Broker agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Broker's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(g) Broker understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, Broker fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Broker fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(h) Broker represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(i) If Broker is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than Twenty-Five Thousand Dollars (\$25,000), but Broker later enters into an agreement or agreements that cause Broker to exceed that amount in a fiscal year, Broker shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Broker and this department to exceed Twenty-Five Thousand Dollars(\$25,000) in the fiscal year.



### **35. Requiring Health Benefits for Covered Employees**

Unless exempt, Broker agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (“**HCAO**”), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth.

The text of the HCAO is available on the web at <http://www.sfgov.org/olse/hcao>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Broker shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Broker chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Broker is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with subsection a above.

(c) Broker's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Broker if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Broker fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Broker fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Broker shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Broker shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Broker shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Broker based on the Subcontractor's failure to comply, provided that City has first provided Broker with notice and an opportunity to obtain a cure of the violation.

(e) Broker shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Broker's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Broker represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Broker shall keep itself informed of the current requirements of the HCAO.

(h) Broker shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Broker shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(j) City may conduct random audits of Broker to ascertain its compliance with HCAO. Broker agrees to cooperate with City when it conducts such audits.

(k) If Broker is exempt from the HCAO when this Agreement is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) [Fifty Thousand Dollars (\$50,000) for nonprofits], but Broker later enters into an agreement or agreements that cause Broker's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars (\$75,000), all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Broker and the City to be equal to or greater than Seventy-Five Thousand Dollars (\$75,000) in the fiscal year.

### **36. Notices**

Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person, by sending it first-class mail or certified mail with a return receipt requested, postage prepaid, or overnight courier, addressed as follows:

City: Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: Tenderloin – District 3 Property Search

With a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682

Attn: Real Estate & Finance Group  
Re: Tenderloin -District 3 Property Search

Fax No.: (415) 554-4757

Broker: John Jensen, Senior Vice President Colliers

International CA, Inc.  
101 Second Street, 11<sup>th</sup> Floor  
San Francisco, California 94105

Vendor #: 22561

Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

### **37. Consideration of Criminal History in Hiring and Employment Decisions**

(a) Broker (as “**Contractor**”) agrees to comply fully with and be bound by all of the provisions of Chapter 12T “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“**Chapter 12T**”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(c) Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(d) Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least five percent (5%) of the employees at the workplace, job site, or other location at which it is posted.

(h) Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including, but not limited to, a penalty of Fifty Dollars (\$50) for a second violation and One Hundred Dollars (\$100) for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

### **38. Consideration of Salary History**

Broker shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Broker is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Broker is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>.

Broker is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

### **39. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three (3)

times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to Ten Thousand Dollars (\$10,000) for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: **(a)** knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; **(b)** knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; **(c)** conspires to defraud the City by getting a false claim allowed or paid by the City; **(d)** knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or **(e)** is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **40. Food Service Waste Reduction**

Broker agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. This provision is a material term of this Agreement. By entering into this Agreement, Broker agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Broker agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Broker's failure to comply with this provision.

#### **41. Food Service and Packaging Waste Reduction Ordinance**

All capitalized terms used in this Section that are not defined in this Agreement shall have the meaning set forth in San Francisco Environment Code Chapter 16 ("Chapter 16"). In connection with this Agreement, Broker agrees to comply with Chapter 16 and shall not use Food Service Ware that is (a) made, in whole or in part, from Polystyrene Foam, (b) not Compostable or Recyclable, or (c) not Fluorinated Chemical Free. In addition, Broker shall not sell, use, or otherwise distribute any single-use straws, stirrers, splash sticks, cocktail sticks, or toothpicks made with plastic, including compostable, bio- or plant-based plastic, except as permitted under Chapter 16. If Broker has any questions regarding compliance with Chapter 16, Broker shall consult with the City's Director of Environment in advance of the use of any product. City shall have all rights and remedies available under this Agreement if Broker violates the requirements of this Section.

## **42. Protection of Private Information**

Broker has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Broker agrees that any failure of Broker to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Broker pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Broker.

## **43. Management of City Data and Confidential Information**

### **(a) Access to City Data**

City shall at all times have access to and control of all data given to Broker by City in the performance of this Agreement (“**City Data**” or “**Data**”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

### **(b) Use of City Data and Confidential Information**

Broker agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Broker shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Broker’s staff assigned to this project on a need-to-know basis only. Broker is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Broker’s own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Broker, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

### **(c) Disposition of Confidential Information**

Upon termination of Agreement or request of City, Broker shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Broker has received written confirmation from City that Confidential Information has been successfully transferred to City, Broker shall within ten (10) business days reasonably purge all Confidential Information from its servers, any hosted environment Broker has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Broker in whatever medium. Broker shall provide City with written certification that such purge occurred within five (5) business days of the purge.

#### **44. First Source Hiring Program**

##### **(a) Incorporation of Administrative Code Provisions by Reference.**

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including, but not limited to, the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

##### **(b) First Source Hiring Agreement.**

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("**agreement**") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

**(i)** Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

**(ii)** Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided, however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed ten (10) days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

**(iii)** Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by

occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term jobs need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(iv) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(v) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(vi) Set the term of the requirements.

(vii) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(viii) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(ix) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

**(c) Hiring Decisions.**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

**(d) Exceptions.**

Upon application by employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.



**(e) Liquidated Damages.**

Contractor agrees:

- (i)** To be liable to the City for liquidated damages as provided in this Section;
- (ii)** To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;
- (iii)** That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to Five Thousand Dollars (\$5,000) for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (iv)** That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to Ten Thousand Dollars (\$10,000) for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- (v)** That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this Section is based on the following data:

The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately forty-one (41) months at an average monthly grant of Three Hundred Forty-Eight Dollars (\$348) per month, totaling approximately Fourteen Thousand Three Hundred Seventy-Nine Dollars (\$14,379); and

In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total Five Thousand Dollars (\$5,000) for first violations and Ten Thousand Dollars (\$10,000) for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(vi) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of Five Thousand Dollars (\$5,000) for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**(f) Subcontracts.**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**45. 38th Supplement to Proclamation of Local Emergency**

On October 8, 2021, Mayor Breed issued the 38th Supplement to the Proclamation of Local Emergency (the “**Supplement**”) requiring employees of existing City contractors and subcontractors who spend substantial time working in close proximity to City employees while performing work under the contract at a City facility to be fully vaccinated or granted an exemption based on medical or religious grounds no later than December 31, 2021. The City will require compliance with the Supplement, to the extent applicable.

**46. Cooperative Drafting**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**47. Severability**

If any provision of this Agreement or the application thereof to any person, entity or circumstance shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Agreement.

**48. General Provisions**

(a) This Agreement may be amended or modified only by a writing signed by City and Broker.

(b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer of other authorized representative, and only to the extent expressly provided in such written waiver.

(c) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the Director, the Director's designated agent or other authorized City official.

(d) This instrument (including the exhibits hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.

(e) The Section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

(f) Time is of the essence.

(g) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City's Charter.

(i) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience.

*[Signatures appear on the following page]*

**IN WITNESS WHEREOF**, City and Broker have executed this Agreement as of the date first above written.

**BROKER:**

Colliers International CA, Inc.,  
a Delaware corporation

I have read and understood Section 28, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco to do business with corporations that abide by the MacBride Principles.

DocuSigned by:  
*John C. Moe*  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

DocuSigned by:  
*Andrico Q. Penick*  
By: \_\_\_\_\_  
ANDRICO Q. PENICK  
Director of Property

**APPROVED AS TO FORM:**

DAVID CHIU, City Attorney

DocuSigned by:  
*Brown, Vincent*  
By: \_\_\_\_\_  
5D88F562E4274BB...  
Vincent L. Brown,  
Deputy City Attorney

**EXHIBIT A**

**CERTIFICATION OF CONSULTANT/BROKER**

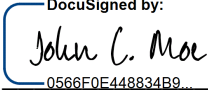
I HEREBY CERTIFY that I am the duly authorized representative of the firm of Colliers International CA, Inc., a Delaware corporation, whose address is 101 Second Street, 11<sup>th</sup> Floor, San Francisco, California 94105 and represent that neither I nor the abovenamed firm have:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this agreement;

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the agreement; or

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the agreement; except as here expressly stated (if any):

12/10/2021  
\_\_\_\_\_  
(Date)

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT B**

**SUMMARY OF SCOPE OF WORK**

*(attached)*

# Approach

## Exhibit B

### Scope of Consulting Services

Colliers is prepared to assist in identifying potential sites for recreation and park use within the Tenderloin, and vicinity of Nob Hill, Russian Hill and North Beach neighborhoods.

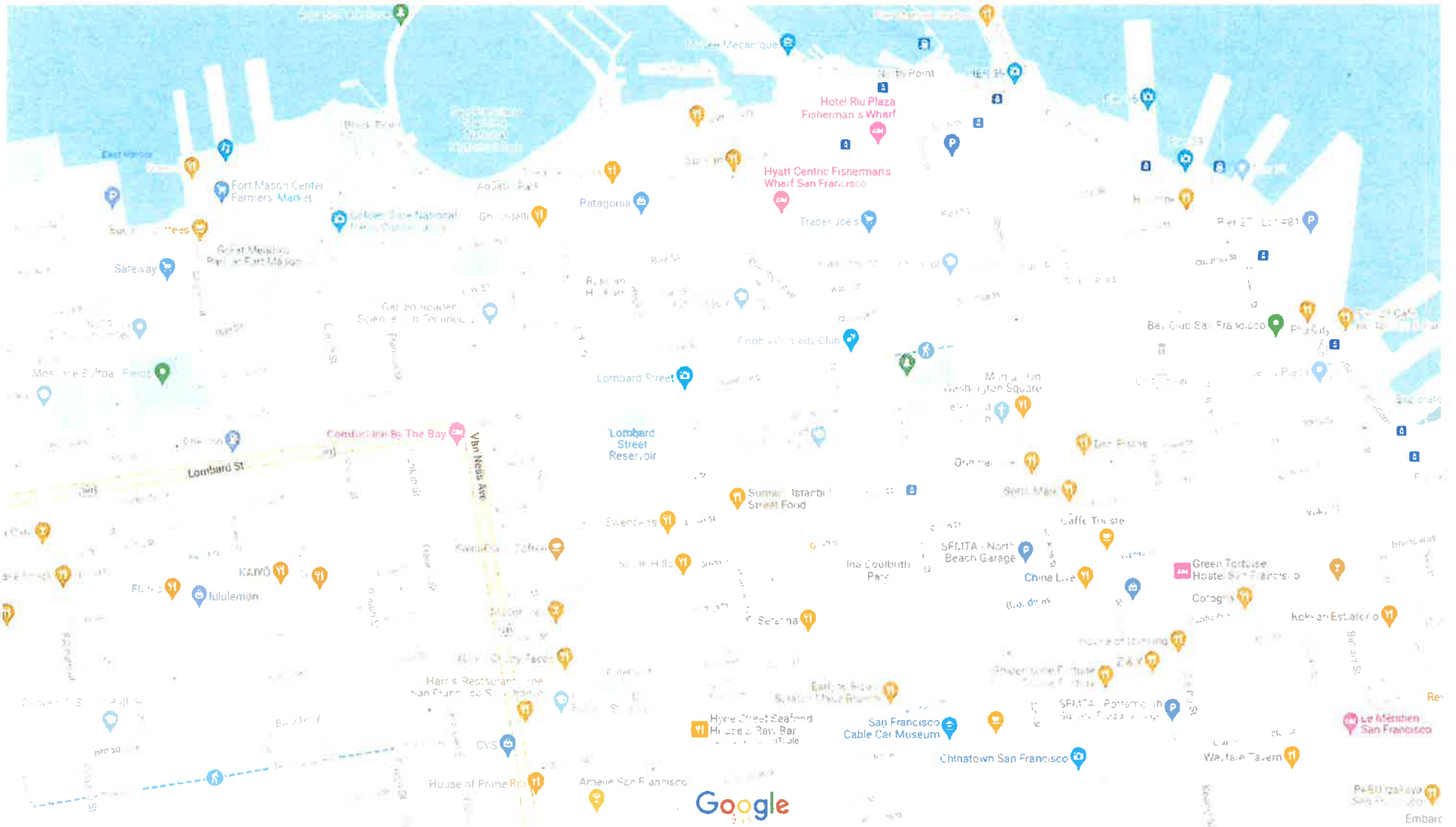
Task	Summary Scope of Services
<b>Property Evaluation - Within 30 business days of project initiation</b>	
1a	Review list of open space sites (55+ parcels) that Colliers identified in the Tenderloin neighborhood for the City in 2013-2014 to determine current applicability and feasibility.
1b	Use market and property ownership knowledge (25+ years of experience) to add additional sites.
1c	Conduct drive by survey of identified site area to identify additional sites.
1d	Combine reconnaissance fieldwork with additional parcel research
1e	As requested by the City, consult with any relevant departments or stakeholders.
1f	Determine building ownership and structure and sale motivation
1g	Evaluate location of lot within block and other relevant entitlement factors
1h	Evaluate current development on site (underutilized? historic building?)
1i	Forecasting analysis with respect to site and future developments in the immediate area of potential site
<b>Initial Reporting - Within 30 business days of project initiation</b>	
2a	Prepare aerial map highlighting each site opportunity and provide any available photography
2b	Prepare matrix analysis summarizing potential site characteristics (ownership structure, sale history, parcel type, location, zoning, FAR, planning/study districts, assemblages needed, and any other criteria requested by the City
2c	Detail historic sale comparables and review market data
2d	Estimate pricing for sites, as requested
<b>Final Analysis &amp; Submissions - Within 15-30 business days following City's feedback on Initial Reporting</b>	
3a	Edit and refine final submissions in coordination with the City

**EXHIBIT C**

**MAP OF NEIGHBORHOODS**

*(attached)*





Map data ©2021 Google 500 ft

The general boundary lines (additional area) for exploring potential opportunity sites suitable for a small park are:

- Van Ness Avenue to the West;
- Cedar Alley to the South;
- Hyde Street to the East;
- California Street to the North