

SAMPLE AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("AGREEMENT") is made and entered into this ____ day of ____, 20__, by and between the CITY OF LANCASTER, a municipal corporation and charter city ("CITY"), and ____ ("BROKER/FIRM").

RECITALS

WHEREAS, CITY desires to engage BROKER/FIRM to perform certain services, as provided herein, identified as:

RFP 737-21 REAL ESTATE BROKER SERVICES

NOW, THEREFORE, the parties agree as follows:

1. **Parties.**

The parties to this AGREEMENT are:

- A. CITY: City of Lancaster
- B. BROKER/FIRM: (Company Name)

2. **Notices.** All written notices required by or related to this AGREEMENT shall be sent by Certified Mail, Return Receipt Requested, postage prepaid and addressed as listed below. Neither party to this AGREEMENT shall refuse to accept such mail; parties to this AGREEMENT shall promptly inform the other party of any changes of address. All notices required by this AGREEMENT are effective on the day of receipt, unless otherwise indicated herein.

CITY City of Lancaster
Attn: Chenin Dow
44933 North Fern Avenue
Lancaster, California 93534

BROKER/FIRM (Name, Title)
(Company Name)
(Address)
(City, State Zip)

3. **Successors and Assigns.** The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no party hereto shall assign any of the benefits and burdens hereunder, whether voluntarily or by operation of law, without prior written consent of the other party, and any such assignments without said consent shall be void.

4. **Precedence of AGREEMENT Documents.** If there is a conflict between AGREEMENT documents, the document highest in precedence shall control. The precedence shall be:

First: This AGREEMENT
Second: The RFQ
Third: The BROKER/FIRM'S Proposal

5. **Description of Services.** CITY hereby engages BROKER/FIRM, and BROKER/FIRM accepts such engagement, to perform the professional services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by reference. BROKER/FIRM shall perform and provide, in a manner satisfactory to CITY, all services set forth in Scope of Services. The Department Director or their designee shall have the right to review and evaluate the quality of the services during the course of this AGREEMENT.

6. **Obligations of the CITY.** The total compensation to be paid by CITY to BROKER/FIRM for all services described in Scope of Services is not to exceed \$_____. BROKER/FIRMS' fees and charges for the services performed shall in no event exceed those set forth in Exhibit "B" attached hereto and made a part hereof.

7. **Obligations of the BROKER/FIRM.**

A. BROKER/FIRM shall perform as required by this AGREEMENT and in accordance with the "Scope of Services" set forth in Exhibit "A." BROKER/FIRM also warrants on behalf of itself and all Subcontractors engaged for the performance of this AGREEMENT.

B. BROKER/FIRM shall be responsible for payment of all employees' and Subcontractor's wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security, as applicable.

C. BROKER/FIRM shall not subcontract any of the work required to perform the Services without the express prior written approval of the CITY.

8. **Hold Harmless and Indemnification.** BROKER/FIRM agrees to indemnify and hold harmless the CITY, its elected officials, officers and employees, from and against any and all claims, losses, obligations, or liabilities whatsoever, including reasonable Attorney's fees, incurred in or in any manner arising out of or related to BROKER/FIRM'S negligent or willful wrongful acts, errors or omissions, or those of its employees or agents. BROKER/FIRM agrees to defend CITY, its elected officials, officers, employees, and volunteers, using counsel of the CITY'S choosing, from and against any and all claims arising from any alleged negligent or wrongful acts, errors or omissions on the part of BROKER/FIRM or on the part of its employees.

9. **Amendments.** Any amendment, modification, or variation from the terms of this AGREEMENT shall be in writing and shall be effective only upon mutual written approval by the Department Director, or their designee, and BROKER/FIRM.

10. **Non-Discrimination and Equal Employment Opportunity.**

A. In the performance of this AGREEMENT, BROKER/FIRM shall not discriminate against any employee, Subcontractor, or applicant for employment because of race, color, religion, ancestry, sex, national origin, physical or mental disability or age. BROKER/FIRM will take affirmative action to ensure that Subcontractors and applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, sex, national origin, physical or mental disability or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

B. The provisions of Subsection A above shall be included in all solicitations or advertisements placed by or on behalf of BROKER/FIRM for personnel to perform any services under this AGREEMENT. CITY shall have access to all documents, data and records of BROKER/FIRM and its Subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section.

11. **Term; Effective Date.** This AGREEMENT shall become effective and shall be in full force and effect upon the execution of the AGREEMENT by the CITY and the BROKER/FIRM. This AGREEMENT shall continue in full force and effect from _____ to _____ (a period of _____ months), unless the AGREEMENT is sooner terminated in accordance with the Termination clause in this AGREEMENT; and may be extended if the CITY and the BROKER/FIRM mutually agree in writing to extend the Term of this AGREEMENT.

12. **Termination.**

A. For Convenience. The CITY may terminate this AGREEMENT at any time without cause by giving thirty (30) days written notice to the other party of such termination and specifying the effective date thereof. In the event of termination of this AGREEMENT, BROKER/FIRM will be paid for work completed through the date of termination within thirty (30) days following submittal of a final invoice.

B. For Cause. If BROKER/FIRM fails to perform the services called for by this AGREEMENT or so fails to make progress as to endanger performance of this AGREEMENT in accordance with its terms, BROKER/FIRM shall correct such failure within ten (10) days (or such longer period that the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure. Should the failure not be corrected within this time period, the CITY may immediately terminate the AGREEMENT by written notice to BROKER/FIRM.

C. In the event of termination, whether for convenience or cause, marketing reports, plans, studies and other documents (collectively, "documents") related to the Services shall become the City's property. BROKER/FIRM shall provide all documents to the City that within ten (10) calendar days after termination of the AGREEMENT.

13. **Independent Contractor.** BROKER/FIRM is an independent contractor and shall have no power or authority to incur any debt, obligation or liability on behalf of the CITY. It is expressly understood between the parties to this AGREEMENT that no employee/employer relationship is intended; BROKER/FIRM is an independent contractor.

14. **Insurance.**

A. The BROKER/FIRM, at its expense, shall maintain in effect at all times during the term of this Agreement the following coverage and limits of insurance, which shall be maintained with insurers listed “A-, VIII” or better in the Best’s Key Rating Guide:

Commercial General Liability

Each Occurrence	\$1,000,000
Per Project General Aggregate	\$2,000,000
Including Products/Completed Operations; Contractual Liability/Independent Contractors; Property Damage	
<i>(Coverage shall be at least as broad as ISO form CG2010 11/85 or CG2010 07/04 and CG2037 07/04 combined, or an equivalent providing ongoing and completed operations)</i>	

Commercial Automobile Liability

Combined Single Limit per Accident for Bodily Injury and Property Damage	\$1,000,000
<i>(Coverage shall be at least as broad as ISO form CA00 01)</i>	

Workers Compensation

As Required by the State of California	Statutory Limits
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Employers’ Liability

Each Accident	\$1,000,000
Bodily Injury by Disease	\$1,000,000
Each Employee	\$1,000,000
<i>(A Waiver of Subrogation must be provided on behalf of the Certificate Holder for the Workers Compensation & Employers’ Liability policies)</i>	

Professional Liability

Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

B. The BROKER/FIRM’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured’s liability.

C. Professional liability and/or cyber insurance written on a “claims made” basis must be renewed for a period of three (3) years after this contract expires or is terminated. Such insurance must have the same coverage and limits as the policy that was in effect during

the term of this contract and will cover BROKER/FIRM for all claims made by the CITY insured entities arising out of any acts or omissions of BROKER/FIRM or its officers, employees, or agents during the time this AGREEMENT was in effect.

D. Any deductibles or self-insurance retentions must be declared and approved by the CITY. At the CITY'S option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY insured entities or the insurer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. All insurance shall be primary and non-contributory as respects the CITY insured entities. Any insurance or self-insurance maintained by the CITY insured entities shall be in excess of the BROKER/FIRM's insurance and shall not contribute with it.

F. BROKER/FIRM shall furnish the CITY with Certificates of Insurance and with original endorsements effecting coverage required by this AGREEMENT. Certificates of Insurance shall meet the following requirements:

(1) Show that the insurance policy has been endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice ten (10) days' written notice for non-payment) to the City of Lancaster.

(2) List in the "Descriptions of Operations/Locations/Vehicles" section:
"RFP 737-21 REAL ESTATE BROKER SERVICES"

The City of Lancaster, its elected officials, officers, employees and volunteers are included as additional covered parties, but only insofar as the operations under this contract are concerned."

(3) List in the "Certificate Holder" section:

The City of Lancaster, 44933 Fern Avenue, Lancaster, California 93534.

15. **Commencement and Completion of Services.** The execution of this AGREEMENT by the parties does not constitute an authorization to proceed. The services of BROKER/FIRM shall commence when the CITY, enters into a specific sales contract for each property.

BROKER/FIRM shall have no claim for compensation for any services or work which has not been authorized by the CITY.

16. **BROKER/FIRM's Warranties and Representations.**

BROKER/FIRM warrants and represents to CITY as follows:

A. BROKER/FIRM has not employed or retained any person or entity, other than a bona fide employee working exclusively for BROKER/FIRM, to solicit or obtain this AGREEMENT.

B. BROKER/FIRM has not paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for BROKER/FIRM, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the execution of this AGREEMENT. Upon any breach or violation of this warranty, CITY shall have the right, in its sole discretion, to terminate this AGREEMENT without further liability, or, in the alternative, to deduct from any sums payable hereunder the full amount or value of any such fee, commission, percentage or gift.

C. BROKER/FIRM has no knowledge that any officer or employee of the CITY has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of the BROKER/FIRM, and that if any such interest comes to the knowledge of BROKER/FIRM at any time, a complete written disclosure of such interest will be made to CITY, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws.

D. Upon the execution of this AGREEMENT, BROKER/FIRM has no interest, direct or indirect, in any transaction or business entity which would conflict with or in any manner hinder the performance of services and work required by this AGREEMENT, nor shall any such interest be acquired during the term of this AGREEMENT.

17. Resolution of Disputes.

A. Disputes regarding the interpretation or application of any provisions of this AGREEMENT shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

B. If the parties cannot resolve the dispute through good faith negotiations, either party may give Notice of Dispute to the other party. The Notice of Dispute shall state the nature of the dispute and the corrective action necessary to remedy the dispute.

After Notice of Dispute, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator. Mediation shall be conducted in Lancaster, California. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

If the dispute has not been resolved by mediation within forty-five (45) days after Notice of Dispute, or the parties are unable to agree to a mediator, within fifteen (15) days after Notice of Dispute, then, the dispute may, upon agreement of the parties be resolved by binding arbitration.

C. If any action at law or in equity is brought to enforce or interpret any provisions of this AGREEMENT, the prevailing party in such action shall be entitled to

reasonable attorney's fees, cost and necessary disbursements, in addition to such other relief as may be sought and awarded.

18. **Governing Law.** This AGREEMENT shall be governed by the laws of the State of California.

19. **Effective Date.** This AGREEMENT shall become effective as of the date set forth below on which the last of the parties, whether CITY or BROKER/FIRM, executes this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed and attested by their respective officers thereunto duly authorized.

CITY OF LANCASTER
LANCASTER, CALIFORNIA

By: _____
Jason Caudle, City Manager

Dated: _____

Broker/Firm Name

By: _____
(Name, Title)

Dated: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

SAMPLE