



**February 2, 2023**

**BY ELECTRONIC MAIL**

City of Chula Vista

Maria Kachadoorian (mkachadoorian@chulavistaca.gov)

cc. Eric Crockett ([ecrockett@chulavistaca.gov](mailto:ecrockett@chulavistaca.gov))

Glen Googins (ggoogins@chulavistaca.gov)

**Re: *Exclusive Lease Listing Agreement:  
Millenia, Lots 1 and 7 , Chula Vista, California ("Property")***

Dear Ms. Kachadoorian :

Thank you for selecting CBRE, Inc. ("CBRE", "us", "we", "our") to represent City of Chula Vista ("you", "your"). With respect to the leasing of the projects to be developed on Lots 1 and 7 of the larger project known as Millenia, located in the City of Chula Vista, State of California. The terms of this engagement are contained in this agreement ("Agreement").

1. The initial term of this Agreement shall commence upon mutual execution and delivery of this document, as indicated by the date of the final signature hereto, and shall terminate thirty- six (36) months thereafter, subject to extensions, by mutual agreement of the parties in their sole respective discretion, subject to each party's right to terminate this Agreement with or without cause upon ninety (90) days prior written notice to the other party. In the event Client terminates this Agreement prior to the expiration of the term, then Broker shall be entitled to the following compensation: if within six (6) months after the effective date of such termination, Client executes a binding agreement to lease any property for which negotiations were commenced during the Term (as evidenced by reciprocal correspondence) and set forth on a written list by Broker and delivered to Client by the effective date of such termination, then Broker shall receive the compensation set forth in the Agreement. Broker shall receive no compensation for any other properties that are not on such written list.
2. During the Term, you appoint us as your agent with the exclusive right to list and market the Property for lease and to negotiate lease agreements for the Property (which includes portions thereof). Notwithstanding the foregoing, the possible transaction with San Diego State University ("SDSU") currently being negotiated between City and SDSU with respect to a film school, a performing arts school or a combination or variation of similar uses (the "SDSU Transaction") shall be excluded from this agreement. CBRE shall not be entitled to any brokerage fee for the SDSU Transaction unless separately negotiated pursuant to the terms of a separate agreement subject to City's approval in its sole discretion.
3. We will commit the appropriate number of qualified and licensed professionals to this engagement. Your initial "Listing Team" is comprised of Tom Turner, Mike McShea, Chris Pascale, and Brian Hutcherson. We will have the right to change members of the Listing Team as necessary and appropriate. The Listing Team shall owe you duties of trust, confidence, and loyalty.
4. It is your right to: (a) approve, modify, reject, or disapprove any and all proposals and offers as well as any prospective tenants for the Property and (b) adjust the terms and conditions of any offer made, including but not limited to, adjusting the Property's lease offering rate, all in your sole discretion.

5. We will work with you to create and implement a strategy to lease the Property, including preparation of appropriate and customary marketing materials (such as an offering brochure). In developing the strategy, we will rely on (without requirement to verify) any information provided to us by you, your agents, affiliates and/or any of the Property's managers. However, we will not issue any written marketing materials without your prior written approval. Further, you authorize us to place one or more signs on the Property as we deem appropriate. You agree to reimburse us for one half (1/2) of reasonable third party out-of-pocket marketing expenses approved by you from time to time pursuant to a mutually developed and approved marketing plan and budget, which may be modified from time to time by mutual agreement. Reimbursement is due upon the receipt of an invoice.

We will leverage our network of occupiers, along with higher education, life sciences and tech relationships to ensure the property will be marketed to both local firms looking to relocate or add additional space, and international firms looking to enter the Chula Vista market or expand their current presence.

We will help identify and engage all relevant industry markets with high quality employment and university tie-in opportunities including, without limitation:

- Aerospace
- Cleantech
- Cybersecurity
- Defense
- Engineering
- Life Sciences
- Medical Device
- Media and Entertainment
- Software
- Telecommunications

We will take the following additional steps to marketing, recruitment and leasing success:

- Broker outreach and events
- Marketing materials catering to specific targeted users
- Offer commute, talent/employment, and demographic studies to potential relocating firms
- Press/Social Media coverage
- Engage brokers to fill possible smaller start-up/collaborative spaces
- Utilize drone footage to highlight area advantages
- Target tenants being priced out of other submarkets
- Support the development of a marketing center
- Develop "Why Chula Vista?" marketing materials for potential new-to-market large firms
- Advertise with industry-specific websites
- Signage at site to highlight superior visibility from access roads

6. The success of this engagement relies, in part, on cooperation and communication between you and CBRE. Therefore, you agree to: (i) provide us with all available information to assist us in marketing the Property; (ii) immediately refer to us all leasing and/or purchase inquiries for the Property; and (iii) conduct all negotiations with prospective tenants exclusively through us.
7. You represent that you either are the fee owner of or otherwise have control over the Property, subject to (i) the terms and conditions of any documents currently recorded in the Official Records of San Diego County; and (ii) any obligations of the City pursuant to the Surplus Land Act of the

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State of California. You further represent that you have full authority to enter into this Agreement without violating anyone else's rights, or any other agreements or contractual obligations.

8. We will present all offers to you and assist you in developing and negotiating counteroffers until a lease agreement ("Lease") is signed and all contingencies are satisfied or waived. You agree that you and/or your legal counsel are solely responsible for determining the legal sufficiency of any documents to be executed by you in any transaction contemplated by this engagement as well as the tax consequences of any such transaction. You are also responsible for evaluating any offers and determining with whom you will negotiate or enter into a transaction. While we may assist you in gathering reasonably available information, we cannot represent or warrant the creditworthiness of any prospect and/or their ability to satisfy their obligations under a Lease. All final business and legal decisions shall be made solely by you. Notwithstanding any designation of us as "agent" in this Agreement, we will have no right, power, or authority to enter into any agreement with any prospective tenant, prospective purchaser, real estate broker, or any other person in the name of, on behalf of, or otherwise binding upon you.
9. Subject to the carve out set forth in Section 2, above we will earn, and you agree to pay us, a commission in accordance with this Agreement and the attached Exhibit A to this Agreement ("Commission Schedule") if either of the following occur:
  - (a) during the Term, you enter into an agreement to lease the Property to a, whether procured by us, you, or anyone else or
  - (b) within one hundred twenty (120) days after the expiration of the Term or after the Agreement otherwise terminates (the "Post Term"), the Property is leased to, sold to, or negotiations continue, resume or commence leading to a lease or sale of the Property during the Post Term or thereafter to any person or entity with whom CBRE negotiated (either directly or through another broker or agent) or to whom the Property was submitted during the Term, or any such person's or entity's successors, assigns, or affiliates ("Existing Prospect"), You agree that CBRE is authorized to continue negotiations with Existing Prospects. We will submit to you a list of such Existing Prospects no later than fifteen (15) business days following the expiration or termination of the Term; provided, however, that if a written offer has been submitted prior to said expiration or termination date, then it shall not be necessary to include the offeror's name on the list.
10. You agree to remain responsible for payment of or leasing commissions earned by us (or that may accrue in the future) unless the person or entity to whom you transfer the Property assumes your obligations, in writing, in a form reasonably acceptable to us.
11. You agree that we are authorized to cooperate with and, if appropriate, share our commission with "Cooperating Brokers" (such as a broker representing a purchaser or a tenant). We will be responsible for paying the fee or commission due to the Cooperating Broker (if any) provided the Cooperating Broker: (i) represents the prospective tenant or purchaser pursuant to a written agreement, a copy of which is furnished to us prior to the execution of the transaction; (ii) is properly licensed; and (iii) executes and delivers to us an acceptable cooperating brokerage agreement. Market conditions may exist whereby, with your written agreement, which may be granted or denied in your sole discretion, the Cooperating Broker receives an above-standard fee and/or broker bonus. If so, our commission shall be increased by, and you agree to pay an amount such that we receive the total fee in accordance with the Commission Schedule.
12. The Listing Team are your designated agents to the exclusion of all of CBRE's other licensees. All other CBRE licensees shall be referred to as "Non-Listing Team Agents" and shall be considered Cooperating Brokers. You acknowledge that CBRE is an international brokerage firm and that it may represent prospective tenants and purchasers, thereby creating a dual agency. You hereby consent to our representation of such prospects. You acknowledge that Non-Listing Team Agents owe duties of trust, confidence and loyalty exclusively to their clients. In the event that CBRE has

a potential conflict of interest (such as CBRE proposing to act as a dual agent), then we will disclose the conflict to you and request your written consent to the conflict in advance of any negotiations with that potential tenant or purchaser which may be granted or denied in your sole discretion. The Listing Team and Non-Listing Team Agents shall not disclose the confidential information of one principal to the other.

13. Questions regarding environmental and zoning issues may arise during the course of our representation. CBRE is not obligated to perform and has not made any investigation of the physical conditions or zoning issues relating to the Property. You agree to disclose to us and allow us to disclose to prospective tenants and/or prospective purchasers everything you actually know (with no duty of inquiry) regarding present and future property issues including, but not limited to, structural, mechanical, hazardous materials, zoning and environmental matters affecting the Property and/or the Property's condition.
14. If the Property becomes the subject of foreclosure proceedings before the expiration of the Term, then in our sole and absolute discretion we may: (a) suspend this Agreement until we elect to reinstate it or (b) terminate this Agreement and enter into a listing agreement with any receiver, party initiating foreclosure, party purchasing the Property at a foreclosure sale, or any other third party.
15. All past due amounts shall bear interest at the lesser of ten percent (10%) per annum or the maximum rate permitted in the state in which the Property is located. No party will be entitled to punitive, special and/or consequential damages, and we each waive all rights to and claims for relief other than for compensatory damages.
16. You and CBRE agree to comply with all applicable laws, regulations, codes, ordinances and administrative orders governing each party's respective participation in any transaction contemplated by this Agreement. Further, we both acknowledge that: (a) it is illegal to refuse to display or lease or sell to or from any person because of one's membership in a protected class, *e.g.*: race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status or any other class protected by applicable law and (b) the Property will be offered in compliance with all applicable anti-discrimination laws.
17. This Agreement is the entire agreement and supersedes all prior understandings between you and CBRE regarding this engagement. The Agreement is governed by the laws of the state where the Property is located, without regard to its conflict of laws principles. This Agreement will be binding and inure to the benefit of your and CBRE's lawful representatives, heirs, successors, designees and assignees. It may not be altered or terminated except in a writing signed by both you and CBRE. Neither party's failure to exercise any of its rights under this Agreement will relieve the other party of its obligations hereunder. Nothing herein is or may be deemed a waiver or full statement of any of either party's respective rights or remedies, whether at law or in equity, all of which are expressly reserved. If any provision of this Agreement is unenforceable or void under applicable law, the remaining provisions will continue to be binding. This Agreement and the rights, interests or obligations created hereunder will not be assigned by either of the parties without the prior written consent of the other party. Each party agrees that each has participated equally in the negotiation and drafting of this Agreement. You acknowledge that the person signing this Agreement on your behalf has your full authority to execute it. This Agreement will be binding whether signatures are exchanged electronically or by hand, mail, fax, electronic transfer or image, photocopy or in counterparts.

Thank you again for this opportunity. We look forward to working with you.

Very truly yours,

**CBRE, Inc.**

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**Licensed Real Estate Broker**

By: \_\_\_\_\_  
Name: John D. Frager  
Title: Executive Managing Director  
Dated: \_\_\_\_\_, 2023

**AGREED:**

**City of Chula Vista**

By: \_\_\_\_\_  
Name: Maria V. Kachadoorian  
Title: City Manager  
Dated: \_\_\_\_\_, 2023

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Attorney  
Dated: \_\_\_\_\_, 2023

#### **EXHIBIT A – Commission Schedule**

Commissions shall be earned upon lease execution in accordance with the:

- 7% of the Base Rent payable during the first 60 months of the Lease Term where rent is paid, and
- 3.5% of the Base Rent for months 61 through 120 of the Lease Term, and
- 2% of the Base Rent for months 121 through 180 of the Lease Term, and
- 1% thereafter until the expiration of the Lease Term.
- The above percentages assume the Tenant is represented by a cooperating broker as described herein. Should the Tenant be represented by your Listing Team, the percentages above will be adjusted downward as follows:
- 6% months 1-60, 3% months 61-120, 1.5% months 121-180 and .5% thereafter.

Said commissions will be due and payable 50% upon full Lease execution and 50% upon the Lease Commencement Date. The term “Base Rent” refers to the Full Service Gross rental amount, or the Full Service Gross equivalent including estimates for taxes, insurance, utilities and operating expenses.

The above rates are subject to the following provisions:

1. *Term of Less Than 1 Year.* If a lease term is less than 12 months, then the commission shall be prorated based upon the number of months included in the lease term.
2. *Option or Right of First Refusal to Renew, Extend Lease or Occupy Additional Space.* If a lease for which a commission is earned and payable hereunder contains: (i) an option or right of first refusal to renew or extend, and a lease term is renewed or extended, whether strictly in accordance with the terms of such option or right or otherwise and/or (ii) an option or right of first refusal to expand, and a tenant occupies additional space whether strictly in accordance with the terms of such option or right or otherwise, then you shall pay a leasing commission in accordance with the provisions of this Commission Schedule on the additional leased space and/or lease term. Said commission shall be earned and payable upon execution of the documents renewing or extending occupancy or adding space, as applicable.
3. *Purchase of Property by Tenant.* If a lease for which a commission is earned and payable hereunder contains an option, right of first refusal, or similar right for purchase of the Property, 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 (90) days after the expiration thereof, then a sales commission shall be calculated and paid in accordance with the provisions of that certain Exclusive Sales/Lease listing Agreement dated October 3, 2022 by and between the City of Chula Vista and CBRE relating to the 383 acre University Innovation District, (“UID Listing Agreement”) provided, however, that there shall be a credit against such sales commission in the amount of lease commissions previously paid to CBRE relating to that portion of the purchaser's lease term which is canceled by reason of such sale. In no event shall such credit exceed the amount of such sales commission.
4. *Below Market Rent.* If the City elects, in its sole discretion, to lease a property at below market rental rates, CBRE will be paid on the assumption that fair market rates are charged.

To the extent a circumstance or transaction type is not expressly addressed herein, but which transaction results in whole or in part from CBRE’s marketing and/or brokerage service, the parties shall meet and confer to determine the fair and appropriate amount and timing of payment therefor under the applicable circumstances.