

CITY COUNCIL

For City Clerk's Use:

APPROVED **DENIED**

Reso No. _____ File No. _____

Ord No. _____

Agenda Item No.: 6
Date: June 13, 2012

TO: Honorable Mayor and Members of the City Council

FROM: Edward N. Domingue, Director of Engineering Services
Debra Lundy, Real Property Manager

SUBJECT: Award of Consulting Agreement- Real Estate Brokerage Services

RECOMMENDATION:

It is requested that Council adopt Resolution No. 2012-83 authorizing the Real Property Manager and City Clerk to execute, on behalf of the City, a Consulting Agreement with Cassidy Turley BRE Commercial for real estate brokerage services.

FISCAL ANALYSIS:

The services to be provided under this Consulting Agreement will assist the City to achieve its objective of managing the City's real property assets in a fiscally responsible manner. Real property that is excess or surplus to the City's needs shall be marketed for lease and/or for sale at the market rate, generating rental revenues and disposition proceeds. With the exception of advisory services that may be called for from time to time (which are based on an hourly rate), the majority of fees for the services provided to the City under this agreement shall be percentage based and only accrued upon the successful completion of a sale or lease of a City property.

PREVIOUS ACTION:

Resolution 2007-49 established the City's Disposal Policy for City-owned Real Property, which sets forth that sales on the open market shall be handled by a qualified real estate broker having been selected via a Request for Qualifications process upon City Council approval.

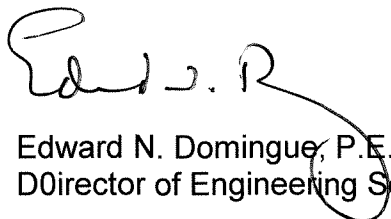
BACKGROUND:

On October 2, 2011, Real Property advertised a Request for Qualifications ("RFQ") for Real Estate Brokerage Services. The ad was posted on the City's website and published in the North County Times for four (4) consecutive Sundays. Additionally, Staff sent the RFQ to brokerage firms who had demonstrated an interest in working with the City by contacting the Real Property Manager. Staff received one (1) proposal by the November 3rd deadline and it was from the incumbent firm, Cassidy Turley BRE Commercial (who partnered with Grubb Ellis BRE in 2010). In an effort to entice additional responders, Staff extended the deadline to December 1, 2011 and resent the RFQ to those firms who received it the first time, and additionally sent it to the qualified firms who responded to the

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City's RFQ in 2007 (eight firms total). As of December 1, 2011, two (2) additional firms submitted proposals for consideration. A review panel consisting of the Real Property Manager and two other City staff reviewed all three proposals. Based on the qualifications of the responsive firms, the review panel recommends the contract be awarded to Cassidy Turley. The firm will provide the City with real estate services on an as-needed basis that will maximize the City's returns on rental and disposition properties.

Respectfully submitted,


Edward N. Domingue, P.E.
Director of Engineering Services


Debra Lundy
Real Property Manager

RESOLUTION NO. 2012-83

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA
AUTHORIZING THE REAL PROPERTY
MANAGER AND CITY CLERK TO EXECUTE,
ON BEHALF OF THE CITY, A CONSULTING
AGREEMENT WITH CASSIDY TURLEY BRE
COMMERCIAL

WHEREAS, the City of Escondido solicited proposals from qualified real estate brokers to provide brokerage services to the City of Escondido; and

WHEREAS, the Real Property Manager and a review panel comprised of two additional City staff members have reviewed the proposals and recommend the award of the agreement to Cassidy Turley BRE Commercial ("Cassidy Turley") for such services including property disposal, leasing, advisory and consulting; and

WHEREAS, this City Council desires at this time, and deems it to be in the best public interest, to retain Cassidy Turley to perform such services for the City of Escondido as specified in the Consulting Agreement ("Agreement").

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the City Council accepts the recommendation of the Real Property Manager and the review panel.
3. That the Real Property Manager and City Clerk are hereby authorized to execute, on behalf of the City, an Agreement with Cassidy Turley. A copy of the Agreement is attached as Exhibit "1" and is incorporated by this reference.



CITY OF ESCONDIDO
CONSULTING AGREEMENT

This Agreement is made this _____ day of _____, 2012 ("Effective Date").

Between: CITY OF ESCONDIDO
a Municipal Corporation
201 N. Broadway
Escondido, California 92025
Attn: Debra Lundy, Real Property Manager
760-839-4034
("CITY")

And: Cassidy Turley BRE Commercial
1000 Aviara Parkway, Suite 100
Carlsbad, CA 92011
Attn: Don Grant
760-431-4200
("CONSULTANT")

Witness that whereas:

- A. It has been determined to be in the CITY's best interest to retain the professional services of a consultant to provide real estate brokerage services; and
- B. The CONSULTANT is considered competent to perform the necessary professional services for CITY;

NOW, THEREFORE, it is mutually agreed by and between CITY and CONSULTANT as follows:

1. Services. The CONSULTANT will furnish all of the services as described in "**Attachment A**" which is attached and incorporated by this reference.
2. Compensation. The CITY will pay the CONSULTANT based on the fees set forth in and in accordance with the conditions specified in "**Attachment A.**" Any breach of this Agreement will relieve CITY from the obligation to pay CONSULTANT, if CONSULTANT has not corrected the breach after CITY provides notice and a reasonable time to correct it.
3. Scope of Compensation. The CONSULTANT will be compensated for performance of tasks specified in "Attachment A" only. No compensation will be provided for any other tasks without specific prior written consent from the CITY.

4. Duties. CONSULTANT will be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other services furnished by the CONSULTANT under this Agreement, except that the CONSULTANT will not be responsible for the accuracy of information supplied by the CITY.
5. Personnel. The performance of services under this Agreement by certain professionals is significant to the CITY. CONSULTANT will assign the persons listed on "**Attachment B,**" which is attached and incorporated by this reference, to perform the Services described in Paragraph 1, and will not add or remove persons from the list without the prior written consent of the CITY. If no designation is made, then CONSULTANT may not assign services without obtaining the advance written consent of the CITY. CONSULTANT will not subcontract any tasks under this Agreement without obtaining the advance written consent of the CITY.
6. Term. The term of this Agreement shall be two (2) years from the Effective Date. In the event that CONSULTANT is handling pending transactions for the CITY when the Agreement term expires, at the discretion of the CITY, CONSULTANT shall continue providing said services under this Agreement for the duration of those pending transactions. In such case, this Agreement shall remain in full force and effect for the duration of the pending transaction(s). Pending transactions shall include open escrows and ongoing negotiations related to listings for sale and for lease.
7. Termination. Either CONSULTANT or the CITY may terminate this Agreement with thirty (30) days advance written notice.
8. City Property. All original documents, drawings, electronic media, and other material prepared by CONSULTANT under this Agreement immediately becomes the exclusive property of the CITY, and may not be used by CONSULTANT for any other purpose without prior written consent of the CITY.
9. Insurance.
 - a. The CONSULTANT shall secure and maintain at its own cost, for all operations, the following insurance coverage, unless reduced by the City Attorney:
 - (1) General liability insurance. Occurrence basis with minimum limits of \$1,000,000 each occurrence, \$2,000,000 General Aggregate, and \$1,000,000 Products/Completed Operations Aggregate; and
 - (2) Automobile liability insurance of \$1,000,000 combined single-limit per accident for bodily injury and property damage, unless waived as provided in 8(b) below; and
 - (3) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended, or certificate of sole proprietorship; and
 - (4) Errors and Omissions professional liability insurance with minimum coverage of \$1,000,000.
 - b. It is the parties' understanding that the use of a motor vehicle is not a primary subject of this Agreement. CONSULTANT acknowledges that operating a motor vehicle is outside the scope of this Agreement and occurs only at the convenience of the CONSULTANT. A waiver of automobile liability insurance is only effective if both sets of initials appear below, otherwise such insurance is required.

Acknowledged by CONSULTANT _____

Waiver appropriate by CITY _____

- c. Each insurance policy required above must be acceptable to the City Attorney.
 - (1) Each policy must provide for written notice within no more than thirty (30) days if cancellation or termination of the policy occurs. Insurance coverage must be provided by an A.M. Best's A- rated, class V carrier or better, admitted in California, or if non-admitted, a company that is not on the Department of Insurance list of unacceptable carriers.
 - (2) All non-admitted carriers will be required to provide a service of suit endorsement in addition to the additional insured endorsement.
 - (3) Both the General Liability and the Automobile Liability policies must name the CITY specifically as an additional insured under the policy on a separate endorsement page. The CITY includes its officials, employees, and volunteers. The endorsement must be ISO Form CG 20 10 11 85 edition or its equivalent for General Liability endorsements and CA 20 01 for Automobile Liability endorsements.
 - (4) The General Liability policy must include coverage for bodily injury and property damage arising from CONSULTANT's work, including its on-going operations and products-completed operations hazard.
 - (5) The General Liability policy must be primary and noncontributory and any insurance maintained by CITY is excess.
- c. In executing this Agreement, CONSULTANT agrees to have completed insurance documents on file with the CITY within fourteen (14) days after the date of execution. Failure to comply with insurance requirements under this Agreement will be a material breach of this Agreement, resulting in immediate termination at CITY's option.

10. Indemnification. CONSULTANT (which in this paragraph 9 includes its agents, employees and subcontractors, if any) agrees to indemnify, defend, and hold harmless the CITY from all claims, lawsuits, damages, judgments, loss, liability, or expenses, including attorneys' fees, for any of the following:

- a. Any claim of liability arising out of the negligence or any acts or omissions of CONSULTANT in the performance of this Agreement;
- b. Any personal injuries, property damage or death that CONSULTANT may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or
- c. Any injury or death which results or increases by any action taken to medically treat CONSULTANT.

11. Anti-Assignment Clause. The CONSULTANT may not assign, delegate or transfer any interest or duty under this Agreement without advance written approval of the CITY, and any attempt to do so will immediately render this entire Agreement null and void. Unless CONSULTANT assigns this entire Agreement, including all rights and duties herein, to a third party with the CITY'S written consent, CONSULTANT shall be the sole payee under this Agreement. Any and all payments made pursuant to the terms of this Agreement are otherwise not assignable.

12. Costs and Attorney's Fees. In the event that legal action is required to enforce the terms and conditions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.
13. Independent Contractor. CONSULTANT is an independent contractor and no agency or employment relationship, either express or implied, is created by the execution of this Agreement.
14. Merger Clause. This Agreement and its Attachments, if any, are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and any of its Attachments, the provisions of this Agreement must prevail.
15. Anti-Waiver Clause. None of the provisions in this Agreement will be waived by CITY because of previous failure to insist upon strict performance, nor will any provision be waived by CITY because any other provision has been waived, in whole or in part.
16. Severability. The invalidity in whole or in part of any provision of this Agreement will not void or affect the validity of any other provisions of this Agreement.
17. Choice of Law. This Agreement is governed by the laws of the State of California. Venue for all actions arising from this Agreement must be exclusively in the state or federal courts located in San Diego County, California.
18. Multiple Copies of Agreement/Counterparts. Multiple copies and/or counterparts of this Agreement may be executed, including duplication by photocopy or by computerized scanning device. Each duplicate will be deemed an original with the same effect as if all the signatures were on the same instrument. However, the parties agree that the Agreement on file in the office of the Escondido City Clerk is the copy of the Agreement that shall take precedence should any differences exist among copies or counterparts of the document.
19. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the CITY.
20. Notices to Parties. Any statements, communications or notices to be provided pursuant to this Agreement must be sent to the attention of the persons indicated below. Each party agrees to promptly send notice of any changes of this information to the other party, at the address first above written.
21. Business License. The CONSULTANT is required to obtain a City of Escondido Business License prior to execution of this Agreement.
22. Compliance with Applicable Laws, Permits and Licenses. CONSULTANT shall keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. CONSULTANT shall obtain any and all licenses, permits, and authorizations necessary to perform services set forth in this Agreement. Neither CITY, nor any elected nor appointed boards, officers, officials, employees, or agents of CITY shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

23. Immigration Reform and Control Act of 1986. CONSULTANT shall keep itself informed of and comply with the Immigration Reform and Control Act of 1986. CONSULTANT affirms that as an employer in the State of California, all new employees must produce proof of eligibility to work in the United States within the first three days of employment and that only employees legally eligible to work in the United States will be employed on this public project. CONSULTANT agrees to comply with such provisions before commencing and continuously throughout the performance of this Agreement.

IN WITNESS WHEREOF, the parties below are authorized to act on behalf of their organizations, and have executed this Agreement as of the date set forth below.

CITY OF ESCONDIDO

Date: _____
Debra Lundy, Real Property Manager

Date: _____
Diane Halverson, City Clerk

CASSIDY TURLEY BRE COMMERCIAL

Date: _____
Signature
Name & Title (please print)

Date: _____
Signature
Name & Title (please print)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

By: _____

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

ATTACHMENT A

SCOPE OF SERVICES

Provide full range of On Call, As-Needed, Residential and Commercial Real Estate Brokerage Services. Services will be required from time to time on specific transactions to include:

1. Sale of excess and/or surplus City owned real property, or other City property, as designated by the City, by open market listing;
2. Leasing services, as needed, for rental and/or leasing of real property from or to the City; and
3. Advisory/Consultation Services (hourly-based), such as assisting City real property staff with market research and assessment and sale or lease negotiations that are handled by City staff (versus by the selected Broker).

FEES

Commercial Property

	Where Commission to be Shared with Buyer/Lessee Representative	Where No Commission Share
SALE		
Under \$1 Million	5.5%	3.5%
\$1 Million – \$3 Million	5%	3%
\$3 Million – \$5 Million	4%	2.5%
\$5 Million – \$7 Million	3.5%	2%
\$7 Million – \$10 Million	3%	1.75%
Over \$10 Million	2.75%	1.5%
LEASE		
Year 1	5.5%	4%
Year 2	5.5%	4%
Year 3	4.5%	3%
Year 4	4%	3%
Year 5	4%	3%
Year 6-10	2.5%	1.25%

Residential Property

Fees are for single family, four units or less

With Co-Op Broker	Judson Real Estate, Inc.
5.5%	4%

Consulting/Advisory services shall be billed on an hourly basis at \$150.00/hr.

ATTACHMENT B

PERSONNEL

- Dan Broderick, President & CEO
- Jonathan Freeman, Chief Operating and Chief Financial Officer
- Don Grant, RE Broker/ Industrial Division
- Mark Avilla, RE Salesperson/Office Division
- Andrew Peterson, RE Salesperson/Retail Division
- Bruce Schiff, CCIM, RE Officer/Retail Division
- Phil Lyons, CCIM, RE Officer/Retail Division
- Ray Adams, RE Broker/Investment Sales Specialist
- William Creagan, RE Broker (renewal pending)/Multi-Family Specialist
- Lynn Judson, RE Officer/Residential
- JoAnn Case Rady, RE Broker/Residential
- Cindy Cochran, RE Salesperson/Residential
- Paul Klink, RE Salesperson/Managing Director/Property Management