

**FIRST AMENDMENT TO AGREEMENT
REGARDING MANAGEMENT OF CITY REAL ESTATE ASSETS**

This FIRST AMENDMENT TO AGREEMENT (Amendment) between the CITY OF FRESNO, CALIFORNIA, a municipal corporation (City) and PACCOM REALTY ADVISORS, INC., a California corporation, dba CUSHMAN AND WAKEFIELD PACIFIC (Consultant) is effective as of March 9, 2018. The City and Consultant are collectively referred to as the "Parties" in this Amendment.

RECITALS

WHEREAS, City, CBRE, and Consultant entered into an Agreement for Consultant Services regarding the management of City real estate assets on March 9, 2015 for a total fee of \$60,000, (the Agreement); and

WHEREAS, CBRE and Consultant were jointly awarded a contract to perform asset management services regarding the City's real estate; and

WHEREAS, under the Agreement, CBRE provided a Strategic Real Estate Plan for the City to maximize the value of its owned assets and streamline operation and Consultant evaluated City-owned property to determine the best approach for disposition and provided marketing services for said properties; and

WHEREAS, CBRE's services have been completed; and

WHEREAS, the City, CBRE, and Consultant desire to remove CBRE from the Agreement while Consultant continues to provide its services to the City; and

WHEREAS, the City and Consultant desire to extend and modify the Agreement as set forth below:

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual covenants herein contained, and such other and further consideration as is hereby acknowledged, the parties agree that the aforesaid Agreement be amended as follows:

AMENDMENTS

1. CBRE is removed as a party to the Agreement.
2. Section 2 (Term of Agreement and Time for Performance) of the Agreement is deleted and replaced as follows:

This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through March 9, 2021, with an option for the parties to extend this Agreement for two, one-year terms, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious

completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Section 3(a) (Compensation) of the Agreement is deleted and replaced as follows:

CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be according to a separate commission agreement attached hereto as Exhibit C. Such fees includes all expense incurred by CONSULTANT in performance of the services.

4. Exhibit A (Scope of Services) of the Agreement is deleted and replaced with the attached Exhibit "A".

5. Exhibit B (Insurance Requirements) of the Agreement is deleted and replaced with the attached Exhibit B.

6. Whenever the Agreement is referred to, it shall mean the Agreement as modified by this First Amendment. Except as otherwise provided herein, the Agreement entered into between City and Consultant regarding the management of City real estate assets on March 9, 2015, remains in full force and effect.


[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Third Amendment in Fresno, California, the day and year first above written.

CITY OF FRESNO,
A municipal corporation

PACCOM REALTY ADVISORS, INC.,
a California corporation, dba CUSHMAN &
WAKEFIELD PACIFIC


By: _____
Wilma Quan-Schechter,
City Manager, City of Fresno

By:  _____
Name: Vince Roche

ATTEST:
YVONNE SPENCE, MMC
City Clerk

Title: President/Broker
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

BY: _____
Deputy
Date

By:  _____
Name: Duane A. Keashley

Title: Secretary
(If corporation or LLC., CFO, Treasurer
Secretary or Assistant Secretary)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY:  _____
Tracy N. Parvanian
Deputy City Attorney
Date

Attachments:
Exhibit A
Exhibit B
Exhibit C

EXHIBIT A

SCOPE OF SERVICES

Consultant Services Agreement between City of Fresno (City) and Cushman & Wakefield/Pacific Commercial Realty Advisors (Consultant)

Real Estate Management Services

- Evaluate City-owned underutilized and/or surplus properties, as identified by City staff, and recommend the best approach-lease or sale-to maximize return
- Provide sales values and/or lease revenue assessments for relevant properties
- Provide disposition recommendations for relevant properties and prioritize opportunities based on City goals
- Recommend the best approach for disposition (sale, auction, other)
- Provide advice and recommendations on marketing strategies
- Represent the City during sale or lease transactions as follows:
 - Prepare and ensure targeted distribution of marketing materials and communicate regularly with all interested parties
 - In lease transactions, identify potential tenants, negotiate competitive leases (with City approvals), finalize lease documents
 - In sale transactions, market the property, analyze and compare offers, coordinate completion of necessary legal, appraisal, survey and/or title work; prepare property disposition documents
- Develop a long-term database solution to track and monitor the City's real property inventory
- Make presentations to City Departments, Staff and/or City Council

Exhibit B

INSURANCE REQUIREMENTS

**Consultant Service Agreement between City of Fresno ("CITY")
And Cushman & Wakefield/Pacific Commercial Realty Advisors
("CONSULTANT")**

Real Estate Management Services

PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT's profession.

MINIMUM LIMITS OF INSURANCE

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to

CITY, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents, and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY's Risk Manager or designee. At the option of the CITY's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents, and volunteers; or
- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, CONSULTANT's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of CONSULTANT's insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents, and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the

alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee.

If no Side Agreement is required, CONSULTANT will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

VERIFICATION OF COVERAGE

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONSULTANT shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

EXHIBIT C

COMMISSION AGREEMENT

Consultant Services Agreement between City of Fresno (City) and Cushman & Wakefield/Pacific Commercial Realty Advisors (Consultant)

Real Estate Management Services

NOTICE: The agreed upon schedule of real estate commissions that are outlined below is not fixed by law. It is set by each Broker/Agent individually and is negotiable between the Owner/Lessor and Broker/Agent.

A. SALES:

As to sales of real property, Broker's commission shall be 6% of the gross sales price. Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities. This commission shall be paid when earned or at the close of escrow through escrow, or if there is no escrow, then upon recordation of the deed; provided, however, if the transaction involves an installment contract, then payment shall be made upon execution of such contract. In the event Owner contributes or conveys the Property or any interest therein to a joint venture, partnership, or other business entity, the commission 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 Owner is a partnership, corporation or other business entity, and an interest in the partnership, corporation or other 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 commission 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.

B. LEASES OR SUBLEASES, AND GROUND LEASES:

Commissions shall be earned and payable per the schedule below. Commissions shall be earned and payable as follows: The first ½ upon Lease execution, payment of any initial rent/deposit as required in the Lease, and all contingencies waived. Second ½ half upon physical occupancy/delivery of space and rent payment as required per Lease.

<p style="text-align: center;">LEASES</p> <p style="text-align: center;">TERM OF LESS THAN 5 YEARS</p> <p style="text-align: center;">6% of the total base rental for the first 24 months in which rent is to be paid, plus</p> <p style="text-align: center;">5% of the total base rental for the next 12 months in which rent is to be paid, plus</p> <p style="text-align: center;">4% of the total base rental for the remainder of the term.</p> <p style="text-align: center;">TERM OF 5 YEARS THROUGH 25 YEARS</p> <p style="text-align: center;">5% of the total base rental for the first 60 months in which rent is to be paid, plus</p> <p style="text-align: center;">2 ½ % total base rental for the next 60 months in which rent is to be paid, plus</p> <p style="text-align: center;">1 ½ % of the total base rental for the remainder of the term.</p>
<p style="text-align: center;">GROUND LEASES</p> <p style="text-align: center;">First year's total base annual rent is capitalized at 8% and capitalized value is multiplied by 6%.</p>

The above rates are subject to the following provisions:

1. **Term of More Than 25 Years:**
If a lease term is in excess of 25 years then the commission shall be calculated only upon the base rental to be paid for the first 25 years of the lease term.
2. **Month to Month Tenancy:**
The minimum commission for a month to month tenancy, tenancy at will, or any other tenancy which is not reduced to a written lease agreement between a tenant and Owner shall be equal to the first and one half month's base rental. The commission shall be payable upon occupancy. In the event such a tenant subsequently executes a written lease with Owner, either directly or with the assistance of Broker or anyone else, within 24 months from the date of initial occupancy, then Broker shall receive a leasing commission with respect to such lease in accordance with the provisions of paragraph B., above.
3. **Option(s) or Right(s) of First Refusal to Renew, Extend Lease or Occupy Additional Space:**
If a lease for which a commission is payable hereunder contains (i) an option(s) or right(s) of first refusal to renew or extend, and a lease term(s) is renewed or extended whether strictly in accordance with the terms of such option(s) or right(s) or otherwise and/or (ii) an option(s) or right(s) of first refusal to expand, and a tenant occupies additional space whether strictly in accordance with the terms of such option(s) or right(s) or otherwise, then Owner shall pay a leasing commission in accordance with the provisions of this Schedule on the additional base rental to be paid, calculated at the commission rate applicable hereunder to the years of the lease in which the additional base rental is payable. Said commission shall be earned and payable at the time the extended term commences or the additional space is occupied, as applicable.
4. **Purchase of Property by Tenant:**
If a lease for which a commission is payable hereunder contains an option, right of first refusal, or similar right, and a tenant, its successors or assignees, or any agent, officer, employee or shareholder of a tenant purchases the Property whether strictly in accordance with the terms of such option, right of first refusal, similar right or otherwise during (a) the term of the lease, (b) any extension thereof, or (c) within ninety days after the expiration thereof, then a sales commission shall be calculated and paid in accordance with the provisions of Section A above; provided however, that there shall be a credit against such sales commission in the amount of lease commissions previously paid to Broker relating to that portion of the purchaser's lease term which is cancelled by reason of such sale. In no event shall such credit exceed the amount of such sales commission.
5. **Percentage Rent:**
If a lease for which a commission is payable hereunder contains a percentage rent clause, Owner shall pay a commission on the percentage rent payable by the tenant at the commission rate applicable to the period of the lease term for which the percentage rent is payable. This commission shall be payable within fifteen days after the tenant's final payment and accounting of percentage rent for the preceding lease year. Notwithstanding the foregoing, at the end of the third full lease year Owner shall pay a commission on percentage rent for the remainder of the original term of the lease. For the purpose of calculating this commission, the percentage rent for each remaining year of the term of the lease shall be deemed to be the same amount as the percentage rent payable for the third full lease year.

C. Representation:

When engaged to represent the City of Fresno in a pursuit of a lease or purchase of property it shall be done on a sole and exclusive basis. The City of Fresno will support the efforts of their agent to secure a fair market commission from the Lessor/Seller.