

## **RESOLUTION NO. 2014-131**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING AN AGREEMENT WITH KEEGAN AND COPPIN COMPANY, INC. FOR COMMERCIAL REAL ESTATE BROKERAGE SERVICES FOR CERTAIN VACANT COMMERCIAL PROPERTY COMMONLY CALLED STADIUM LANDS**

**WHEREAS**, The City of Rohnert Park (City) is in possession of certain vacant commercial property commonly called Stadium Lands, located at 5870 Labath Avenue (the Property); and,

**WHEREAS**, said Property is designated Regional Commercial, supporting retail and other commercial uses; and

**WHEREAS**, the City desires to sell the Property to be developed into retail uses; and

**WHEREAS**, the City has solicited proposals from commercial real estate brokers to market and sell the Property; and

**WHEREAS**, upon review by City staff and a consultant, Keegan and Coppin Company, Inc. has been identified as a qualified broker for the Property; and

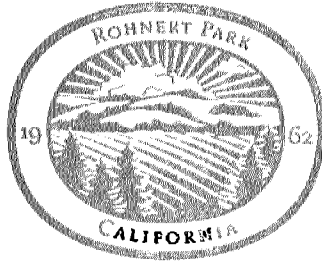
**WHEREAS**, the City and Keegan and Coppin Company, Inc. have negotiated a brokerage services agreement for the marketing and sale of the Property; and

**WHEREAS**, the City Council considered a staff report, presentation and public comment regarding the award of the brokerage services agreement at its duly noticed regular meeting of October 14, 2014.

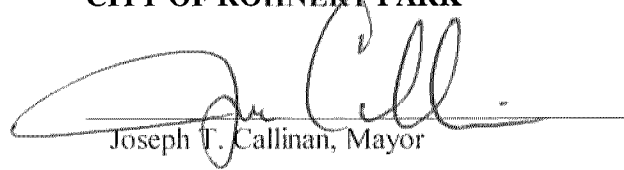
**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that it does hereby approve the agreement by and between Keegan and Coppin Company, Inc. and the City of Rohnert Park, a municipal corporation, for real estate brokerage services, in substantially similar form to the agreement attached to the Staff Report as "Attachment 2" and incorporated by this reference.

**BE IT FURTHER RESOLVED** that the Council hereby authorizes the City Manager to execute said brokerage services agreement, subject to minor modification as approved by the City Attorney, and to perform such other acts as may be necessary or convenient to effect the purposes of this Resolution.

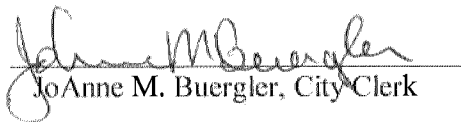
**DULY AND REGULARLY ADOPTED** this 28<sup>th</sup> day of October, 2014.



**CITY OF ROHNERT PARK**

  
Joseph T. Callinan, Mayor

**ATTEST:**

  
JoAnne M. Buergler, City Clerk

BELFORTE: Aye MACKENZIE: Aye STAFFORD: Aye AHANOTU: Aye CALLINAN: Aye  
AYES: ( 5 ) NOES: ( 0 ) ABSENT: ( 0 ) ABSTAIN: ( 0 )

**REAL ESTATE BROKERAGE SERVICES AGREEMENT**  
**BETWEEN THE CITY OF ROHNERT PARK AND KEEGAN AND COPPIN**  
**COMPANY, INC.**

THIS REAL ESTATE BROKERAGE SERVICES AGREEMENT ("Agreement") is executed effective as of October 29, 2014 ("Effective Date"), by and between the City of Rohnert Park, a municipal corporation in the state of California (the "CITY") and Keegan and Coppin Company, Inc. ("BROKER"). CITY and BROKER are referred to herein as the "Parties".

The Parties agree as follows:

1) **SERVICES.** Subject to the terms and conditions set forth in this Agreement, BROKER shall provide to the CITY the services described in Exhibit "A," and is attached hereto and incorporated by this reference. BROKER shall provide said services at the time, place, and in the manner specified in Exhibit "A".

2) **PAYMENT.** CITY shall pay BROKER for professional services rendered pursuant to this Agreement at the rate and in accordance with the schedules set forth in Exhibit "B," which is attached hereto and incorporated by this reference. The payments specified in Exhibit "B" shall be the only payments to be made to BROKER for services rendered pursuant to this Agreement. Payment by City under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to the CITY at the time of payment. Unless otherwise specified in Exhibit "B", BROKER shall be paid for services rendered pursuant to this Agreement through escrow for the sale of the Property or part thereof.

BROKER shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by BROKER.

3) **FACILITIES AND EQUIPMENT.** BROKER shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4) **GENERAL PROVISIONS.** The general provisions set forth in Exhibit "C," which is attached hereto and incorporated by this reference, are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5) **INSURANCE REQUIREMENTS.** The insurance requirements set forth in Exhibit "D," which is attached hereto and incorporated by this reference, are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

7) LISTING AGENT. Subject to the exclusions set forth in Exhibit "E" attached hereto and incorporated herein by reference, CITY appoints Shawn Johnston, Dave Peterson, and Ken Bizzell, as employees of the BROKER, (hereinafter and collectively referred to as "LISTING AGENT") as the CITY's sole agent during the term of this Agreement with the Exclusive right to sell or lease the real property owned by the CITY that is commonly known as Assessor's Parcel Number 143-040-124 (the "PROPERTY"). The PROPERTY consists of approximately 12.25 acres and is located in Rohnert Park, California, County of Sonoma. If no offers to sell or lease the Excluded Property (as defined in Exhibit "E") are received during the Exclusion Period (as defined in Exhibit "E"), then upon the completion of the Exclusion Period, the LISTING AGENTS shall be the CITY's sole agent for all transactions under the terms of this Agreement for the duration of the term of this Agreement.

CITY is entering into this Agreement in material reliance upon the particular personal skills of the LISTING AGENT. Any change in the LISTING AGENT must receive the prior written consent of CITY, which may be given or withheld in CITY's sole and absolute discretion, without stating reason therefor. If LISTING AGENT is no longer employed or terminated by BROKER, CITY may immediately cancel this Agreement by providing BROKER with ten (10) days written notice.

8) LISTING AGENT is a licensed broker in the State of California and BROKER shall require LISTING AGENT to maintain such license during the term of this Agreement.

9) COMMISSION. Subject to the exclusions set forth in Exhibit "E", if during the term hereof, CITY sells or leases all or any interest in the PROPERTY, CITY will pay to BROKER a commission in accordance with the attached Exhibit B. Within 15 days after the end of the term, BROKER will provide to CITY a list of prospective purchaser(s) or tenant(s) to whom the PROPERTY was submitted (by BROKER, CITY or any third party) during the term. If a prospective purchaser, appearing on said list, enters into a purchase contract, option or lease agreement within 180 days after the end of the term, and such transaction thereafter closes, CITY will pay a commission to BROKER as provided above. Broker shall provide reasonable evidence to CITY to document that information regarding the PROPERTY was actually presented to such prospective purchaser(s) or tenant(s) during the term of this Agreement. If the PROPERTY or part thereof is in escrow at the time that the term of this Agreement would otherwise expire, this Agreement shall extend with respect to such portion of the PROPERTY until such escrow closes or is terminated.

10) PROCURING BROKERS. BROKER shall recognize a procuring broker who has been appointed as a purchaser or tenant's exclusive agent in a transaction for which a commission is payable hereunder, BROKER will request such broker to agree to accept no more than one-half (1/2) of the commission as determined in accordance with Exhibit "B" as its compensation. If such broker so agrees, CITY will pay to BROKER the commission provided for herein, out of which BROKER will pay to such broker its agreed share and retain the balance as BROKER's compensation. If such broker does not so agree, then negotiations will be suspended until such agreement is obtained. BROKER will not be liable for failure to obtain such agreement. In no

event shall CITY be responsible for paying any commission in excess of the amount stated in this Agreement.

11) ALTERNATIVE TRANSACTION. If a proposed transaction covered by this Agreement turns into any other transaction, including, but not limited to, an exchange, build to suit, option to purchase, right of first refusal, or ground lease, then BROKER will automatically, without the necessity of any further acts by CITY or BROKER or an amendment to this Agreement, be CITY's sole and exclusive agent for such transaction and will be entitled to a commission on such transaction under the terms of this Agreement. If the commission computation is not addressed in the attached Schedule of Commissions (Exhibit B), then the CITY and BROKER shall negotiate in good faith on a mutually agreeable commission.

12) PROPERTY INFORMATION. CITY has informed BROKER in writing of all knowledge of CITY with respect to toxic, contaminated or hazardous substances, or defective conditions, at the PROPERTY. CITY authorizes BROKER to transmit such information to prospective purchasers. With respect to sale or ground lease of the PROPERTY only, CITY and BROKER each acknowledge that they are required to make certain "natural hazard disclosures" to prospective purchasers or tenants prior to closing. CITY agrees, at its sole cost and expense, to retain the services of a third party professional consultant to determine whether, based on available mapping, disclosure is required, who will issue a report with respect thereto, which report will be delivered to the prospective purchaser. CITY hereby agrees to indemnify, defend and hold BROKER harmless of and from any and all claims from prospective purchasers or tenants of the PROPERTY arising from any error or omission by CITY in such reports or arising from any CITY failure to comply with any disclosure obligation of CITY.

13) OTHER CLIENTS. BROKER shall not represent potential purchasers or tenants of the PROPERTY without obtaining CITY's prior written consent.

14) AUTHORITY. CITY represents that it is the owner of the PROPERTY and/or has the full right, power and authority to execute this Agreement and to consummate a sale or lease transaction as provided herein, and to perform CITY's obligations hereunder.

15) PROFESSIONAL ADVICE. BROKER/LISTING AGENT recommends that CITY obtain legal, tax or other professional advice relating to this Agreement and the proposed sale of the PROPERTY, as well as the condition and/or legality of the PROPERTY, including, but not limited to, the PROPERTY 's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans With Disabilities Act. BROKER will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by CITY and BROKER. CITY further agrees that in determining the financial soundness of any prospective purchaser or tenant, CITY will rely solely upon CITY's own investigation and evaluation, notwithstanding BROKER's assistance in gathering any financial information.

16) NON-DISCRIMINATION. It is unlawful for either CITY or BROKER to discriminate against any persons because of their race, color, religion, national origin, sex, disability or family status.

17) SURVIVAL. This Agreement is binding upon the parties hereto and their

respective successors and assigns. The terms "CITY", "Purchaser" and "Tenant" include affiliates, successors, assigns and nominees. Notwithstanding the foregoing, BROKER may not assign this Agreement without CITY's prior written consent, which CITY may withhold in its sole discretion.

18) PUBLICITY. CITY hereby consents to BROKER's publicizing its role in any transaction entered into, subject to CITY's approval of such publicity.

19) COUNTERPARTS; AUTHORITY. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

20) ENTIRE AGREEMENT; AMENDMENTS. This Agreement together with the Exhibits attached hereto constitutes the entire agreement between CITY and BROKER with respect to the subject matter hereof and supersedes all prior written or oral communication with respect thereto. No modification of this Agreement will be effective unless made in writing and signed by both CITY and BROKER.

21) TERM. The term of this Agreement shall commence on the Effective Date, and shall continue in full force and effect until October 15, 2015, unless earlier terminated or amended as provided for in this Agreement.

22) OPTION TO EXTEND TERM. In the event the CITY has not entered into a contract to dispose of the PROPERTY by the end of the Term (as specified in Section 22), then the CITY shall have the right to extend the term of this Agreement up to twelve (12) months, subject to the mutual written agreement of the BROKER and the CITY.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY

BROKER

By: \_\_\_\_\_  
Darrin Jenkins, City Manager

By: \_\_\_\_\_  
Shawn Johnson, Managing Partner

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

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

Attest: \_\_\_\_\_  
JoAnne Buerger, City Clerk

Approved as to Form

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Alexandra Barnhill, Assistant City Attorney

## **EXHIBIT "A"**

### **SCOPE OF SERVICE**

The CITY has indicated that it desires to sell or lease the PROPPERTY (as defined in Section 7 of the Agreement). The CITY has deemed the PROPERTY surplus. To this end, the CITY seeks the services of BROKER to assist the CITY in disposing the PROPERTY in a timely and efficiency manner at the highest possible price. The PROPERTY is currently zoned Commercial-Regional, and the CITY anticipates selling the PROPERTY for a use that is consistent with this zoning designation or to an experienced developer who will develop the Property for such use. The following outlines the scope of service to be performed by BROKER:

- Broker Opinion of Value. BROKER will prepare and submit a Broker Opinion of Value of the PROPERTY(S) within thirty (30) days of CITY's issuance of a Notice to Proceed. The Broker Opinion of Value shall be updated on a periodic basis at the request of the CITY, but not less than on a quarterly basis.
- A representative of the BROKER (Shawn Johnson, Dave Peterson or Ken Bizzell) shall participate in-person or via teleconference in all CITY Team meetings. The LISTING AGENT will be a valuable member of this team and will be expected to provide regular updates on the marketing and disposition of the Property, as well as new development, comparable lease transactions, and comparable sales transactions.
- BROKER shall advise the CITY and CITY's consultants that are completing any other due diligence necessary to facilitate disposition of the PROPERTY.
- BROKER will submit to CITY Quarterly Market Research reports and any other relevant market data or analysis prepared by BROKER.
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- BROKER will develop and submit to the CITY a comprehensive and proactive marketing plan that will include paid advertising within thirty (30) days of the Notice to Proceed for the disposition of the PROPERTY. At a minimum, the advertising and marketing plan will consist of the following elements:
  - Illustrative signage that the BROKER desires to install on the PROPERTY during the term of this Agreement. Upon receiving CITY's approval for the installation of such signage, the BROKER shall be responsible for the installation and day-to-day maintenance of the signage, which shall include ensuring that it is securely installed on a periodic basis and free of any graffiti.
  - Collateral materials including a flier, brochure, mailers, project specific website, etc. that will be developed by the BROKER, at BROKER's sole expense, to market the PROPERTY to prospective purchasers and media outlets to promote the PROPERTY. BROKER will be responsible for the distribution of the collateral materials and the PROPERTY website. These materials shall be updated on a periodic basis at the CITY's request.



- Identify websites such as Loopnet and the BROKER's website that will advertise the PROPERTY. The BROKER shall be responsible for the costs of listing the PROPERTY on Loopnet and the BROKER's website.
- Identify any other advertising and marketing opportunities including the costs of these items.
- A timeline consisting of key milestones and key deliverables.
- A detailed budget including a breakdown of expenses to be incurred by BROKER and expenses to be incurred by the CITY. At a minimum, the BROKER shall spend \$5,000 (Five Thousand and 00/100 dollars) on a mutually acceptable advertising campaign for print media (paid advertising in for example: Business Journal, trade periodicals, real estate journals, etc.) including the cost of producing the property brochure, interactive brochures and all direct mail expenses expended by BROKER. The CITY's investment, if any, shall be determined upon review and approval of the advertising and marketing plan. Amounts spent by the CITY on advertising and marketing will be credited against the commission upon the close of escrow provided that BROKER has requested CITY to make such expenditures.

The BROKER will update the advertising and marketing plan on a periodic basis, at the CITY's request. The BROKER will also provide regular updates to the CITY on its progress and success in implementing the advertising plan.

- Broker will develop and submit to CITY a comprehensive list of prospective purchasers that focuses on owner-users, within 60 days of CITY's issuance of a Notice to Proceed. BROKER shall provide the CITY with regular updates on the status of its efforts to market the PROPERTY to this list of prospective purchasers.
- CITY will refer to BROKER all inquiries and offerings received by CITY regarding the PROPERTY, and BROKER agrees to immediately follow-up on any inquiries received by the CITY.
- BROKER shall represent the CITY throughout the disposition and negotiation process and shall assist the CITY and the CITY's attorney in the preparation and negotiation of any agreements required to dispose of the PROPERTY. BROKER will enlist the efforts of its firm to secure a satisfactory purchaser(s) or tenant(s) for the PROPERTY and will also solicit the cooperation of other licensed real estate brokers.

## **EXHIBIT "B"**

### **PAYMENT**

For the sale of the PROPERTY, payment shall be 5% of the actual purchase price of the PROPERTY, paid at close of escrow through the title company.

## EXHIBIT "C"

### GENERAL PROVISIONS

1) INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, BROKER shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control BROKER only insofar as the results of BROKER's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which BROKER accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. BROKER represents and warrants to CITY that BROKER has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for BROKER to practice BROKER's profession and perform the services required under this Agreement. BROKER represents and warrants to CITY that BROKER shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for BROKER to practice his profession.

3) TIME. BROKER shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of BROKER's obligations pursuant to this Agreement. BROKER shall adhere to the Schedule of Activities as described in their Executive Summary.

4) BROKER NOT AN AGENT. Except as expressly stated in this Agreement or as CITY may otherwise specify in writing, BROKER shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. BROKER shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) PERSONNEL. BROKER shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by BROKER to perform services pursuant to this Agreement, BROKER shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

7) STANDARD OF PERFORMANCE. BROKER shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which BROKER is engaged in the geographical area in which BROKER practices his profession. All products which BROKER delivers to CITY pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person

practicing in BROKER's profession. CITY shall be the sole judge as to whether the product of the BROKER is satisfactory.

8) TERMINATION OF AGREEMENT. This Agreement may be terminated at any time by the CITY, with or without cause, at CITY's discretion upon prior written 10 (ten) day notification to BROKER. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY. Notwithstanding the foregoing, if the PROPERTY or any part thereof is in escrow, the provisions of Section 9 of the Agreement shall apply with respect to such escrow and the term of this Agreement shall extend with respect to such portion of the PROPERTY until such escrow closes or is terminated.

9) PRODUCTS OF CONSULTING. All products of the BROKER provided under this Agreement shall be the property of the CITY, and none of said products shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the CITY. Upon termination of this Agreement with or without cause, BROKER shall turn over to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by BROKER or its subcontractors, if any, or given to BROKER or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the CITY.

10) INDEMNIFY AND HOLD HARMLESS.

BROKER shall, to the fullest extent permitted by law, indemnify, defend with counsel reasonably acceptable to CITY, and hold harmless the CITY, its officials, officers, agents, employees and volunteers from all claims, costs, damages, losses, suits, liabilities or actions of every name, kind and description ("Claims") arising directly or indirectly in connection with the performance under this Agreement by BROKER, LISTING AGENTS, or the employees, agents or contractors of the foregoing, or any person directly or indirectly employed by or acting as agent for BROKER in the performance of this Agreement. Except to the extent any such Claim arises as a result of the gross negligence or willful misconduct of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of BROKER to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve BROKER from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages and shall continue to bind the parties after termination/completion of this Agreement.

11) PROHIBITED INTERESTS. BROKER represents, warrants and covenants that neither BROKER, LISTING AGENTS, nor any owner, officer or principal of BROKER's or LISTING AGENTS' firm currently, directly or indirectly, possesses any form of economic or ownership interest in any of the PROPERTY or part thereof, and that none of the foregoing shall, directly or indirectly, acquire any such interest during the term of this Agreement. BROKER and LISTING AGENTS further covenant that in the performance of this Agreement, no person

having any such interest shall be employed by it as an officer, employee, agent, consultant or subcontractor without the express prior written consent of the CITY. BROKER agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the CITY in the performance of the Agreement.

12) BROKER NOT A PUBLIC OFFICIAL. BROKER is not a "public official" for purposes of Government Code §§ 87200 et seq. BROKER conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, BROKER possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

13) CITY NOT OBLIGATED TO THIRD PARTIES. CITY shall not be obligated or liable for payment hereunder to any party other than the BROKER.

14) WAIVER. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

15) SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

16) APPLICABLE LAW; VENUE. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

17) TIME OF THE ESSENCE. Time is of the essence of this Agreement.

18) INTERPRETATION. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

19) WRITTEN NOTIFICATION. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to CITY:                      City Manager  
    City of Rohnert Park – City Hall  
    130 Avram Avenue

Rohnert Park, CA 94928

If to BROKER:        Shawn Johnson, Managing Partner  
                             1355 North Dutton Avenue  
                             Santa Rosa, CA 95401

20)    EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the CITY executes an agreement for or makes payment to BROKER in the amount of \$600 (six hundred dollars) or more in any one calendar year, BROKER shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether BROKER is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, non-profit corporation or other form of organization.

b) If BROKER is doing business as a sole proprietorship, BROKER shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If BROKER is doing business as other than a sole proprietorship, BROKER shall provide BROKER's federal tax identification number.

## EXHIBIT "D"

### INSURANCE REQUIREMENTS

BROKER shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the BROKER and BROKER's agents, representatives, and employees. BROKER shall ensure that all persons performing work under this Agreement are covered by automobile and liability insurance coverage in accordance with the requirements of this Agreement.

#### 1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$2,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

#### 2) INDUSTRY SPECIFIC COVERAGES

The following insurance is also required.

Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.

#### 3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. See BROKER Self Insurance clarification in Section 3(c) below.

b) The general and automobile liability policies are to contain, the following provisions:

- i) The CITY, its officers, officials, employees, CONSULTANTS and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the BROKER; products and completed operations of the BROKER; premises owned, occupied or used by the BROKER; or automobiles owned, leased, hired or borrowed by the BROKER. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials,

employees or volunteers.

- ii) For any claims related to this project, the BROKER's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the BROKER's insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The BROKER'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 insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the CITY.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the BROKER's policy limits of coverage.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, with the exception that, the CITY acknowledges and accepts that the first \$2 million dollars worth of BROKER'S Professional Liability Insurance is through its Captive Insurance Company. BROKER Self Insures the first \$2 million dollars worth of Professional Liability Insurance which is acceptable to the CITY.

d) VERIFICATION OF COVERAGE. BROKER shall furnish the CITY with a Certificate of Insurance effecting coverages required by this Exhibit D. The certificate is to be signed by a person authorized by the insurer to bind coverage on its behalf. All insurance certificates are to be received and approved by the CITY before work commences.

e) WAIVER OF SUBROGATION. BROKER and BROKER's insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, officers, agents, employees, and volunteers for losses paid under BROKER's workers' compensation insurance policy which arise from the work performed by BROKER for the CITY.



## EXHIBIT "E"

### EXCLUSION LIST

Notwithstanding any provision of this Agreement to the contrary, during the period commencing on October 15, 2014 and ending 45 days thereafter (the "Exclusion Period"), CITY may offer for sale or lease, and may accept from any of the entities listed in this Exhibit "E" offers to purchase or lease the PROPERTY without using the services of BROKER or the LISTING AGENT, and no commission or other compensation shall be payable to BROKER or LISTING AGENT in connection with any such sale or lease.

#### Entities:

1. Bellwether Properties
2. Fry's Electronics
3. Robert Leys Architects AIA
4. USA Properties Fund
5. St. Regis Properties

Notwithstanding the foregoing, if CITY sells or leases any of the Excluded Properties during the Exclusion Period, BROKER shall be entitled to reimbursement for actual expenses BROKER has incurred in connection with the marketing of the PROPERTY, in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500) in the aggregate. BROKER must submit a written request for reimbursement to CITY in accordance with Section 19 of Exhibit "C" that is accompanied by evidence of marketing expenses incurred for the specific properties in form reasonably acceptable to CITY.