

**PROPERTY MANAGEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF DETROIT
AND
THE CITY OF DETROIT BUILDING AUTHORITY**

This Property Management Agreement (this "Agreement") is entered into by and between the CITY OF DETROIT (hereinafter the "City"), a Michigan municipal corporation acting by and through its Planning and Development Department ("P&DD") and its Housing and Revitalization Department ("HRD"), and the CITY OF DETROIT BUILDING AUTHORITY (hereinafter the "DBA"), a public authority and body corporate of the State of Michigan, organized and existing under the authority of Act 31, Public Acts of Michigan, 1948 (First Extra Session) as amended, (individually a "Party" and together with the City, the "Parties").

WITNESSETH:

WHEREAS, the DBA has been incorporated in accordance with the provisions of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended, for the purposes of acquiring, furnishing, equipping, owning, improving, enlarging, operating and maintaining buildings, automobiles parking lots or structures, recreational facilities, stadiums and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for the use of any legitimate public purpose of the City; and

WHEREAS, the City desires to engage the DBA for the purposes of providing certain property management and real estate services with respect to the operation and management of surplus commercial/industrial/residential buildings and/or vacant land owned and/or leased by the City (the "Properties"), or by a public entity created, in whole or in part, by the City (the "Services"); and

NOW, THEREFORE, in consideration of the mutual undertakings herein set forth, the Parties agree as follows:

**ARTICLE I
ENGAGEMENT OF DBA**

1.01 The City hereby engages the DBA and the DBA agrees to perform the Services as more fully described in Exhibit A, which is attached hereto and incorporated by reference herein.

1.02 The relationship of the DBA and the City shall be that of a professional contractor. No liability or benefits, such as retirement benefits or liabilities, pension rights or liabilities, holiday pay, sick pay, vacation pay, personal injury or property insurance rights or liabilities, or such other rights, provisions or liabilities arising out of a contract of hire or employer/employee relationship either express or implied shall arise or accrue to either Party as a result of this Agreement.

ARTICLE II
SCOPE OF SERVICES

2.01 The DBA warrants that its performance of the Services shall be of a professional standard of care and skill equal to that of the property management and real estate industry in the Detroit metropolitan area. All of the Services shall be subject to the approval of the City through HRD.

2.02 The DBA shall devote such time, attention, skill, knowledge and ability as is necessary to carry out and perform the Services.

2.03 The Services shall include all conferences and consultations deemed reasonably necessary by the City for the DBA to properly and fully perform the Services.

2.04 The Services shall be performed at such locations as are appropriate for the proper performance of the Services.

2.05 The Services shall, to the extent possible, be undertaken in such sequence or phases as directed by HRD necessary to assure their proper and expeditious completion in light of the objectives of this Agreement. However, the DBA shall not be responsible for delays in the performance of the Services caused by any individual or entity other than employees, real estate brokerage firms, consultants, contractors or subcontractors of the DBA (also referred to herein as "Associates").

2.06 The DBA agrees to provide all finished or unfinished documents or copies thereof (when originals are unavailable), title work, subcontracts, records, data, correspondence, studies, briefs, drawings, maps, models, photographs, files, intermediate materials estimates, memoranda, computations, papers, supplies, recordings, videotapes, notes, computer discs, all other electronic data or any other materials prepared by or in the possession of the DBA pursuant to this Agreement or in anticipation of this Agreement (the "Work Product") to the City, and any department or office thereof, at the request of the City.

2.07 In the event that there shall be any dispute between the Parties with regard to the extent and character of the Services to be performed, the reasonable interpretation and determination of the City shall govern.

ARTICLE III
ADDITIONAL SERVICES

3.01 All services to be performed by the DBA which are in addition to the Services shall not be authorized unless such additional services are mutually agreed to by the Parties and incorporated into a written amendment to this Agreement in accordance with Article X hereof.

ARTICLE IV
AGREEMENT TERM

4.01 The term of this Agreement shall begin July 1, 2018 and expire June 30, 2021, unless otherwise extended or terminated as provide for herein.

4.02 Notwithstanding anything in this Agreement or otherwise to the contrary, the DBA shall not be authorized to perform any Services and the Agreement shall not become effective until the Agreement: (1) is fully executed by duly authorized representatives of the City and DBA, as well as approved by the Detroit City Council and any other City financial review commission or board as required by law and (2) has been executed by the City's Chief Procurement Officer.

4.03 The DBA shall have no authority to start work, no payments shall be authorized by the Finance Department of the City of Detroit, nor shall the City be liable for reimbursement for any materials or services purchased, or payment of any cost incurred by the DBA, or any Services rendered by the DBA until the requirements of Section 4.02 have been satisfied.

ARTICLE V
PERSONNEL AND ADMINISTRATION

5.01 To ensure proper performance of the Services, the DBA warrants that all employees, consultants and subcontractors of the DBA performing the Services shall be authorized to perform such Services under all applicable Federal, State and local laws, rules, and regulations.

5.02 Each employee, consultant and subcontractor of the DBA engaged by the DBA to perform the Services shall devote such time, attention, skill, knowledge and ability as is necessary to most effectively and efficiently perform the Services in conformance with the standard practices in the property management and real estate industries in the Detroit metropolitan area.

The City may, within its sole discretion, and upon such terms and conditions as it deems appropriate, assign its own qualified City employees, consultants or subcontractors to work with the DBA to complete the Services.

5.03 The City reserves the right, for cause, to require the dismissal of a DBA employee, consultant or subcontractor, from work performed in association with this Agreement. In all cases in which any employee, consultant, or subcontractor must be replaced for any reason, the DBA shall supply an acceptable replacement and notify the City of said replacement as soon as possible.

5.04 The DBA shall inform the City as soon as the following conditions become known:

a. Problems, delays, or adverse conditions which materially impair the ability of the DBA to perform the Services or prevent the meeting of any mutually agreed upon time schedule. This disclosure shall be accompanied by statement of the action to be taken by the DBA and any City assistance needed to resolve the situation; or

b. Favorable development of events which enable the DBA to meet any mutually agreed upon time schedules sooner than anticipated.

The DBA shall inform the City of the reasons for the occurrence of events specified in subsections "a" and "b" of this Section 5.04 as well as any additional pertinent information.

5.05 Upon request of the City, the DBA shall bid or rebid those portions of the Services that may be performed by a real estate brokerage firm, consultants, contractors and/or subcontractors of the DBA. In the event that such a request is made, the City shall have the right to: (1) review such bids/rebids and (2) approve all real estate brokerage firms, consultants, contractors and/or subcontractors of the DBA that are assigned to perform the Services on behalf of the DBA.

ARTICLE VI **COMPENSATION**

6.01 Compensation to the DBA for Services provided shall not exceed the amount of:

- (a) Two Million Seven Hundred Thousand and 00/100 Dollars (\$2,700,000.00) ("Management Fee"), inclusive of travel and other expenses; plus
- (b) One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00) for the As-Needed Services Allowance Fees; plus
- (c) Property Sales Services Fees (if any) and Lease Services Fees (if any).

The Management Fee and As-Needed Services Allowance Fees that total Four Million Fifty Thousand and 00/100 Dollars (\$4,050,000.00) will be paid directly to the DBA by the City in the manner set forth in Exhibit B, which is attached hereto and incorporated by reference herein.

The Property Sales Services Fees are paid to the DBA at closing from the proceeds of any applicable sale of the Properties in the manner set forth in Exhibit B. The Lease Services Fees are paid to the DBA from the actual rents collected under any applicable lease agreements in the manner set forth in Exhibit B.

The Management Fee, As-Needed Services Allowance Fees, Property Sales Services Fees and Lease Services Fees are collectively referred to herein as the "Fees".

6.02 It is understood and agreed by the Parties that the amounts described in Section 6.01 and Exhibit B for performance of the Services are inclusive of any and all remuneration to DBA under this Agreement. Payments to the DBA for work covered by the As-Needed Services Allowance Fees, Property Sales Services Fees and Lease Services Fees shall be pre-approved by HRD prior to the DBA incurring any costs and shall be itemized on invoices separately if applicable. The City shall not be responsible for any such costs that are not otherwise approved by HRD. Except as otherwise provided in this Agreement, no other fees, costs or expenses incurred by the DBA in performance of the Services shall be eligible for reimbursement by the City. This language shall not be construed to prohibit the City from accepting performance of Services by the DBA to be paid for by third parties.

6.03 In no event shall the City be obligated to pay to or on behalf of the DBA for the Services any amounts in excess of the amounts set forth in this Article VI and Exhibit B of this Agreement.

ARTICLE VII **METHOD OF PAYMENT**

7.01 Upon execution of this Agreement, the City agrees to authorize vouchers to pay all invoices and requests for payment submitted to it by the DBA for all Services performed and to be performed pursuant to this Agreement.

ARTICLE II
SCOPE OF SERVICES

2.01 The DBA warrants that its performance of the Services shall be of a professional standard of care and skill equal to that of the property management and real estate industry in the Detroit metropolitan area. All of the Services shall be subject to the approval of the City through HRD.

2.02 The DBA shall devote such time, attention, skill, knowledge and ability as is necessary to carry out and perform the Services.

2.03 The Services shall include all conferences and consultations deemed reasonably necessary by the City for the DBA to properly and fully perform the Services.

2.04 The Services shall be performed at such locations as are appropriate for the proper performance of the Services.

2.05 The Services shall, to the extent possible, be undertaken in such sequence or phases as directed by HRD necessary to assure their proper and expeditious completion in light of the objectives of this Agreement. However, the DBA shall not be responsible for delays in the performance of the Services caused by any individual or entity other than employees, real estate brokerage firms, consultants, contractors or subcontractors of the DBA (also referred to herein as "Associates").

2.06 The DBA agrees to provide all finished or unfinished documents or copies thereof (when originals are unavailable), title work, subcontracts, records, data, correspondence, studies, briefs, drawings, maps, models, photographs, files, intermediate materials estimates, memoranda, computations, papers, supplies, recordings, videotapes, notes, computer discs, all other electronic data or any other materials prepared by or in the possession of the DBA pursuant to this Agreement or in anticipation of this Agreement (the "Work Product") to the City, and any department or office thereof, at the request of the City.

2.07 In the event that there shall be any dispute between the Parties with regard to the extent and character of the Services to be performed, the reasonable interpretation and determination of the City shall govern.

ARTICLE III
ADDITIONAL SERVICES

3.01 All services to be performed by the DBA which are in addition to the Services shall not be authorized unless such additional services are mutually agreed to by the Parties and incorporated into a written amendment to this Agreement in accordance with Article X hereof.

7.02 The City shall make any required payments following submission by the DBA and approval by the City of an invoice delivered to HRD at 2 Woodward Avenue, Suite 908, Detroit, Michigan 48226; Attention: Director of Development & Special Projects. The invoice(s) shall include the following information:

- (a) The beginning and end dates of the billing period.
- (b) A list of any individuals or firms engaged by the DBA to assist with the performance of the Services during the applicable billing period, a general description of the Services provided by such individuals or firms, and the amounts paid or owed to such individuals or firms for the applicable billing period.
- (c) A general description of the Services rendered for that billing period, including a list of Properties serviced pursuant to this Agreement and supporting documentation.
- (d) An itemized description of any fees due the DBA pursuant to Article VI.

7.03 Each Invoice for which payment is requested must be signed by the authorized representative of the DBA.

7.04 The City has the right to rely on the DBA for submission of accurate invoice(s), including the support documents. Should any discrepancy in the records, or any other inaccuracy or inaccuracies result in overpayment or ineligible expenditures, such overpayments or ineligible expenditures shall be recovered from the DBA.

7.05 Each invoice will be submitted on a schedule set by the City, and shall include the performance report specified in Section 19.01 herein.

7.06 Payments shall be made by the City within forty five (45) days after HRD's approval of a properly submitted and documented invoice.

7.07 Any objection to an invoice submitted by DBA shall be communicated to the DBA by HRD within two (2) weeks of its submission, and the DBA shall respond to the objection within one (1) week thereafter. If the matter remains unresolved after the DBA's response, the Parties shall meet within two (2) weeks in an effort to resolve the dispute. Any undisputed portion of an invoice shall be paid by the City without delay.

ARTICLE VIII

COORDINATION AND ASSIGNMENTS/SUBCONTRACTING

8.01 The Parties agree to coordinate with each other, and any employees, consultants, and subcontractors of the other, in the performance of the Services.

8.02 Subject to Article V, the City acknowledges and agrees that the DBA may subcontract with other entities for the performance of the Services, or any portion thereof, as is reasonably necessary for the DBA's efficient performance hereunder; provided, that any contract the DBA enters into effectuating such assignment or subcontract shall be terminable by the DBA, with or without cause, and with no penalty or other liability for termination other than for costs actually incurred through the effective date of such termination, upon no more than sixty (60) days' written notice.

ARTICLE IX
TERMINATION

9.01 The City may terminate this Agreement for cause, in whole or in part, after giving written notice of termination (a "Notice of Termination") to the DBA at least (60) days before the effective date of the termination (a "Termination Date"), should the DBA: (1) fail to fulfill in a timely and proper manner its obligations under this Agreement; (2) violate any of the covenants, agreements, or stipulations of this Agreement; (3) cease conducting business in the normal course by reason of insolvency, bankruptcy or any similar proceedings, whether voluntary or involuntary, filed under any present or future bankruptcy or other applicable law; or (4) admit in writing its inability to pay its debts generally as they become due. Prior to issuing a Notice of Termination for items 2 and 3 above, the City shall provide the DBA with notice of the specific breach of contract and a sixty (60) day cure period or such other time reasonably required to cure said breach from the date of said notice. If this Agreement is so terminated, the City, as its sole and exclusive remedy, may take over the Services and prosecute the same to completion by contract with another party or otherwise.

9.02 The DBA may terminate this Agreement for cause, in whole or in part, upon giving Notice of Termination to the City at least sixty (60) days before the Termination Date, should the City fail to fulfill in a timely and proper manner its obligations under this Agreement. Prior to issuing a Notice of Termination, the DBA shall provide the City with notice of the specific breach of contract and a sixty (60) day cure period or such other time reasonably required to cure said breach from the date of said notice. The rights provided to the DBA in the event of the City's election to terminate this Agreement as set forth in Section 9.04 shall be provided to DBA in the same manner and to the same extent in the event of DBA's election to terminate this Agreement pursuant to this Section 9.02.

9.03 Notwithstanding anything stated herein to the contrary, if the DBA determines in its reasonable judgment that compensation provided for in Section 6.01 for the provision of Services will be exhausted at any time during the term of the Agreement, in the absence of an Amendment to the Agreement authorizing the payment of additional compensation satisfactory to the Parties for continuation of the Services, the DBA shall have the right to terminate the Agreement for cause, upon notice timed to avoid incurring costs for Services in excess of compensation provided for in Article VI.

9.04 The City may terminate this Agreement at its convenience, with or without cause, at any time during the term of this Agreement by issuing a written Notice of Termination to the DBA at least ninety (90) days before the effective date of termination ("Termination Date"). If this Agreement is so terminated, the City will only be obligated to pay the DBA as follows:

- (a) The pro rata value of the Services and any Fees for the applicable year as identified in Section 6.01 for the period between the DBA's receipt of a Notice of Termination and the Termination Date (the "Termination Period"); plus
- (b) All non-disputed amounts, if any, due on account of any prior invoices that have not been paid by the City to the DBA by the Termination Date.

The Parties expressly agree that in no case shall the DBA be entitled to, nor shall the City be obligated to pay, any amounts under this Section 9.04 that exceed the amounts due under Article VI in any applicable year.

Should the City or the City's designee undertake any part of the Services during the Termination Period, to the extent such Services are being performed by the City or its designee, the DBA shall not be entitled to the pro rata value of any Fees representing the value of the Services performed by the City during such Termination Period.

9.05 Upon receipt of a Notice of Termination and except as otherwise directed by the City, the DBA shall:

- (a) Stop work under this Agreement on the date of the Notice of Termination and to the extent specified in the Notice of Termination;
- (b) Not obligate any contract funds for payroll costs and other costs beyond such date of the Notice of Termination as the City shall specify, and place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under this Agreement as is not terminated;
- (c) Terminate any orders and subcontracts to the extent that they relate to the portion of the work so terminated;
- (d) Preserve all records and submit to the City such records and reports as the City shall specify, and furnish to the City an inventory of all furnishings, equipment, and other property purchased for the Agreement (if any), and carry out such directives as the City may issue concerning the safeguarding or disposition of files and other property; and
- (e) Within thirty (30) days, submit a final report to the City of receipts and expenditures of funds relating to this Agreement, and a list of all creditors, subcontractors, lessors, and/or other parties with which the DBA has incurred financial obligations pursuant to this Agreement (if any).

9.06 Upon expiration or termination of this Agreement, all Work Product shall, at the option of the City, become its sole and exclusive property, whether or not in the DBA's possession, free from any claims or retention of rights thereto on the part of the DBA. The DBA shall promptly deliver to the City upon the City's request all such Work Product, and the City shall return all the DBA's property to it. The DBA acknowledges that any intentional failure or delay on its part to deliver the Work Product to the City will cause irreparable injury to the City not adequately compensable in damages and for which the City has no adequate remedy at law, and the DBA accordingly agrees that the City may, at its sole cost and expense, in such event, seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Work Product. The City shall have full and unrestricted use of the Work Product for any lawful City purpose. The DBA may retain copies of the Work Product at its own expense with the consent of the City, which consent

shall not be unreasonably withheld. The DBA shall have no liability arising out of or in connection with such use of the Work Product, or involving or resulting from such use of Work Product.

ARTICLE X
AMENDMENTS

10.01 The City may from time to time consider it in its best interest to change, modify or extend a term, condition or covenant of this Agreement or require changes in the scope of Services to be performed by the DBA, or require the DBA to perform additional services. Any such change, addition, deletion, extension or modification, including any increase or decrease in the amount of the DBA's compensation, which is mutually agreed upon by and between the City and the DBA, shall be incorporated in a written amendment (herein called an "Amendment") to this Agreement. Such an Amendment shall not invalidate this Agreement, nor relieve or release the DBA and/or City from any of its obligations under this Agreement, unless so stated therein.

10.02 No Amendment to this Agreement shall be effective and binding upon the Parties, unless it is in a writing amendment that expressly makes reference to this Agreement and: (1) is fully executed by duly authorized representatives of the City and DBA, as well as approved by the Detroit City Council and any other City financial review commission or board as required by law and (2) has been executed by the City's Chief Procurement Officer. No verbal order by either Party or instructions shall in any way change or modify this Agreement. No verbal conversation, understanding, or agreement with any officer or employee of the City, the DBA or any other person, either before or after the execution of the Agreement shall affect or modify any of the terms, conditions or obligations contained herein.

ARTICLE XI
CONFLICT OF INTEREST

11.01 The DBA warrants and covenants that it does not have and that it will not have during term of this Agreement, any direct or indirect proprietary or other interest in any concern, business or entity which would conflict in any manner or degree with the performance of the Services under this Agreement. The DBA further warrants and covenants that no officer, commissioner, member or employee of the City or any other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement has any personal or financial interest, direct or indirect, in this Agreement or the proceeds hereof.

ARTICLE XII
CONFIDENTIAL INFORMATION

12.01 In order that the DBA may effectively fulfill its obligations under this Agreement, it may be necessary or desirable for the City to disclose confidential and proprietary information to the DBA pertaining to the City's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the DBA shall regard all information gained as a result of the Services to be performed hereunder as information which is proprietary to the City and, except as is necessary to perform the Services, not to be disclosed to any organization without the prior written consent of the City.

XIII
INDEMNITY

13.01 The DBA agrees to defend, indemnify and hold harmless the City from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including, without limitation, actual fees and expenses of attorneys, expert witnesses and consultants which may be imposed upon, incurred by or asserted against the City, arising from any accident, loss, casualty or damage resulting to any person or property through the performance of the Services, any use, misuse, or nonuse of the Properties, or by reason of the following occurring during the term of this Agreement:

- a) Any negligent or tortious act or error, or omission attributable in whole or in part to the DBA or any of its Associates for whose acts may be liable, regardless of whether or not it is caused in part by a person indemnified hereunder, and
- b) Any failure by the DBA or any of its Associates to perform their obligation, either express or implied, under this Agreement; and
- c) Any and all injury to the person or damage to property of, or loss or expense incurred by, employee of the City which arises out of or pursuant to DBA's performance or that of its Associates under this Agreement.

ARTICLE XIV
SAFEKEEPING AND NOTICE OF CLAIMS

14.01 The DBA agrees that it is its responsibility and not the responsibility of the City to safeguard the personal property and materials of the DBA and its Associates that are used or in their possession while performing under this Agreement.

14.02 If the DBA becomes aware of any injury, damages, claim, demand, action, legal proceeding, or other loss that may involve the City, whether directly or indirectly, the DBA shall inform the City in writing within ten (10) days of receiving knowledge of the injury, damages, claim, demand, action, legal proceeding, or other loss. Such notice(s) shall be provided in accordance with Section 18.01 of this Agreement.

ARTICLE XV
INSURANCE

15.01 The City qualifies as a self-insurer for the purpose of Act 294, P.A. 1972 as amended, Act 198, P.A. 1965 as amended and Act 300 P.A. 1949 as amended.

15.02 The City shall have the right, in its sole discretion, to self-insure against any portion or all of the risks which are customarily insured against in projects of the type here being contemplated.

15.03 Any funds received by the DBA or the City from any insurance policies, or from self-insurance funds, or otherwise, because of casualty or damage to the Properties, shall be used promptly to restore the Properties to a condition satisfactory to the City. If such funds are not sufficient to so restore the Properties, the City has the option to provide sufficient additional funds therefor in such amounts as the City may deem fit.

15.04 The DBA shall require any consultant, contractor and/or subcontractor, whether an individual or firm, engaged by the DBA as an independent contractor to perform any of the Services to procure and maintain: (1) Commercial General Liability Insurance covering bodily and personal injury, property damage and contractual liability in a minimum amount of One Million and 00/100 (\$1,000,000.00) Dollars per claim and Two Million and 00/100 Dollars (\$2,000,000.00) in the annual aggregate, (2) Worker's Compensation Insurance for Employees which meets the State of Michigan's statutory requirement and Employer's Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000.00), and (3) Automotive Liability Insurance covering all owned, hired and non-owned vehicles with personal protection insurance to comply with the provision of the Michigan No-Fault Insurance Act, including residual liability insurance, with minimum bodily injury limits of One Million Dollars (\$1,000,000.00) per occurrence. All such policies shall name the City of Detroit as an additional insured.

ARTICLE XVI **CITY'S RESPONSIBILITIES**

16.01 City shall do the following in a timely manner so as not to delay the Services of the DBA and shall bear all costs incident thereto:

a. Designate in writing a person to act as the City's representative with respect to the Services to be performed or furnished by the DBA under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to this Agreement.

b. It shall be the City's responsibility and not the responsibility of the DBA to take such action and perform such title work as is necessary to deliver marketable title to Properties that will be sold or leased with the assistance of the DBA under this Agreement.

ARTICLE XVII **FAIR EMPLOYMENT PRACTICES**

17.01 In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, Title VI and VII of the Civil Rights Act of 1964 (P.L. 88-352, 78 STAT. 252), and United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to that Title, and in accordance with the Michigan Constitution and all state laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Handicappers Civil Rights Act (P.A. 1976 No. 220), the DBA agrees that it will not discriminate against any person, employee, consultant or

applicant for employment with respect to his (her) hire, tenure, terms, conditions or privileges of employment or hire because of his (her) religion, race, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. The DBA recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against discrimination against itself or its subcontractors.

17.02 The DBA agrees to comply with City of Detroit Executive Orders 2003-4 and 2016-1, if applicable, and with Chapter 27 of the Detroit City Code, as amended, being Ordinance No. 303-H and those rules and procedures adopted by the Human Rights Department pursuant thereto. The Parties hereto shall promptly furnish any information required by the City or the Human Rights Department of the City of Detroit pursuant to this Article.

The DBA shall not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Agreement, with respect to his (her) hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation.

17.03 The DBA further agrees that it will notify any subcontractor of its obligations relative to nondiscrimination under this Agreement when soliciting same and will include the provisions of this Article in such subcontract, as well as provide the City a copy of any subcontract agreement upon request. The DBA further agrees to take such action with respect to any subcontract procurement as the City may reasonably direct as a means of enforcing such provisions, including the aforementioned sanctions for noncompliance.

17.04 Breach of the terms and conditions of this Article XVII may be regarded as a material breach of this Agreement.

ARTICLE XVIII **NOTICES**

18.01 All notices, consents, waivers and other communications (herein collectively called "Notices") required under this Agreement to be given in writing, shall be signed by an authorized representative of the applicable Party hereto, and sent by certified or registered mail, return receipt requested, or delivered overnight by "Federal Express", "Airborne" or other reputable overnight courier and addressed as follows:

If to DBA:

City of Detroit Building Authority
1301 Third Street, Suite 328
Detroit, Michigan 48226
Attention: Tyrone Clifton
Executive Director

with a copy to: The Allen Law Group, PC
3011 W. Grand Blvd., Suite 2500
Detroit, Michigan 48202
Attention: Floyd E Allen, Esquire

If to City: City of Detroit
Housing and Revitalization Department
2 Woodward Avenue, Suite 908
Detroit, Michigan 48226
Attention: Director

with copies to: City of Detroit
Planning and Development Department
2 Woodward Avenue, Suite 808
Detroit, Michigan 48226
Attention: Director

and

City of Detroit
Law Department
2 Woodward Avenue, Suite 500 Floor
Detroit, Michigan 48226
Attention: Corporation Counsel

18.02 Any Notice shall be deemed to have been given three (3) days after postmarked if mailed, the next day, if sent via nationally recognized overnight carrier, and upon delivery, if personally delivered. Either Party to this Agreement may change its address for the receipt of Notices at any time by giving Notice thereof to the other as herein provided.

18.03 For clarification, the Notices requirement of this Article does not apply to the requests and approvals contemplated in Exhibit A, which may be transmitted in writing between the DBA and HRD by any mutually agreeable method.

ARTICLE XIX

AUDITS, MONITORING, RECORD KEEPING AND REPORTS

19.01 The DBA shall make available all books, documents, papers, records, electronic data and files directly pertinent, in whole or in part, to this Agreement for monitoring, audits, inspections, examinations and making excerpts and transcriptions by the City, at all reasonable times. The DBA shall make available all such books, documents, papers, and records, in their entirety, including all identifying labels and case names, with no deletions, for all such monitoring, audits, inspections, examinations, and making of excerpts and transcriptions. The DBA shall submit a report documenting all Services performed under this Agreement during a particular invoice period including all identifying labels with no deletions. The DBA shall keep full and complete records

documenting all Services performed under this Agreement, including but not limited to, records of all activities performed pursuant to this Agreement and all financial records associated therewith.

All financial records pertinent to this Agreement shall be kept in accordance with generally accepted accounting practices.

19.02 All such required records shall be maintained for a period of four (4) years beginning on the later of: (1) after final payment under this Agreement, or (2) after all pending matters are closed irrespective of whether said dates occur after the expiration date or termination date of this Agreement, whichever comes later.

19.03 The DBA agrees to allow representative(s) of the City to make periodic inspections for the purpose of ascertaining that the DBA is properly performing the Services set forth in Exhibit B herein. Such inspections shall be made at any time during normal business hours of the DBA. If in the course of such inspections, the representative(s) of the City should find any deficiencies in the DBA's agreed upon Services, such deficiencies may be reported promptly to the DBA in writing. The DBA agrees to promptly remedy and correct any such reported deficiencies within thirty (30) days of notification by the City or such other amount of time reasonably necessary to correct such reported deficiencies.

19.04 The City shall have the right to examine and audit all items relating to this Agreement including books, records, documents and other such supporting data as the City may deem necessary of the DBA and any subcontractors, consultants or agents rendering Services under this Agreement whether direct or indirect which will permit adequate evaluation of the cost or pricing data submitted by the DBA. The DBA shall include a similar covenant allowing for City audit and monitoring of any subcontract it has with a subcontractor, agent or consultant whose services will be charged directly or indirectly to the City pending the results of any such audit or monitoring without penalty or interest. Any City required audit shall be undertaken by a qualified financial auditor or CPA designated by the City.

ARTICLE XX **MISCELLANEOUS**

20.01 (a) No failure by the City or the DBA to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, term or remedy resulting from a breach thereof shall constitute a waiver of any such covenant, agreement, term or condition of this Agreement and the same shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(b) Each Party reserves and shall have the exclusive right to waive, at its sole discretion, and to the extent permitted by law, any requirement or provision under this Agreement unless such waiver is specifically prohibited. No act by or on behalf of a Party hereto shall be, or shall be deemed or construed to be, a waiver of any such requirement or provision, unless the same be in writing, signed by the authorized representative of the Party and expressly stated to constitute a waiver.

20.02 If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of the Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.03 This instrument, including Exhibits A and B attached hereto, which are a part of this Agreement, contain the entire agreement between the Parties and all prior negotiations and agreements are merged herein. Neither the City nor the City's agents have made any representations except as expressly set forth herein, and no rights or remedies are or shall be acquired by the DBA or the City by implication or otherwise unless expressly set forth herein.

20.04 Unless the context otherwise expressly requires, the words "herein", "hereof", and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article or section or other subdivision.

20.05 All the terms and provisions of this Agreement shall be deemed and construed to be "covenants" and "conditions" as though the words specifically expressing or importing covenants and conditions were used in each separate term and provision.

20.06 The headings and sections in this Agreement are for convenience only and shall not be used to construe or interpret the scope of intent of this Agreement or in any way affect the same.

20.07 The Agreement and all actions arising hereunder shall be governed by, subject to and construed according to the laws of the State of Michigan. The DBA agrees, consents and submits to the personal jurisdiction of the Circuit Court for the County of Wayne, Michigan for any action arising out of this Agreement. The DBA agrees that service of process at the address and in the manner specified in Article 18 will be sufficient to put the DBA on notice, and the DBA hereby waives any and all claims relative to such notice. The DBA also agrees that it will not commence any action against the City because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement, in any court other than that identified in this Section 20.07.

20.08 It is understood that this is not an exclusive service contract and that during the term of this Agreement the City may self-perform any of the Services, sell and/or lease any City real property without being subject to Fees, and/or contract with any other entity the City so chooses to provide the same or substantially the same Services provided for hereunder, and that the DBA is free to render the same or similar advisory services to other clients; provided, however, that the DBA's obligations to the City contained in this Agreement will not be affected in any manner.

20.09 Neither Party shall be responsible for force majeure events. In the event of a dispute between the Parties with regard to what constitutes a force majeure event, the City's determination shall be controlling. However in the event of an occurrence of any circumstance(s) beyond the control of the DBA, the City may, at its option, terminate this Agreement, pursuant to Article IX herein.

20.10 For purposes of the hold harmless and indemnity provisions contained in this Agreement, the term "City" shall be deemed to include the City of Detroit, and all other associated,

affiliated, allied or subsidiary entities or commissions now existing or hereafter created, but specifically excluding any elected officials, officers, agents, consultants, subcontractors representatives, and employees of the City in their individual capacities.

20.11 The DBA covenants that it is not, and will not become, in arrears to the City upon any contract, debt or other obligations to the City, and any real property, personal property and income taxes owed to the City.

20.12 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or pdf transmission shall constitute effective execution and delivery of this Agreement as to the Parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties hereto transmitted by facsimile or pdf shall be deemed to be their original signatures for all purposes.

[Signatures on the following page]

IN WITNESS WHEREOF, the CITY and the DBA, by and through their duly authorized officers and representatives, have executed this Agreement as follows:

ON BEHALF OF THE
CITY OF DETROIT BUILDING AUTHORITY,
a public authority and body corporate

By: [Signature]
Its: Chairman

Date: 5/25/2018

By: [Signature]
Christopher T. Jackson

Its: Treasurer
Date: 5-25-18

APPROVED AS TO FORM:

[Signature]
General Counsel, City of
Detroit Building Authority

ON BEHALF OF THE
CITY OF DETROIT,
a Michigan municipal corporation

By: [Signature]
Maurice Cox

Its: Director, Planning and Development Department

Date: 5/25/2018

By: [Signature]
Michael A. Freeman

Its: COO, Housing and Revitalization Department

Date: 5/30/18

APPROVED AS TO FORM:

June 24, 2018

Supervising Assistant Corporation Counsel
City of Detroit

OFFICE OF CONTRACTING AND
PROCUREMENT

DocuSigned by:

Boysie Jackson 7/3/2018

Chief Procurement Officer
City of Detroit

This Agreement was approved by
Detroit City Council on:

June 26, 2018

Date

EXHIBIT A

SCOPE OF SERVICES

The Services to be provided by DBA shall be property management, administrative and real estate transaction services as further defined herein for certain Properties owned by the City of Detroit. The DBA shall perform the Services at the direction of HRD.

For purposes of this Agreement, the Properties shall include all real property owned by the City of Detroit that is being held for future public use or deemed surplus to be offered for sale, as well as other real property identified by HRD from time to time during the term of this Agreement.

The purpose of this Agreement is for the DBA to assist P&DD and HRD in the management of the Properties to improve the efficiency of managing, marketing, selling and leasing the large volume of Properties owned by the City.

I. SERVICES TO BE PERFORMED

The DBA shall perform the following Services, which include but are not limited to:

A. PROPERTY MANAGEMENT & ADMINISTRATIVE SUPPORT

1. Assist in maintaining the City's real property database, including data entry, updates, corrections, reporting, physical site visits to the Properties to verify data accuracy, providing photographs of Properties for upload and identifying other various attributes of the Properties for upload.
2. Perform periodic site visits to all Properties to photograph and monitor the status of the Properties.
3. Manage the process for securing the Properties.
4. Identify, report, monitor and address any unauthorized use of Properties.
5. Coordinate the maintenance and/or repair of the Properties with the City.
6. Manage the process for undertaking and completing necessary capital improvements and repairs of the Properties.
7. Manage the performance of leases of the Properties, including cellular tower leases and billboard leases.
8. Assist various City departments with real estate space needs as directed.
9. Attend such meetings (including City Council meetings, community meetings and meetings with individual Council Members) as directed by the City.

10. Provide HRD and/or P&DD with sufficient information to address public and City Council inquiries regarding the Properties and property transactions.
11. Provide bi-weekly reports of property management and real estate transaction activities to the City as directed.
12. Provide monthly reports of property management and real estate transaction activities to HRD and P&DD. Such reports shall include itemized real estate sales, lease payments received and such other data in sufficient form and scope as required by HRD.
13. Hire, oversee and pay for all necessary third-party consultants, contractors and subcontractors used by the DBA in connection with performance of the Services.
14. Provide such other property management and/or maintenance services and reporting as are requested by the City.

B. REAL ESTATE TRANSACTIONAL SERVICES

1. Market the Properties for sale and/or lease as directed by the City.
2. Manage the intake, initial review, recording, reporting and routing of applications received through the City's real estate application intake system (portal), including for the sales and leasing of Properties. This also includes:
 - a. Serving as the initial frontline for the City in responding to all public inquiries, phone calls, walk-ins and emails.
 - b. Update the City's real property database and other lists to note certain Properties identified by the City for public bid, RFP or first-come sales.
 - c. Assist the City in drafting documents and revising the City's real estate application intake system as needed.
3. Research and report on all application requests to include: property ownership confirmations, environmental facility status, outstanding blight and tax delinquency of applicants, comparisons of offer prices to City guidelines, review of zoning, review of master plan designations and development of pricing recommendations.
4. Conduct all necessary site visits and property showings with applicants related to sales and leasing transactions.
5. Communicate and follow-up as necessary with applicants on: City approvals, required conditions, sending of offer/denial letters and negotiation of sales/lease pricing.

6. Assist HRD by preparing documents and providing information for internal City real estate meetings.
7. Provide additional real estate transactional services for leases, including surplus property, cellular towers and billboards, as follows:
 - a. Identify site locations for City-as-tenant leases according to parameters and goals identified by the City.
 - b. Negotiate lease rates and provide HRD with basic lease terms as required.
 - c. Secure signatures of third parties as needed on documents provided by HRD.
 - d. Manage the accounts receivable functions for City-as-landlord leases on behalf of the City as directed.
 - e. Provide monthly reports and rent payments to HRD for lease revenue received by the DBA on behalf of the City for the respective previous month.
 - f. Provide periodic site visits to ensure that tenants are using City-owned property according to the terms of their lease.
 - g. Provide HRD with completed clearances, insurance certificates and other documents sufficient to process lease agreements to Detroit City Council for approval.
 - h. Coordinate work done by cellular carriers for routine equipment maintenance, upgrades and replacements.
8. Provide additional real estate transactions services for property sales as follows:
 - a. Negotiate sales prices and provide HRD with basic sale terms and legal descriptions.
 - b. Secure signed purchase agreements and collect/hold a deposit from prospective purchasers. Any such deposits shall be applied to the sale at the closing. DBA shall return all deposits to prospective purchasers for sales that are canceled or not approved by the City.
 - c. Secure signatures of third parties as needed on other documents provided by HRD.
 - d. Manage the closing of sales as directed, including the preparation of closing statements, collection/acceptance of the City's sales revenue and ensuring that deeds are recorded and property transfer affidavits are filed. Unless otherwise provided, the DBA shall pay for all recording fees.

- e. Provide monthly reports and sales revenue payments to HRD for funds received by the DBA on behalf of the City at closings that took place during the respective previous month.
- 9. Work cooperatively with the City and other agencies, including the Detroit Economic Growth Corporation and Detroit Land Bank Authority, as directed to foster City economic development projects.
- 10. Provide necessary services to support the City's acquisition of real property as directed.
- 11. Assist the City in developing and implementing real estate transaction strategies and processes as directed by the City.
- 12. Provide such other property transactional services and reporting as are requested by the City.

C. AS-NEEDED SERVICES

- 1. From time to time during the term of the Agreement, the City may require the DBA to perform certain additional services on an as-needed basis ("As-Needed Services").

The As-Needed Services shall include but not be limited to the following Tasks:

- a. Title Work and Title Commitments
 - b. Appraisals / Broker Opinions of Value
 - c. Property Maintenance & Development Support Work
 - 1) Survey and environmental assessment work
 - 2) Building board-ups and property security
 - 3) Other miscellaneous property maintenance, development support work or real estate services requested by HRD
- 2. As-Needed Services will require the following procedures be completed prior to the DBA incurring any costs for such As-Needed Services:
 - a. HRD will submit to the DBA an As-Needed Services request that will outline the scope of work details and the type of service to be performed. The DBA will then submit to HRD a detailed "Task Proposal", including total cost of completion for the requested "Task". If the Task Proposal is related to a transaction that will have either a Property Sales Services Fee or Lease Services Fee, then such Task Proposal shall be priced at actual vendor costs for work performed without any mark-up or administrative fees to the DBA. If the Task Proposal is related to a transaction handled by the City and without DBA assistance such that a Property Sales Services

Fee or Lease Services Fee are not applicable, then such Task Proposal shall be priced at actual vendor costs plus a 5% administrative fee to the DBA.

- b. For each Task Proposal, the DBA will receive from HRD either: (i) written authorization to proceed with the Task, (ii) a written denial, or (iii) instructions for revisions and resubmission. The DBA is not authorized to begin any work or incur any costs related to a specific Task until HRD has provided written approval of the Task Proposal in each instance.
- c. Upon HRD's approval of a Task Proposal, the DBA shall be authorized to begin work and incur costs to complete the Task.
- d. The Task shall be assigned a Task number that shall be outlined in the DBA's invoices and tracked accordingly for the remainder of the Agreement.

II. ADDITIONAL CLARIFICATIONS & ASSUMPTIONS

- A. The Services performed by the DBA are non-exclusive and the City is free to sell and/or lease property with or without the assistance and support of the DBA in any specific instance.
- B. HRD shall perform the following with respect to this Agreement:
 1. Communicate to the DBA those real estate transactions (including sales, acquisitions and leases) for which the City does not require the Services of the DBA.
 2. Draft all lease agreements, development agreements, City Council letters and resolutions and deeds.
 3. Secure appropriate City certifications of legal descriptions provided by the DBA.
 4. Secure all applicable City signatures on the documents listed in 2. above and provide copies to the DBA.
 5. Secure certified copies from the City Clerk of resolutions adopted by City Council for real estate transactions.
 6. Provide the DBA with boilerplate documents, such as a purchase agreement, closing statement, offer letter, etc. that the DBA can utilize for real estate transactions.
 7. Provide the DBA with final, executed copies of lease agreements as approved by Detroit City Council.
 8. Address title issues and exceptions.

- C.** City shall provide the DBA with access to the City's real property database (Example: Salesforce) and real estate application intake system (Portal) for the purposes of completing the Services.
- D.** At all times, DBA shall have a real estate brokerage firm under contract to assist the DBA with performance of the Services. DBA's selection of such firm is subject to the bidding requirements of Section 5.05 of this Agreement.
- E.** "Year One" of the Agreement shall be July 1, 2018 to June 30, 2019.

"Year Two" of the Agreement shall be July 1, 2019 to June 30, 2020.

"Year Three" of the Agreement shall be July 1, 2020 to June 20, 2021.

EXHIBIT B

FEE SCHEDULE

I. MANAGEMENT FEE

- A. The City shall pay the DBA for performance of the Services a management fee of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00) per year ("Management Fee") for the term of the Agreement.
- B. The Management Fee shall be paid to the DBA in monthly installments of Seventy Five Thousand and 00/100 Dollars (\$75,000.00) per month.
- C. The Management Fee includes all travel and personnel expenses of the DBA under this Agreement.
- D. Management Fee Schedule

Year One	\$900,000.00
Year Two	\$900,000.00
Year Three	\$900,000.00

II. ADDITIONAL FEES

In addition to the Management Fee, the City shall pay the following additional fees as follows:

A. Property Sales Services Fees

When Properties under the jurisdiction and/or control of either P&DD or HRD are sold to a third-party pursuant to this Agreement, the City shall pay transaction fees from the proceeds of any applicable sale of the Properties equal to a sum calculated as follows (collectively the "Property Sales Services Fees"):

- 1. The DBA shall receive at closing only one of the following as applicable:
 - a. When the gross sale proceeds equal Forty Two Thousand and 00/100 Dollars (\$42,000.00) or more, the DBA shall be paid six percent (6%) of the gross sale proceeds from the sale of real estate; or
 - b. When the gross sale proceeds equal less than Forty Two Thousand and 00/100 Dollars (\$42,000.00) but more than Five Thousand Three Hundred and 00/100 Dollars (\$5,300.00), the DBA shall be paid Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00); or

- c. When the gross sale proceeds are less than Five Thousand Three Hundred and 00/100 Dollars (\$5,300.00), the DBA shall be paid six percent (6%) of the gross sale proceeds from the sale of real estate.
2. The DBA's real estate brokerage firm shall be paid at closing five percent (5%) of the gross sale proceeds from the sale of real estate.
3. The DBA shall be paid at closing customary closing costs to cover such things as property appraisals, procurement of necessary property legal descriptions, - recording fees, title policy premiums, escrow closing costs and all other such real estate related documents and/or services costs that are pre-approved by HRD.

Notwithstanding anything stated herein to the contrary, (1) all Property Sales Services Fees shall require the prior written approval of HRD and (2) in no event shall the total Property Sales Services Fees for a respective real estate sales transaction exceed the net sale proceeds paid to the City by a purchaser. If applicable, Property Sales Services Fees shall be proportionately reduced across the three categories above such that the total Property Sales Services Fees amount is less than the respective net sale proceeds paid to the City by a purchaser.

B. Lease Services Fees

For lease of Properties under City lease agreements that are new, renegotiated or prior/ongoing in which rents to the City are collected by the DBA, the City shall pay transaction fees to the DBA from the actual rents collected in an amount equal to eleven percent (11%) of the rent in cash to the City under such lease agreements ("Lease Services Fees").

Notwithstanding anything stated herein to the contrary, (1) all Lease Services Fees require the prior written approval of HRD, (2) the City shall only be obligated to pay Lease Services Fees after rent is collected, and (3) for purposes of this Section "rent" shall include cash only and not any other fair value to the City. The City shall be under no obligation to pay Lease Services Fees on uncollected rent.

C. As-Needed Services Allowance Fees

1. For Task Proposals approved by HRD pursuant to this Agreement, the City shall pay the DBA the amount given for each Task up to a total amount for all Tasks under this Agreement not to exceed Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) ("As-Needed Services Allowance Fees") per year of the Agreement.
2. Payment of As-Needed Services Allowance Fees to the DBA are contingent upon HRD's receipt of an approved invoice for payment pursuant this Agreement.

3. As-Needed Services Allowance Fees Schedule

Year One	\$450,000.00
Year Two	\$450,000.00
Year Three	\$450,000.00
