

RESOLUTION NO. 2021-001

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA SELECTING CBRE, INC., AS THE QUALIFIED, RESPONSIVE AND RESPONSIBLE BIDDER PROVIDING THE BEST OVERALL VALUE TO THE CITY PURSUANT TO REQUEST FOR QUALIFICATIONS NO. 2019-20-8500-00-003 FOR REAL ESTATE BROKER SERVICES, AND AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY OF HIALEAH, TO EXECUTE A LISTING AGREEMENT FOR THE SALE OF PROPERTY LOCATED AT 601 WEST 20 STREET, HIALEAH, FLORIDA, A COPY OF WHICH IS ATTACHED HERETO AS "EXHIBIT 1".

WHEREAS, the City sought competitive bids in response to Request for Qualifications No. 2019-20-8500-00-003 for real estate broker services to sell City owned property; and

WHEREAS, a selection committee composed of three staff members evaluated all responses received in accordance with the requirements in the solicitation to select the most qualified, responsive and responsible bidder providing the best overall value to the City; and

WHEREAS, the selection committee ranked CBRE, Inc. as the highest ranking firm from among the three competing firms and recommends the City enter into a listing agreement with CBRE, Inc. pursuant the report of the committee dated _____, a copy of which is attached to this Resolution as Exhibit 2; and

WHEREAS, the findings of the selection committee are hereby adopted;

WHEREAS, in the 2017 primary election, City electors approved the sale of City owned property located at 601 West 20 Street as provided for in Hialeah, Fla. Ordinance No. 2017-46 (August 22, 2017); and

WHEREAS, it is in the best interest and welfare of the residents of the City of Hialeah to enter into a listing agreement with CBRE, Inc., for the sale of City owned property located at 601 West 20 Street, Hialeah, Florida in accordance with the recommendation of the selection committee;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

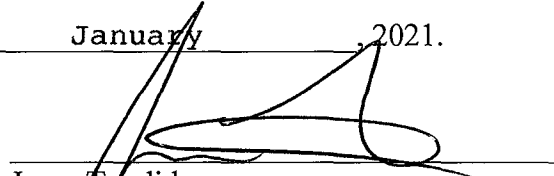
RESOLUTION NO. 2021-001

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Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby selects CBRE, Inc. as the most qualified, responsive and responsible bidder to provide real estate broker services pursuant to Request for Qualifications No. 2019-20-8500-00-003 and hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City of Hialeah, to execute the listing agreement for the sale of city owned property located at 601 West 20 Street, Hialeah, Florida, a copy of which is attached as "Exhibit 1".


PASSED and ADOPTED this 12 day of January, 2021.




Jesus Tundidor
Council President

Attest:

Approved on this 20 day of January, 2021.

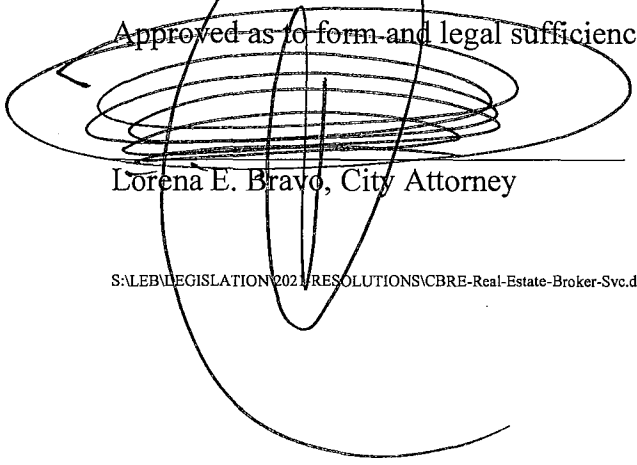


Marbelys Fatjo, City Clerk



Mayor Carlos Hernandez

Approved as to form and legal sufficiency:



Lorena E. Bravo, City Attorney

Resolution was adopted by 4-0-3 vote with Councilmembers, De la Rosa, Garcia-Roves, Tundidor, and Zogby voting "Yes" and with Council Member Cue-Fuente and Council Member Hernandez absent and Council Vice President Perez recording her vote as "Yes".

EXHIBIT "1"



EXCLUSIVE SALES LISTING AGREEMENT

THIS EXCLUSIVE SALES LISTING AGREEMENT ("Agreement") is entered into as of the ____ day of January, 2021, by and between **CBRE Inc.**, a Delaware corporation with an office located at 777 Brickell Avenue, Suite 1100, Miami, FL 33131 ("CBRE") and **CITY OF HIALEAH**, a political subdivision of the State of Florida, with an office address at 501 Palm Avenue, Hialeah, Florida 33010 ("Owner").

RECITALS

WHEREAS, Owner owns certain land, buildings and improvements located at 601 West 20th Street, in the City of Hialeah, Florida 33010 (the "Property"), and

WHEREAS, Owner desires to engage CBRE as its exclusive broker, and to grant to CBRE the exclusive right, to list for sale the Property, and CBRE is agreeable to such engagement on the terms and conditions as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereinafter expressed, the parties hereto agree as follows:

ARTICLE ONE

APPOINTMENT

1.1. Exclusive Right to Sell. Owner hereby appoints CBRE as its exclusive agent and grants CBRE the exclusive right to solicit and procure prospective purchasers for the Property. Reference herein to the Property or Properties shall mean all or any portion thereof. CBRE accepts the appointment and agrees to act in good faith and use diligent efforts to perform the services required by this Agreement.

1.2. Definition of "Sale" or "Purchase". As used in this Agreement, the term "sale" or "purchase," in reference to the Property, shall include a sale or exchange of the Property, the granting of an option to purchase the Property, or any other transfer, conveyance, or contribution of a controlling interest in the Property or in the entity which owns the Property, or any other transaction identified in Section 5.2 below.

1.3. Listing Price. The listing price for the Property shall be the highest and best listing price as agreed up by the parties and the Property shall be sold on an "all cash" basis, or such other terms and conditions as acceptable to Owner in its sole and absolute discretion.

ARTICLE TWO

TERM

2.1. Term of Agreement. The term ("Term") of this Agreement shall commence on the date hereof and shall end at midnight, one (1) year later unless sooner terminated or extended in accordance with the provisions of this Agreement. The Term shall be extended only by an agreement in writing signed by the parties hereto. Notwithstanding anything contained herein to the contrary, in the event the Property is

removed from the market due to the opening of an escrow or acceptance of an offer to purchase the Property during the Term, or any extension thereof, and the sale is not consummated for any reason then, in that event, the Term shall be extended for a period of time equal to the number of days that the escrow had been opened and/or the Property had been removed from the market, whichever is longer, provided that, in no event shall such extension(s) exceed one hundred eighty (180) calendar days in the aggregate.

ARTICLE THREE

CBRE'S REPRESENTATIONS AND DUTIES

3.1. Licensing. CBRE hereby represents that it and its personnel providing services are, to the extent required by law, duly licensed. CBRE shall, at its expense, obtain and keep in full force and effect throughout the Term of this Agreement all licenses and permits required to be maintained by CBRE in connection with the rendering of the services.

3.2. Performance of Services. CBRE shall perform the services through able, qualified and trained personnel of CBRE in sufficient number to properly render the services in the manner appropriate for the Property as required by this Agreement. CBRE shall have the exclusive right to hire, direct, discipline, compensate and terminate the personnel of CBRE, and shall exercise complete and exclusive control over the conduct of CBRE's personnel. Such services shall include:

- (a) Inspection, Review and Analysis. CBRE shall review the Property to determine its relative market appeal, quality of location, market and area trends, and potential for value enhancement prior to entering the market. CBRE shall be entitled to rely on information provided by Owner, Owner's agents, and any property manager for the Property, and shall not be responsible for verifying the accuracy or completeness of any such information.
- (b) Marketing Plan. CBRE shall develop and prepare for Owner's review and approval a detailed marketing plan (the "Marketing Plan") setting forth a comprehensive strategy for sale of the Property.
- (c) Offering Materials. CBRE shall assemble and produce for Owner's review and approval an offering brochure and/or other marketing materials of a type which is customary for similar properties. Owner shall provide the information in its possession, custody or control regarding the Property necessary for CBRE to prepare a professional offering brochure. The brochure shall include, as appropriate, property facts, photographs, high-quality graphics, cash flow projections, market competition data, descriptive area and location information, site plan, and other relevant information as available.
- (e) Marketing Efforts and Advertising. Owner has authorized CBRE to advertise the Property for sale. CBRE shall expose the Property to a wide variety of purchasers via direct mail, print advertising and on the Internet, as deemed appropriate by CBRE. CBRE shall provide prospective purchasers with additional information and coordinate site visits. CBRE shall not disseminate any offering brochures or other written promotional materials, until approved by Owner in writing. Upon completion of the sale of the Property, CBRE may advertise or issue a press release or other public announcement regarding the sale, in form and content reasonably acceptable to Owner. Owner hereby consents to the use of a "tombstone" type ad and CBRE's internal newsletters and publications.
- (f) Prospective Purchaser Qualification and Inspections. CBRE shall solicit and identify prospective purchasers of the Property, deliver the offering materials to such prospective purchasers and, in connection therewith, assist Owner in qualifying prospective purchasers prior to recommending acceptance of an offer, provided, however, that Owner shall have

the ultimate responsibility for determining the financial condition and capabilities of any prospective purchaser. If requested by Owner, CBRE shall require each prospective purchaser to execute and deliver to CBRE Owner's form confidentiality agreement. CBRE shall make the necessary arrangements with Owner or Owner's agent to permit prospective purchasers to physically inspect the Property.

- (g) Inquiries. CBRE shall promptly inform Owner of all offers and inquiries received from brokers, prospective purchasers or anyone else with respect to the Property.
- (h) Negotiations and Legal and Tax Advice. All negotiations with prospective purchasers shall be conducted by CBRE in conjunction with Owner and Owner's counsel. Owner and its counsel shall be responsible for determining the legal sufficiency of the purchase and sale agreement and all other documents relating to any transaction contemplated by this Agreement; and Owner and its financial advisors shall be solely responsible for determining the tax consequences of any transaction contemplated under this Agreement.
- (i) Closing. At Owner's request, CBRE shall assist Owner and Owner's counsel in the preparation and execution of the closing checklist and provide information necessary to complete closing documentation, and shall coordinate with the property manager for the Property to secure all documents and information required for closing.

3.3. Staffing. CBRE's listing team for purposes of implementing the obligations of CBRE hereunder shall consist of David J. Wigoda, Lee Ann Korst, Sean Kelly and Tess Flemming (the "Listing Team"). Owner and CBRE appoint the Listing Team as Owner's legal agent limited solely to the extent specified in this Agreement, to the exclusion of all other CBRE-affiliated brokers and salespersons (the "Non-Listing Team Agents"). The Listing Team shall assume primary responsibility for the initiation of all discussions and the conduct of all negotiations with prospective purchasers on the part of CBRE. CBRE may replace any member of the Listing Team during the Term in the event a member of the Listing Team dies, becomes incapacitated or terminates his/her employment with CBRE, provided such replacement individual has similar or greater experience than the replaced member and provided that Owner consents, which consent shall not be unreasonably withheld. Upon written request by Owner, any member of the Listing Team shall be replaced by another qualified salesperson employed by CBRE, subject to Owner's approval, which approval shall not be unreasonably withheld. For compensation purposes, Non-Listing Team Agents who represent prospective purchasers shall be treated as Cooperating Brokers under Section 3.6 below.

3.4. Reports. CBRE shall submit to Owner a bi-weekly report on the marketing of the Property which shall include an updated list of all prospective purchasers and a summary of the status of any offers or negotiations.

3.5. Confidentiality.

- (a) As used in this Agreement, the term "Confidential Information" means information provided by Owner to CBRE pertaining to the Property which Owner believes in good faith contains legally protectable and/or otherwise confidential trade secrets, non-public research, development, or commercial information and that Owner designates in writing as confidential at the time it is provided to CBRE. Confidential Information does not include information that (i) was known to CBRE at the time it was provided by Owner, (ii) was publicly available at the time it was provided by Owner or thereafter becomes publicly available without breach by CBRE of its obligations hereunder, (iii) becomes available to CBRE on a non-confidential basis from a source other than Owner or its representatives, (iv) can be shown to have been developed independently by CBRE, (v) is required to be disclosed by court order, regulation, or other law or legal process; or (vi) is approved for

release by written agreement of Owner.

- (b) For a period of two (2) years from the date of disclosure of any Confidential Information to CBRE, CBRE agrees to hold such Confidential Information in trust and confidence for Owner, and agrees not to use Confidential Information other than as required in the performance of its obligations under this Agreement, which shall include disclosure to CBRE's personnel who have a need to know.

3.6. Cooperating Brokers. CBRE and the Listing Team are authorized to solicit and cooperate with other real estate brokers, including Non-Listing Team Agents, who represent prospective purchasers for the Property ("Cooperating Brokers").

CBRE shall be responsible to pay the fee or commission due to any such Cooperating Broker, provided such Cooperating Broker (i) represents the prospective purchaser pursuant to a written agreement, a copy of which is furnished to CBRE, (ii) executes and delivers to CBRE a confidentiality agreement, if required by Owner and on Owner's form, and (iii) executes and delivers CBRE's standard form Cooperating Brokerage Agreement.

3.7. Nondiscrimination. Owner and CBRE agree that the Property will be offered in compliance with all applicable federal, state and local anti-discrimination laws and regulations.

3.8. Compliance With Laws. CBRE shall comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, the Property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

ARTICLE FOUR

CBRE'S AUTHORITY

4.1. Limitation of CBRE's Authority. Notwithstanding any designation of CBRE as "agent" in this Agreement, CBRE shall have no right, power or authority to enter into any agreement with any prospective purchaser, real estate broker or any other person in the name of, on behalf of, or otherwise binding upon Owner, nor may CBRE create any other obligations or liabilities binding on Owner, except as otherwise provided by applicable law.

ARTICLE FIVE

FEEES AND EXPENSES

5.1. Calculation of Fee. CBRE's sole and exclusive compensation for its services hereunder (the "Fee") shall be calculated as provided on the Schedule attached hereto as Exhibit A, and Sections 5.5, 5.6, and 5.7 below

5.2. When Earned.

- (a) The Fee shall be payable for services rendered if: (a) any contract for the sale of the Property is entered into by Owner during the Term and the sale of the Property subsequently closes, whether during or after the Term, pursuant to the terms of such contract or any amendment or extension thereto; (b) Owner contributes or conveys the

Property during the Term to a partnership, joint venture or other business entity in which Owner retains or receives an interest; or (c) Owner is a corporation, partnership or other business entity and a controlling interest in such corporation, partnership or other business entity is transferred during the Term, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property.

- (b) In the event the sale of the Property (or any other transaction enumerated in Section 5.2) fails to close for any reason whatsoever, including Owner's default, CBRE shall not be entitled to any fee, commission or other compensation except the CBRE shall be entitled to fifty percent (50%) of any earnest money or similar deposits made by the prospective purchaser that is forfeited, but not to exceed the total amount of the anticipated commission. CBRE is authorized to provide a copy of this Agreement to any escrow or closing agent holding such earnest money or other deposits, and such escrow or closing agent is hereby instructed by Owner to pay to CBRE fifty percent (50%) any such deposits.

5.3. When Payable. The Fee shall be payable hereunder at closing of escrow, recordation of deed, or taking of possession by the purchaser, whichever is earlier. In the event Owner fails to make payments within the time limits set forth herein, then from the date due until paid, the delinquent amount shall bear interest at the lesser of twelve percent (12%) per year or the maximum rate permitted in the state in which the CBRE office executing this Agreement is located.

5.4. Rights After Term. Owner shall pay CBRE the Fee in accordance with the terms of this Agreement if, within ninety (90) calendar days after the expiration or earlier termination of the Term, the Property is sold to, or Owner enters into a contract of sale of the Property with, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property to, any person or entity (including his/her/its successors, assigns or affiliates) with whom CBRE or Owner has negotiated (either directly or through another broker or agent) or to whom the Property has been submitted prior to the expiration or termination of the Term. CBRE is authorized to continue negotiations with such persons or entities. CBRE shall submit a list of such persons or entities to Owner no later than fifteen (15) calendar days following the expiration or termination of the Term, provided, however, that if a written offer has been submitted, then it shall not be necessary to include the offeror's name on the list. Such list shall be definitive as to whether CBRE shall be entitled to the Fee pursuant to this Section 5.4.

5.5. Contribution or Sale of the Entity. In the event Owner contributes or conveys the Property or any interest therein to a joint venture, partnership, or other business entity in which Owner retains or receives an interest, the Fee shall be calculated on the fair market value of the Property, less the value of the interest in the Property retained by or transferred to Owner, as the case may be, and shall be paid at the time of the contribution or transfer. If an interest in the Owner's business entity is transferred, whether by merger, outright purchase, or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a commission in connection with such sale or transfer, the Fee shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid at the time of the transfer.

5.6. Break-up Fee. N/A

5.7. Option. In the event an option to purchase the Property is granted, Owner shall pay CBRE the Fee in accordance with the Schedule attached as Exhibit A, on the price paid for the option and for any extensions thereof. This Fee shall be paid upon receipt by Owner of any such payment(s). In the event that such option is exercised, whether during the Term or thereafter, Owner shall also pay CBRE a the Fee in accordance with Exhibit A. Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by Owner to CBRE on account of such option payments shall be credited against the

commission payable to CBRE on account of the exercise of the option.

5.8. Refinance. N/A

ARTICLE SIX

OWNER'S RIGHTS AND OBLIGATIONS

6.1. Refer All Inquiries. Owner shall cooperate with CBRE in bringing about a sale of the Property, shall provide all available information to permit CBRE to properly market the Property in accordance with the terms of this Agreement, and shall immediately refer immediately to CBRE all offers and inquiries received from brokers, prospective purchasers or anyone else interested in the Property.

6.2. Rights Reserved By Owner. Owner reserves the right, in all events and in Owner's sole and unfettered discretion, to approve, modify or disapprove any and all proposals and offers regarding pricing, marketing and terms of sale of the Property, and to approve or reject any prospective purchaser. Owner reserves the right to adjust the terms and conditions of any offer made or received, including, but not limited to, adjustment of the offering price for the Property upward or downward.

6.3. Withdrawal From The Market. Owner may, by written notification to CBRE, at any time in its sole and unfettered discretion, remove the Property from the Market.

6.4. Termination For Cause. Either party shall have the right to terminate this Agreement upon not less than sixty (60) days' prior written notice to the other in the event of a material breach or default by the other party of any of its obligations hereunder. The notice shall specify with particularity the material breach or default with respect to which the notice is given and the acts which the breaching party must undertake to remedy such failure and, in the event that such material breach or default is not cured by that date which is thirty (30) days from the breaching party's receipt of said notice, this Agreement shall terminate upon the party's receipt of a second written notice from Owner declaring such termination.

6.5. FIRPTA. Owner represents that it is the owner of the property and that, except as may be disclosed in writing to CBRE, no person or entity who has an ownership interest in the property is a foreign person as defined in the Foreign Investment in Real Property Tax Act (commonly known as "FIRPTA").

6.6. Hazardous Materials.

- (a) The Property is being sold in an "as is" condition, without representation or warranty of any kind, expressed or implied, oral or written, concerning the Property or any matter related thereto, including zoning, availability of access or utilities, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, or underground storage tanks ("Hazardous Materials") in, on, or about the Property. Prospective purchasers shall be advised of this fact and shall be allowed to make independent investigations of the Property made by their own experts, at their own expense. Language reflecting the above shall be inserted into any purchase and sale agreement entered into by Owner, which language shall also disclaim any such representations regarding the condition of the Property by CBRE and any reliance on such representations by the prospective purchaser.
- (b) Owner and prospective purchaser are responsible for retaining qualified experts to detect and/or remediate any current, past or potential Hazardous Materials in, on or about the Property. Owner hereby releases and forever discharges CBRE, its directors, officers, employees, agents, successors and assigns from any and all actions, causes of action, suits, covenants, judgments, claims and demands whatsoever, in law or in equity, for or on

account of or in any manner connected with Hazardous Materials in, on or about the Property and the violation of any federal, state or local law, statute, ordinance or regulation, any court or administrative order or decree or private agreement relating to the collection, storage, treatment or disposal of hazardous materials, excluding any such claims arising out of CBRE's gross negligence or intentional wrongful conduct.

6.7. Compliance with Laws. Owner agrees to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, any Property that is the subject of an acquisition or proposed acquisition or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment in Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

6.8. OFAC Screening. CBRE and Owner represent and warrant to the other that they are currently in compliance with, and shall use their best efforts at all times during the term of this Agreement (including any extension thereof) to remain in compliance with, the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury, and any statute, executive order or other governmental action relating thereto, including, but not limited to, Executive Order 13224 (dated September 23, 2001) "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism".

ARTICLE SEVEN

CONFLICTS OF INTEREST

7.1. Dual Representation. This Agreement establishes CBRE as Owner's single agent under Florida law. Owner acknowledges that CBRE is a national brokerage firm and that, in some cases, CBRE may represent prospective purchasers. Owner desires that the Property be presented to such prospective purchasers and, in the event that a prospective purchaser is also represented by CBRE, Owner, upon request and consent, authorizes CBRE to appoint designated agents, if permitted by Florida Statute §475.2755, for both Owner and such prospective purchaser. CBRE shall, in such event, make the designated agent disclosure required by Florida Statute § 475.2755 and attached hereto as Exhibit B and obtain Owner's consent thereto. The Listing Team shall implement CBRE's obligations under this Agreement.

7.2. Other Interests. Owner acknowledges that, from time to time, CBRE may provide to other persons or other properties services that are similar to or in conflict with those that are to be provided pursuant to this Agreement, including, for example, listing other properties which may be competitive with the Property and showing prospective purchasers other properties in addition to the Property. Such other persons and/or properties may be in direct or indirect competition with Owner, and Owner consents thereto, provided that CBRE shall not disclose the confidential information of Owner.

7.3. CBRE Affiliated Entities. N/A.

ARTICLE EIGHT

INDEMNIFICATION

8.1. Indemnification.

- (a) Indemnification by CBRE. CBRE agrees to indemnify and defend Owner from and against all liability, damages, losses and expenses resulting from claims or causes of action by a third party (collectively, "Claims") based solely upon CBRE's wrongful act, failure to act, or misrepresentation. Such obligation to

defend and indemnify will not apply, however, if the claim or cause of action is based upon or arises in any way out of an act, failure to act or representation of any other person or entity, including, but not limited to, Owner providing to CBRE incorrect information or failing to disclose to CBRE information which should have otherwise been disclosed to such claimant or to CBRE. CBRE will have the sole and absolute right to select and employ an attorney or attorneys to defend against such Claim and Owner will cooperate with CBRE and its attorneys in connection with the resolution of any Claims.

- (b) Indemnification by Owner. Subject to the limitations of Owner's sovereign immunity and the limitations set forth in Section 768.28, Florida Statutes, Owner agrees to indemnify and defend CBRE from and against all Claims by a third party based solely upon Owner's wrongful act, failure to act, or misrepresentation, including, but not limited to, Owner providing to CBRE incorrect information or failing to disclose to CBRE information which should have otherwise been disclosed to such claimant or to CBRE. Owner will have the sole and absolute right to select and employ an attorney or attorneys to defend against such Claim and CBRE will cooperate with Owner and with its attorneys.

8.2. Procedure. If either party (an "Indemnified Party") notifies the other party (the "Indemnifying Party") of any Claim for which the Indemnified Party is entitled to indemnification pursuant to his Article, the Indemnifying Party shall, within fifteen (15) days following receipt of such notice, notify the Indemnified Party whether it will assume defense of such Claim, assume defense of such Claim with a reservation of rights, or reject defense of such claim. If the Indemnifying Party fails or refuses to defend such Claim or fails to timely give the notice required by this section, the Indemnified Party shall then have the right to employ counsel at the expense of the Indemnifying Party. If an Indemnifying Party assumes the defense with a reservation of rights, the Indemnified Party shall have the right to employ counsel at its expense and participate in the defense with the full cooperation of the Indemnifying Party. With respect to any Claim for which an Indemnifying Party assumes defense without a reservation of rights, such Indemnifying Party shall have the right to defend such action, employ counsel of its choice, and negotiate and carry out any settlement of such action. Notwithstanding the foregoing, an Indemnifying Party shall not, without the prior written consent of the Indemnified Party, (i) settle or compromise any Claim or consent to the entry of any judgment in which the Indemnifying Party receives a more comprehensive release or hold harmless than the Indemnified Party, provided that such settlement, compromise or judgment shall not affect the continuing obligation of the Indemnifying Party to indemnify the Indemnified Party hereunder; or (ii) settle or compromise any action, suit, proceeding or claim in any manner that may adversely affect the Indemnified Party or obligate the Indemnified Party to pay any sum or perform any obligation.

ARTICLE NINE

NOTICES

9.1. Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be sent by a nationally recognized courier service or personally delivered (including by means of professional messenger service), or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile or electronic transmission and promptly confirmed in writing, to the addresses set forth below, and shall be deemed received when actually received.

To Owner: City of Hialeah
 501 Palm Avenue
 Hialeah, Florida 33010

Attn: David Jove, Assistant City Attorney
Telephone: (305) 883-5925
E-Mail: djove@hialeahfl.gov

With a copy (which shall not constitute notice) to:

Gardner, Bist, Bowden, Bush, Dee, LaVia, Wright & Perry, P.A.
Attention: Benjamin B. Bush
1300 Thomaswood Drive
Tallahassee, Florida 32308
Telephone: (850) 385-0070
E-Mail: ben@gbwlegal.com

To CBRE:

CBRE, Inc.
225 Water Street, Suite 110
Jacksonville, FL 32202

Attn: William Gulliford
Telephone: (904) 630-6344
Email: Tripp.Gulliford@CBRE.com

with a copy (which shall not constitute notice) to:

CBRE, Inc.
225 Water Street, Suite 110
Jacksonville, FL 32202

Attn: Lee Ann Korst
Telephone: (850) 251-9319
Email: LeeAnn.Korst@CBRE.com

9.2. Change of Notice. Notice of a change in address shall be given by notice in the manner set forth in this Article.

ARTICLE TEN

GENERAL PROVISIONS

10.1. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State in which the office executing this Agreement is located, without regard to its conflicts of laws principles, except where a dispute relates solely to one or more properties located within a single state, in which instance this Agreement shall be governed by and construed and interpreted in accordance with the laws of the State where that Property is located, without regard to its conflict of laws principles.

10.2. Disputes.

- (a) Any claim, controversy or dispute (a “Dispute”), whether sounding in contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whenever brought and whether between the parties to this Agreement or between one of the parties to this Agreement and the employees, agents or affiliated

businesses of the other party, shall be subject to this section.

- (b) The venue of any Dispute, in the case of any Dispute relating solely to one or more properties located within a single state, shall be the jurisdiction where the Property is located or in which the claim arose, and shall be any appropriate jurisdiction in all other instances.
- (c) Neither party shall be entitled to punitive damages, and the parties hereby waive all rights to, and claims for, relief other than for compensatory damages. The prevailing party in any Dispute shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements incurred in connection with any Dispute.
- (d) EACH PARTY UNCONDITIONALLY AND IRREVOCABLY WAIVES ITS RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE.
- (e) Any Dispute between the parties shall be subject to the sovereign immunity of the Owner and the limitations set forth in Section 768.28, Florida Statutes. Nothing in this Agreement shall be construed in such a way to constitute a waiver of the Owner's sovereign immunity.

10.3. Amendment, Modification and Termination. This Agreement may be amended, modified or terminated only by written agreement of CBRE and Owner.

10.4. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other party.

10.5. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.6. Headings. The headings of the Sections and Articles of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.

10.7. Due Authority. Each individual signing this Agreement on behalf of a party warrants and represents to the other party that he has the authority to execute this Agreement on such party's behalf and to bind such party to the terms hereof.

10.8. Severability. In the event any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, that provision shall be severed from this Agreement and shall not affect the validity of the remainder of the Agreement.

10.9. Third Parties. Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto and their successors or assigns, any rights or remedies under or by reason of this Agreement.

10.10. Entire Agreement. This Agreement, including the Exhibits hereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations and warranties, whether oral or written, by any officer, employee or representative of any party hereto. This Agreement shall be construed neutrally, neither for nor against either party, regardless of which party is deemed to have drafted the Agreement.

10.11. Foreclosure. In the event that the Property becomes the subject of foreclosure proceedings prior to the expiration of this Agreement, then CBRE may, in its sole and absolute discretion (i) suspend this Agreement until such time as CBRE may elect, in its sole and absolute discretion, to reinstate this Agreement, or (ii) terminate this Agreement and be free to enter into a listing agreement with any receiver, the party initiating the foreclosure, the party purchasing the Property at a foreclosure sale, or any other person having an interest in the Property.

10.12. Bankruptcy. In the event that the Property comes under the jurisdiction of a bankruptcy court, Owner shall immediately notify CBRE of the same, and shall promptly take all steps necessary to obtain court approval of CBRE's appointment, unless CBRE shall elect to terminate this Agreement upon said notice.

10.13. Broker's Lien. The Florida Commercial Real Estate Sales Commission Lien Act provides that when a broker, such as CBRE, has earned a commission by performing licensed services under a brokerage agreement with an owner, such as Owner, the broker may claim a lien against such owner's net sales proceeds for the broker's commission. The broker's lien rights under the Act cannot be waived before the commission is earned.

[The rest of this page is intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been executed by Owner and CBRE, through their duly authorized representatives, as of the day and year first above written.

**CITY OF HIALEAH,
a political subdivision of the State of Florida**

By: _____

Name: _____

Title: _____

CBRE, INC.

DocuSigned by:

By:

Tripp Gulliford

B5AD0EDEB4FC481...

Name: William Gulliford

Title: Managing Director

SCHEDULE 1

Property Description

601 W. 20th Street, Hialeah, FL

Property ID#: 04-3013-034-0110

The East 110 feet of Tract 1, Block 2, BING'S RED ROAD TERMINALS, according to the plat thereof, as recorded in Plat Book 65, at Page 13, of the Public Records of Miami-Dade County, Florida.

EXHIBIT A

Fee Schedule

A 6.00% Buyer's Premium will be added to the final bid price and it will be included in the total contract price. CBRE will receive the Buyer's Premium as their earned commission. If a buyer is represented by a Broker (Co-broker) CBRE will split the Buyer's Premium with the co-broker.

EXHIBIT B
CONSENT TO DESIGNATED AGENCY

Florida Statutes Section 475.2755 permits CBRE, Inc., and where the buyer and seller have assets of \$1 million or more, at the request of the customers, to designate sales associates to act as single agents for different customers in the same transaction. Such designated sales associates shall have the duties of a single agent as outlined in Section 475.278(3) as follows:

SINGLE AGENT NOTICE

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

As a single agent, David J. Wigoda, Lee Ann Korst, Sean Kelly and Tess Flemming owe to you the following duties:

1. Dealing honestly and fairly;
2. Loyalty;
3. Confidentiality;
4. Obedience;
5. Full disclosure;
6. Accounting for all funds;
7. Skill, care, and diligence in the transaction;
8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and
9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

FLORIDA LAW PROHIBITS A DESIGNATED SALES ASSOCIATE FROM DISCLOSING, EXCEPT TO THE BROKER OR PERSONS SPECIFIED BY THE BROKER, INFORMATION MADE CONFIDENTIAL BY REQUEST OR AT THE INSTRUCTION OF THE CUSTOMER THE DESIGNATED SALES ASSOCIATE IS REPRESENTING. HOWEVER, FLORIDA LAW ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE INFORMATION ALLOWED TO BE DISCLOSED OR REQUIRED TO BE DISCLOSED BY LAW AND ALSO ALLOWS A DESIGNATED SALES ASSOCIATE TO DISCLOSE TO HIS OR HER BROKER, OR PERSONS SPECIFIED BY THE BROKER, CONFIDENTIAL INFORMATION OF A CUSTOMER FOR THE PURPOSE OF SEEKING ADVICE OR ASSISTANCE FOR THE BENEFIT OF THE CUSTOMER IN REGARD TO A TRANSACTION. FLORIDA LAW REQUIRES THAT THE BROKER MUST HOLD THIS INFORMATION CONFIDENTIAL AND MAY NOT USE SUCH INFORMATION TO THE DETRIMENT OF THE OTHER PARTY.

BY SIGNING THIS CONSENT, THE UNDERSIGNED REPRESENT AND WARRANT FOR THEMSELVES THAT THEY HAVE ASSETS OF \$1 MILLION OR MORE, AND THAT THEY HAVE REQUESTED THAT CBRE, INC., USE THE DESIGNATED SALES ASSOCIATE FORM OF REPRESENTATION.

BUYER

Date

Signature

SELLER

Date


Signature

EXHIBIT "2"

CITY OF HIALEAH
CITY ATTORNEY'S OFFICE

MEMORANDUM

TO: Mayor Carlos Hernandez and
Members of the Hialeah City Council

FROM: David Jove, Assistant City Attorney 

DATE: January 6, 2021

RE: **Report of the Evaluation Committee concerning the City's Request for
Qualifications for Real Estate Broker Services (RFQ No. 2019-20-8500-00-
003)**

The City Council is respectfully requested to take final action concerning the City's Request for Proposals ("RFQ") for Real Estate Broker Services (RFQ No. 2019-20-8500-00-003). According to Section 3.7 of the RFQ, the City's Evaluation Committee recommended unanimously the award of a contract to CBRE according to the rankings.

The RFQ identifies the criteria that the City's Evaluation Committee used to evaluate each proposal at Section 3.7. The Evaluation Committee was tasked with evaluating the proposals and awarding the highest ranked broker as follows:

- | | |
|----------------------------------------------------------|----|
| 1. Experience and Project Team Assigned. | 20 |
| 2. Plan for Marketing and Sale of properties in general. | 5 |
| 3. Plan for Marketing and Sale of the Property. | 35 |
| 4. Cost to City. | 40 |

This report describes the findings and recommendations of the Evaluation Committee.

The City's RFQ, published on August 11, 2020, solicited one or more qualified real estate brokerage firm(s) to sell the city owned property located at 601 West 20 Street as a single agent as provided in Florida Statutes section 475.272(3) "AS-IS" at the highest and best price. Pursuant to the duly advertised Request for Qualifications, three responses from experienced brokerage firms containing their qualifications were submitted to the City: 1) CBRE Inc., 2) Colliers International Florida, LLC., and 3) Rauch Heim Commercial Real Estate LLC.

On September 30, 2020, the Evaluation Committee met to consider the submittals provided in response to the RFQ. The Evaluation Committee, was comprised of Ines Beecher, Director of

City of Hialeah
City Council Members
January 6, 2021
Page 2

Office of Management and Budget, Annette Quintana, Director of Grants and Human Services, and Armando Vidal, Director of Public Works, and conveyed virtually as allowed by the emergency order signed by Governor DeSantis due to the COVID19 pandemic.

All proposals were found to be responsive and responsible and meet the minimum criteria set forth in the RFQ. The committee members ranked CBRE highest (274 points), followed by Colliers (273 points), and Rauch Heim (266 points). Ms. Quintana motioned to select CBRE, seconded by Ms. Beecher, and all three members voted affirmatively to select CBRE.

Recommendation

The Evaluation Committee recommends that the City Council award a contract to CBRE in accordance with their ranking as provided by the RFQ.