

**CITY OF DETROIT BUILDING AUTHORITY  
PROFESSIONAL SERVICES AGREEMENT FOR PROPERTY MANAGEMENT  
WITH  
JOINT VENTURE OF SIGNATURE & ASSOCIATES, INC. AND SUMMIT  
COMMERCIAL, LLC**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement"), dated and made effective as of this 1st day of July, 2018, by and between the CITY OF DETROIT BUILDING AUTHORITY, a public authority and body corporate organized and existing under the authority of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended, located at 1301 Third Street, Suite 328, Detroit, Michigan 48226 (herein called the "Authority" or the "DBA"), and the Joint Venture of Signature Associates, Inc., a Michigan corporation, located at One Towne Square, Suite 1200, Southfield, Michigan 48076 and Summit Commercial LLC, a Michigan limited liability company, located at 7700 Second, Suite 300, Detroit, Michigan 48202 (hereinafter called the "Professional Contractor"),

**WITNESSETH:**

WHEREAS, the Authority desires to engage the Professional Contractor to provide professional, proactive and comprehensive real estate and property management services under the direction of the Detroit Building Authority for the strategically and efficient administration of property related to the City of Detroit's inventory of owned, leased and leasehold interests (the "Properties" or "Property") (the "Project"); and

WHEREAS, the services to be performed hereunder (herein collectively called the "Services") are described in Exhibit A, attached hereto and made a part hereof by this reference, and are to be performed in accordance with this Agreement and Exhibit A; and

WHEREAS, the Professional Contractor has the requisite skills necessary to assist the Authority and represents that it is fully qualified and capable of performing the Services required hereunder upon the terms and conditions hereinafter set forth; and

WHEREAS, the Authority has adopted or will adopt a resolution authorizing the engagement of the Professional Contractor for the Services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

**ARTICLE I**  
**Engagement of Professional Contractor**

1.01 The Authority hereby engages the Professional Contractor and the Professional Contractor agrees to perform the Services as set forth in Exhibit A hereto in accordance with the terms and conditions contained in this Agreement.

1.02 The relationship of the Professional Contractor and the Authority shall be that of an independent contractor and 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 and undertaking.

## ARTICLE II

### Level of Performance, Documents and Dispute Resolution

2.01 The Professional Contractor warrants that its performance of the Services set forth in Exhibit A shall be of a professional standard of care and skill recognized to be the standard commonly accepted by practicing members of its profession. All of the Services shall be subject to the approval of the Authority or such other representative as may be designated by the Authority.

2.02 The Professional Contractor shall during the term of the Agreement, devote such time, attention, skill, knowledge and ability as is necessary to carry out and perform the Services, as herein required.

2.03 The Professional Contractor agrees to provide copies of any documents as part of the Services, if requested by the Authority.

2.04 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 Authority, or such other representative as may be designated by the Authority, shall govern.

## ARTICLE III

### Contract Term

3.01 The Services to be performed by the Professional Contractor pursuant to the terms of this Agreement shall begin on July 1, 2018 (the "Effective Date") and shall be complete not later than June 30, 2021 (the "Contract Term"), unless the term of this Agreement is otherwise extended in writing by the Authority or terminated as provided for herein.

**ARTICLE IV**  
**Compensation**

4.01 The Authority agrees to pay the Professional Contractor for the proper performance of the Services described in Exhibit A hereto fees in the amount of:

a) Two Million One Hundred Eighteen Thousand and 00/100 Dollars (\$2,118,000.00) ("Management Fee"), inclusive of travel and other expenses; plus

b) For commissionable transactions, five (5%) percent per transaction based upon either the i) property value of property purchased, ii) gross sales proceeds of property sold, or iii) from actual rent on leases collected by the City as the Landlord ("Commission Fees"). Professional Contractor shall be paid a minimum annual fee of Ninety Thousand and 00/100 Dollars (\$90,000); plus

c) For additional services on an as-needed basis, which may include but not limited to appraisals, broker opinions of value, or special projects, and which shall be priced at actual costs for work performed without any mark-up or fees after obtaining written authorization to proceed from the Authority prior to incurring such costs ("As-Needed Services Allowance Fees").

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

4.02 It is understood and agreed by the parties hereto that the Fees stated above for performance of Services is inclusive of any and all remuneration to which the Professional Contractor may be entitled, and that the Professional Contractor shall not receive any fringe benefits including, but not limited to, overtime pay, holiday pay, sick pay, vacation pay, retirement benefits, pension benefits and insurance benefits in addition to or in lieu of those expressly stated herein.

4.03 Remuneration for this engagement will be by stipulated lump sum for the Property Management portion of the Scope of Services, paid monthly in equal installments. Existing lease renewals are non-commissionable. For the Property Transaction portion of the Scope of Services, the DBA will deduct from sale proceeds and cause to be paid to the Professional Contractor agreed upon brokerage transaction fees. Marketing, investigative and other industry standard services are considered to be a component of brokerage services, and as such no additional fee will be paid beyond the stipulated commission for all related actions necessary to facilitate the purchase or sale of a Property.

Professional Contractor shall bill in accordance with the Exhibit B, Schedule of Fees, attached and incorporated herein by this reference.

Professional Contractor is to provide a proposed organizational chart and resumes for each staff member to be assigned to this Project. (Exhibit C)

4.04 Any additional services requested by the Authority of the Professional Contractor shall be payable as mutually agreed upon in writing between the Authority and the Professional Contractor.

ARTICLE V  
Method of Payment

5.01 Payment for the proper performance of Services required hereunder shall be made following submission by the Professional Contractor of an Invoice for payment. The invoice shall include the following information:

- (a) The total cost of the staff fee, computer systems fee and operating expense fee by category provided to the Project to date.
- (b) The total cost of transactional fees earned to date.
- (c) A description of the Services rendered for that billing period.
- (c) The date of performance of the Services.

5.02 The Professional Contractor shall be paid for the proper performance of Services, for earned transaction fees and for other fees approved by the Authority hereunder.

5.03 Acceptance of final payment by the Professional Contractor shall constitute and operate as a release of the Authority and the City of Detroit (the "City") from any and all claims by the Professional Contractor of any liability of the Authority or the City for any act or omission relating to or arising under the Agreement, including any prior omission, negligence, delay or default of the Authority, the City, or any of their officers, employees, agents or contractors. Any claim by Professional Contractor relating to or arising from the Agreement and not otherwise waived by the Professional Contractor shall be submitted to the Authority prior to final payment in a verified statement of any and all claims relating to or arising under the Agreement, setting forth with respect to each such claim the total amount thereof and the value of each item included in the claim. Unless the Professional Contractor's claims are completely submitted as required herein prior to the Authority's final payment to the Professional Contractor, the Professional Contractor will have waived such claims and the right to assert the claims.

ARTICLE VI  
Assignments

6.01 The parties hereto having acknowledged that this Agreement is based upon the professional qualifications of the Professional Contractor further agree that the Professional Contractor shall not assign, subcontract or transfer its interest in this Agreement without the prior written consent of the Authority.

ARTICLE VII  
Termination

7.01 The Authority may terminate this Agreement in whole or in part for cause upon giving written notice of termination (herein called "Notice of Termination") to the Professional Contractor at least fifteen (15) days before the Effective Date of the termination, should the Professional Contractor: (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. The Professional Contractor shall be liable to the Authority for damages sustained by the Authority by virtue of the Professional Contractor's breach and shall be liable for any reasonable costs the Authority might incur enforcing or attempting to enforce this Agreement, including reasonable attorneys' fees. The Authority may withhold any payment(s) to the Professional Contractor for the purpose of set-off until such time as the exact amount of damages due the Authority from the Professional Contractor is determined. It is expressly understood that the Professional Contractor will remain liable for any damages the Authority sustains in excess of any set-off. If this Agreement is so terminated the Authority may take over the Services and prosecute the same to completion by contract with another party or otherwise, and the Professional Contractor shall be liable to the Authority for any and all costs incurred by the Authority thereby.

7.02 The Professional Contractor may terminate this Agreement in whole or in part for cause upon giving Notice of Termination to the Authority at least thirty (30) business days before the Effective Date of the termination, should the Authority fail to fulfill in a timely and proper manner its obligations under this Agreement. The rights provided to the Authority in the event of the Professional Contractor's breach as set forth in Section 7.01 shall be equally provided to the Professional Contractor.

7.03 The Authority may terminate this Agreement without cause, in whole or in part, for its convenience, at any time, without incurring any further liability whatsoever, other than as stated in this Article VII, by issuing a Notice of Termination to the Professional Contractor of such termination, specifying the Effective Date thereof, at least fifteen (15) business days prior to the Effective Date of such termination. If this Agreement is so terminated, the Authority will pay the Professional Contractor only for the Services rendered prior to such termination, including any retainage for the Services

previously performed. The amount of the payment shall be computed by the Authority on the basis of the Services rendered and accepted by the Authority; any expenses incurred prior to termination; bona fide termination settlement costs reasonably incurred by the Professional Contractor, as determined by the Authority relating to the commitments which had become firm prior to the termination, but only to the extent that the Professional Contractor could not have mitigated the same; and such other costs as, in the judgment of the Authority, represent a fair value of the Services provided, less the amount of any previous payments made. Should the Authority or the Authority's designee undertake any part of the Services which are to be performed by the Professional Contractor, to the extent such Services are being performed by the Authority or its designee, the Professional Contractor shall not be entitled to any compensation for the Services so performed. The parties expressly agree that in no case shall payment under this Section 7.03 exceed the maximum sum payable provisions in Section 4.01 and any compensation due the Professional Contractor for any duly authorized Amendments hereto increasing the scope of work hereunder.

7.04 After receipt of a Notice of Termination and except as otherwise directed by the Authority, the Professional Contractor shall:

- (a) Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;
- (b) Obligate no additional contract funds for payroll costs and other costs beyond such date as the Authority 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) As of the date the termination is effective, preserve all records and submit to the Authority such records and reports as the Authority shall specify, and furnish to the Authority an inventory of all furnishings, equipment, and other property purchased for the Agreement, (if any), and carry out such directives as the Authority may issue concerning the safeguarding or disposition of files and other property; and
- (e) Submit within thirty (30) days of the Notice of Termination a final report 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 Professional Contractor has incurred financial obligations pursuant to this Agreement (if any).
- (f) Submit within (30) days of the Notice of Termination a final report of all commissionable sales transactions in process as of the date of

termination, under which the contractor would be due a commission at closing, which the Authority shall pay pursuant to this Agreement as though this Agreement had not been terminated.

7.05 Upon completion or other termination of this Agreement, all finished or unfinished original documents or copies (when originals are unavailable), data, studies, briefs, drawings, maps, models, photographs, files, intermediate materials estimates, memoranda, computations, papers, supplies, recordings, videotapes, notes or other materials (herein collectively called the "Work Product") prepared by the Professional Contractor under this Agreement or in anticipation of this Agreement shall become the Authority's sole and exclusive property, whether or not in the Professional Contractor's possession, free from any claims or retention of rights thereto on the part of the Professional Contractor. The Professional Contractor shall promptly deliver to the Authority all of such property and the Authority shall return all the Professional Contractor's properties to it. The Professional Contractor acknowledges that any intentional failure or delay on its part to deliver the Work Product to the Authority will cause irreparable injury to the Authority not adequately compensable in damages and for which the Authority has no adequate remedy at law, and the Professional Contractor accordingly agrees that the Authority may, in such event, seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Work Product. The Authority shall have full and unrestricted use of the Work Product for the purpose of completing the Project. The Professional Contractor may retain copies of the Work Product at its own expense with the consent of the Authority, which consent shall not be unreasonably withheld.

Should the Authority use such Work Product for any purpose except for the Project without utilizing the services of the Professional Contractor, the Professional Contractor shall have no liability arising out of or in connection with such use or involving or resulting from such use.

#### ARTICLE VIII Amendments

8.01 The Authority 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 the services to be performed by the Professional Contractor, or require the Professional Contractor to perform additional services. Any such change, addition, deletion, extension or modification, including any increase or decrease in the amount of the Professional Contractor's compensation, which is mutually agreed upon by and between the Authority and the Professional Contractor, shall be incorporated in written amendments (herein called "Amendments") to this Agreement. Such Amendments shall not invalidate this Agreement, nor relieve or release the Professional Contractor and/or Authority from any of its obligations under this Agreement, unless so stated therein. The Professional Contractor shall not be required to perform in accordance with any requested Amendment until compliance with Section 8.02 is met.

8.02 No Amendment to this Agreement shall be effective and binding upon the parties, unless it expressly makes reference to this Agreement, is in writing and is signed and acknowledged by duly authorized representatives of both parties. No verbal order or instructions shall in any way change or modify this Agreement. No verbal conversation, understanding, or agreement with any officer or employee of the Authority, 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 IX Conflict of Interest

9.01 The Professional Contractor warrants and covenants that it does not have and that it will not have during the performance 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 Professional Contractor further warrants and covenants that no officer, commissioner, member or employee of the Authority 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 X Confidential Information

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

#### ARTICLE XI Indemnity

11.01 The Professional Contractor agrees to indemnify, defend and hold harmless the Authority and the City against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the Authority or the City to the degree of fault of the Professional Contractor and its employees, agents, consultants and sub-consultants by reason of any of the following occurring during the term of this Agreement:



- (a) Any negligent or tortious act or omission of the Professional Contractor or any of its personnel, employees, agents, consultants or subcontractors, or any entities associated, affiliated or subsidiary to the Professional Contractor now existing or hereafter created, or their agents and employees.
- (b) Any failure by the Professional Contractor, its personnel, employees agents, consultants or subcontractors to perform its obligations, either implied or expressed, under this Agreement.
- (c) Any act, failure to act or misrepresentation by the Professional Contractor or any of its agents, personnel, employees, consultants or subcontractors in connection with the Project.
- (d) Any and all injury to any assets, any person or property of an employee of the Authority or the City where such injury arises out of the Professional Contractor or any of its agents, personnel, employees, consultants or subcontractors in performance of this Agreement.
- (e) Each party to the joint venture assumes "joint and several" liability for the actions of the Professional Contractor under this Agreement, regardless of which party made the breach, error or omission.

The Professional Contractor also agrees to hold the City and the Authority harmless from any and all injury to the person or damage to the property of, or any loss or expense incurred by, an employee of the Authority which arises out of the grossly negligent performance by the Professional Contractor or its employees of the Services under this Agreement to the degree of fault of the Professional Contractor.

11.02 In the event any action or proceeding shall be brought against the Authority or the City, or any of their respective agents or employees, by reason of any claims covered hereunder, the Professional Contractor, upon notice from the Authority, shall at the Professional Contractor's sole cost and expense, resist or defend the same to the degree of Professional Contractor's fault with counsel of the Professional Contractor's choice, provided said counsel is acceptable to the Authority and/or the City.

11.03 The Professional Contractor agrees that it is its responsibility and not the responsibility of the Authority to safeguard the property and materials that its employees, consultants, or subcontractors use or have in their possession while performing under this Agreement. Further, the Professional Contractor agrees to hold the Authority harmless for any loss of such property and materials to the degree of Professional Contractor's fault used by such persons pursuant to the Professional Contractor's performance under this Agreement or which is in their possession.

11.04 The indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits

payable by or for the Professional Contractor under workers' compensation acts or other employee benefit acts. In addition, the Professional Contractor agrees to hold the Authority and the City of Detroit harmless from the payment of any deductible on any insurance policy to the degree of Professional Contractor's fault.

11.05 The Professional Contractor agrees that it will require the same indemnification of the Authority by any consultant or subcontractor it hires in providing the Services to be provided in this Agreement.

11.06 Nothing contained in this Article XI shall be construed to require indemnification by the Professional Contractor to a greater degree than that permitted by Act 165 of the Michigan Public Acts of 1966, being MCLA 691.991.

## ARTICLE XII

### Insurance

12.01 If required by the Authority, it is agreed, prior to the execution of this Agreement by the Professional Contractor, Professional Contractor shall provide the Authority with evidence of the following occurrence-based liability insurances in amounts no lower than those required under Section 12.02 and 12.03.

12.02 The Professional Contractor shall procure and maintain at its sole expense, the following insurances:

- (a) Worker's Compensation insurance which meets Michigan statutory requirements and Employers Liability insurance with minimum limits of \$500,000.00 each accident. The Professional Contractor agrees that it will obtain a similar covenant with respect to Worker's Compensation insurance from any consultant or subcontractor retained by the Professional Contractor to render any of the Services. This insurance shall be kept in force and effect until receipt of final payment by the Professional Contractor. This insurance is mandatory if the Professional Contractor has employees.
- (b) Professional Liability (errors and omissions) insurance with minimum limits of \$2,000,000 each claim. This insurance shall be kept in force and effect for six (6) years after receipt of final payment by the Professional Contractor to the extent such insurance is commercially available to the Professional Contractor for the duration of the six (6) year period; \* and

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\*Professional Liability insurance may be obtained on claims made basis, but the Professional Contractor will be required to maintain said insurance in full force and effect for a minimum of six (6) years after receipt of final payment by the Professional Contractor.

- (c) Automobile liability insurance covering all owned, non-owned, or hired automobiles with minimum limits for bodily injury of \$250,000 each person and \$1,000,000 each occurrence and minimum limits for property damage of \$500,000 each occurrence. Such insurance shall comply with the provisions of the Michigan No Fault Insurance Law. This insurance shall be kept in force and effect until receipt of final payment by the Professional Contractor.

12.03 If during the term of this Agreement, changed conditions or other pertinent factors should, in the reasonable judgment of the Authority, render inadequate the insurance limit, or types of coverage required herein, the Professional Contractor will furnish on demand such additional coverage as may reasonably be required under the circumstances. All such insurance shall be under valid and enforceable policies, issued by insurers of recognized responsibility, registered to do business in the State of Michigan and which are well-rated by national rating organizations and are acceptable to the Authority.

12.04 Professional Contractor agrees to notify the Authority in writing of any material change or cancellation or non-renewal of any of the required policies at least thirty (30) days prior to such material change, cancellation or non-renewal and failure to do so will constitute material breach of this Agreement.

12.05 Certificates of insurance evidencing all required coverage shall be submitted to the Authority prior to the commencement of the Services and at least fifteen (15) days prior to the expiration dates of expiring policies.

12.06 The Professional Contractor shall be responsible for payments of all deductibles contained in any insurance required hereunder. The provisions requiring the Professional Contractor to carry the insurance required under this Article shall not be construed in any manner as waiving or restricting the obligation to indemnify or any other liability of the Professional Contractor under this Agreement.

12.07 Unless prohibited by law, all policies of insurance required herein shall name the Authority and the City as additional insureds.

### ARTICLE XIII

#### Fair Employment Practices

13.01 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 Professional

Contractor 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 Professional Contractor 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.

13.02 The Professional Contractor agrees to comply with all rules and procedures adopted by the Human Rights Department. 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 Professional Contractor 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.

The Professional Contractor further agrees to take affirmative action to achieve reasonable representation of minority groups and women on its work force. Such affirmative action shall include, but not be limited to, the following areas: employment, promotion, demotion or transfer, recruiting, or recruitment, advertising, lay-off or termination, rates of pay or other forms of compensation and selection for training or education, including apprenticeships. The Professional Contractor shall promptly furnish any information required by the Authority or the City of Detroit Human Rights Department pursuant to this Section.

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

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

#### ARTICLE XIV Notices

14.01 All notices, consents, approvals, requests, reports and other communications (herein collectively called "Notices") required or permitted under this Agreement shall be in writing and sent by registered or certified mail, postage prepaid and addressed as follows:

If to Authority: City of Detroit Building Authority  
1301 Third Street, Suite 328  
Detroit, Michigan 48226  
Attention: Mr. Tyrone Clifton, Director

with a copy to: The Allen Law Group, P.C.  
2500 Fisher Building  
3011 West Grand Boulevard  
Detroit, Michigan 48202-3030  
Attention: Floyd Allen, Esq.

If to Professional Contractor: Signature Associates, Inc.  
One Towne Square, Suite 1200  
Southfield, Michigan 48076  
Attention: John Hamburger,  
Senior Vice President

with a copy to: Summit Commercial LLC  
7700 Second Ave. Suite 300  
Detroit, Michigan 48202  
Attention: Bunia Parker

14.02 Notices shall be deemed received three (3) days after the day of mailing. 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. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

ARTICLE XV  
Representations and Warranties

15.01 Professional Contractor represents and warrants that all of the following statements are true and shall remain true from the Effective Date of this Agreement throughout the Contract Term:

- (a) The Professional Contractor covenants that it is not, and will not become, in arrears to the Authority or the City upon any contract, debt or other obligations.
- (b) The Professional Contractor is fully qualified and capable and has the requisite skills necessary to perform the Services pursuant to the terms and conditions set forth therein.

- (c) Professional Contractor represents and warrants that it has full power to enter into this Agreement, to enter into the obligations described herein, to execute and deliver this as well as any and all other documents to be executed and/or delivered in connection herewith, and to incur the obligations provided for herein, all of which have been duly authorized by all proper and necessary action of the Professional Contractor.
- (d) Professional Contractor represents and warrants that, as of the Effective Date and throughout the Contract Term of this Agreement, Professional Contractor has not been and is not in arrears to the State of Michigan for any debts whatsoever (including, but not limited to, back taxes), nor is or was Contractor in default or in litigation regarding any issues with the State of Michigan, US Federal Government, Wayne County, Oakland County, Macomb County or the City.
- (e) Professional Contractor represents and warrants that it has the necessary financial resources, employees, vehicles and equipment available to provide the Services required by this Agreement.
- (f) Professional Contractor represents and warrants that it is not, jointly or severally, party to any contract or agreement or subject to any other restriction or unusually burdensome order of any regulatory commission, court, board or agency, which may materially and adversely affect its ability to provide the Services. The execution and performance of this Agreement and the documentation related hereto, will not result in the creation of any other encumbrance or charge upon any asset of Professional Contractor pursuant to the terms of any other agreement. No provisions of any existing mortgage, indenture, contract or agreement affecting Professional Contractor's operations and/or assets is in effect which would conflict with or in any way prevent the execution, delivery or enforcement of the terms of this Agreement.
- (g) To the best of Professional Contractor's knowledge, it has not received any written notice from any governmental authority that the Professional Contractor is now in violation of any governmental orders, regulations, statutes or ordinances dealing with the Professional Contractor's operations. In the event any such notice from any governmental authority is received by Professional Contractor between the Effective Date and throughout the Contract Term, which Contractor does not reasonably contest, Professional Contractor shall correct the same at Professional Contractor's expense as promptly as possible.
- (h) Professional Contractor has not entered into any contracts or made any commitments which would bind the Authority as a successor in interest.
- (i) Professional Contractor has not entered into any other existing agreements which will conflict with its obligations hereunder.

- (j) To the best of Professional Contractor's knowledge, all documents heretofore and hereafter provided to the Authority are, and shall be complete, true, and accurate in all material respects.
- (k) Professional Contractor has not contracted for the furnishing of labor or materials which will not be paid in full by Professional Contractor in the ordinary course.
- (l) Professional Contractor has no notice of, and there is no pending or threatened litigation, administrative action or examination, claim or demand whatsoever relating to the Professional Contractor and/or its operations and/or assets, or the Services contemplated herein, before any court or any federal, state or municipal government department, commission, board, bureau, agency or instrumentality thereof, the outcome of which may materially adversely affect Professional Contractor and/or Professional Contractor's ability to perform the Services in accordance with this Agreement.
- (m) No federal, state or local taxing authority has asserted any tax deficiency, lien, or assessment against the Professional Contractor which has not been paid or the payment for which adequate provision has not been made to the Authority's reasonable satisfaction.
- (n) That Professional Contractor and the principals and/or partners and/or owners and/or officers of Professional Contractor are citizens of the United States of America as defined in Section 1445 of the Internal Revenue Code.
- (o) This Agreement, and all related documents will, when executed and delivered by Professional Contractor, be the valid, legal and binding agreements or obligations of the Professional Contractor, enforceable in accordance with their respective terms, having been duly authorized by all requisite corporate action.
- (p) Professional Contractor has complied with all applicable City clearance and hiring policy requirements, including execution and delivery of a Request for Income Tax Clearance, Vendor Clearance Request, Covenant of Equal Opportunity, Hiring Policy Compliance Affidavit and Slavery Era Records and Insurance Disclosure Affidavit.
- (q) Professional Contractor hereby warrants and represents to and covenants with the Authority that each and every warranty, representation, and covenant set forth in this Agreement shall be true for the period from the Effective Date and throughout the Contract Term of this Agreement.

ARTICLE XV  
Miscellaneous

15.01 (a) No failure by the Authority 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.

15.02 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.

15.03 This instrument, including any exhibits hereto, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither the Authority nor the Authority's agents have made any representations except as expressly set forth herein, and no rights or remedies are or shall be acquired by the Professional Contractor by implication or otherwise unless expressly set forth herein. The Professional Contractor hereby waives any defense it may have to the validity of the execution of this Agreement.

15.04 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.

15.05 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.

15.06 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.

15.07 The rights and remedies set forth herein are not exclusive and are in addition to any of the rights and remedies provided at law or in equity. 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 Professional Contractor agrees, consents and submits to the personal jurisdiction of any competent court in Wayne County, Michigan for any action arising out of this Agreement. The Professional Contractor agrees that service of process at the address and in the manner specified in Article 14 will be sufficient to put the Professional Contractor on notice, and the Professional Contractor hereby waives any and all claims relative to such notice. The Professional Contractor also agrees that it will



not commence any action against the Authority because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement, in any courts other than those in the County of Wayne, State of Michigan, unless original jurisdiction can be had in the United States District Court, Eastern District, the Michigan Court of Appeals or the State Supreme Court.

15.08 If any affiliate (as hereinafter defined) of the Professional Contractor shall take any action, which, if done by a party, would constitute a breach of this Agreement, the same shall be deemed a breach by the Professional Contractor with right legal effect. "Affiliate" shall mean a "parent", subsidiary or other company controlling, controlled by or in common control with the Professional Contractor.

15.09 It is understood that this is not an exclusive service contract, and that during the term of this Agreement, the Authority may contract with other consulting firms and that the Professional Contractor is free to render the same or similar advisory services to other clients; provided, however, that the Professional Contractor's obligations to the Authority contained in this Agreement will not be affected in any manner.

15.10 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 Authority's determination shall be controlling. However, in the event of an occurrence of any circumstance(s) beyond the control of the Professional Contractor, the Authority may, at its option, terminate this Agreement, pursuant to Article VII herein.

15.11 For purposes of the hold harmless and indemnity provisions contained in this Agreement, the term "Authority" shall be deemed to include the Detroit Building Authority, the City of Detroit, and all other associated, affiliated, allied or subsidiary entities or commissions, their officers, agents and representatives and employees now existing or hereafter created.

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

15.13 This Agreement may be executed in any number of counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Promptly after the execution hereof, the Authority shall submit to the Professional Contractor a confirmed copy of this Agreement.

15.14 [INTENTIONALLY OMITTED].

15.15 Professional Contractor acknowledges and agrees that the Authority shall be permitted to audit the Professional Contractor's financial records pertaining to the Contractor's performance of this Agreement, which right to audit may be assigned by the Authority to its designee, including the Detroit City Council and the City Auditor General.

15.16 Professional Contractor and each of its subcontractors, if any, shall comply with all anti-kickback laws, including the Copeland Anti-Kickback Act (18 USC §874), and is prohibited from inducing, by any means, any person employed in connection with the Project to give up any part of the compensation to which it is otherwise entitled. Professional Contractor shall insert substantially similar language to the language in this Section to ensure compliance by any of its subcontractors with the terms of this Section.

15.17 Professional Contractor and each of its subcontractors, is prohibited from paying or accepting any bribe in connection with securing this Agreement or in connection with performing under the terms of this Agreement. Professional Contractor shall insert substantially similar language to the language in this Section to ensure compliance by subcontractors with the terms of this Section.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF DETROIT BUILDING  
AUTHORITY, a Michigan public authority  
and body corporate

By: 

Bryan C. Barnhill, II

Its: Chairman

By: 

Christopher T. Jackson

Its: Treasurer

Signature Associates, Inc. a Michigan  
corporation

By: 

Its: SVP


Summit Commercial LLC, a Michigan  
limited liability company

By: 

JEROME EGGER

Its: PRINCIPAL

APPROVED AS TO FORM:

  
General Counsel, City of Detroit  
Building Authority

## **EXHIBIT A**

### **SCOPE OF SERVICES**

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

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 Professional Contractor to assist the Authority 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 Professional Contractor 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 Authority.
10. Provide the Authority 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 Authority as directed.
12. Provide monthly reports of property management and real estate transaction activities to the Authority. Such reports shall include itemized real estate sales, lease payments received and such other data in sufficient form and scope as required by the Authority.
13. Provide such other property management and/or maintenance services and reporting as are requested by the Authority.

#### **B. REAL ESTATE TRANSACTIONAL SERVICES**

1. Market the Properties for sale and/or lease as directed by the Authority.
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. Preparing documents and providing information for internal 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 Authority.
  - b. Negotiate lease rates and provide the Authority with basic lease terms as required.
  - c. Secure signatures of third parties as needed on documents provided by Authority.
  - d. Manage the accounts receivable functions for City-as-landlord leases on behalf of the Authority as directed.
  - e. Provide monthly reports and rent payments for lease revenue received by the Authority 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 completed clearances, insurance certificates and other documents sufficient to process lease agreements for 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 basic sale terms and legal descriptions.
  - b. Secure signed purchase agreements and collect a deposit from prospective purchasers. Any such deposits will be held by the Authority and shall be applied to the sale at the closing. The Authority 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.

3. The Task shall be assigned a Task number that shall be outlined in the Professional Contractor's invoices and tracked accordingly for the remainder of the Agreement.

## **II. ADDITIONAL CLARIFICATIONS & ASSUMPTIONS**

- A. The Services performed by the Professional Contractor are non-exclusive and the Authority is free to sell and/or lease property with or without the assistance and support of the Professional Contractor in any specific instance.
- B. The Authority shall provide the Professional Contractor 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.
- C. "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 30, 2021.

## **III. BUDGETS**

- A. In order for the Authority to anticipate and plan for the cash requirements of the Property's management and as information is available, the Firm shall within 30 days after the execution of this agreement submit to the Authority in a format previously agreed upon by the Authority and the Professional Contractor an annual budget prorated for the period commencing with the assumption of management services through December 31, 2018, and concurrently, an annual Fiscal year. The Professional Contractor shall prepare and present for the Authority approval an updated annual operating budget not less than 60 days before the end of the upcoming fiscal year in ongoing contract years.
- B. Based on the previous 3 year experience, the Professional Contractor shall prepare and submit to the Authority a fiscal year 2018/2019 budget for supportive services, such as board ups, lock change, clean out, grass cutting, etc. for each occupied and vacant Property that information has been gathered, including but not limited to parking facilities, commercial buildings, industrial sites, parks and cemeteries, within the first 90 days of this agreement. Thereafter, the Professional Contractor shall submit an updated annual operating budget for each vacant Property along with its CY Operating Budget.
- C. The Professional Contractor shall prepare and submit an operating budget *by category* for each unoccupied or vacant Property type, including but not limited to vacant lots, industrial sites and commercial buildings.

- 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 Authority shall pay for all recording fees.
  - e. Provide monthly reports and sales revenue payments for funds received by the Authority 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 as directed by the Authority.
  - 10. Provide necessary services to support the City's acquisition of real property as directed by the Authority.
  - 11. Assist the Authority in developing and implementing real estate transaction strategies and processes.
  - 12. Provide such other property transactional services and reporting as are requested by the Authority.

#### **C. AS-NEEDED SERVICES**

- 1. From time to time during the term of the Agreement, the Authority may require the Professional Contractor 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
- 2. Only upon the Authority's written pre-authorization may the Professional Contractor begin work and incur costs on As-Needed Services.



#### **IV. ACCOUNTING AND REPORTING**

A. Within 30 days of the execution of this agreement, the Professional Contractor shall establish and maintain the accounting and reporting system approved by the Authority that will duly account for all transactions relating to the Properties. The Professional Contractor shall provide such financial reports as have been agreed upon on a monthly basis by the 10<sup>th</sup> working day of the calendar month following the current calendar month. All reports shall be in a format previously agreed upon by the Professional Contractor and the Authority, and shall include at minimum the following information:

- i. Detailed report of all cash receipts and disbursements
- ii. Bank statement and reconciliation of such statement to the books and records kept by the Professional Contractor
- iii. Comparison of current month and year to date amount of actual cash transactions to the budget and calculation of monthly and year to date variances from budget
- iv. Schedules presented, by tenants
- v. Tenant directory containing, at minimum, the following, updated monthly:
  1. Tenant name/ designated vacant space
  2. Location
  3. Rental Rate(s)
  4. Contribution to Common Area Costs
  5. Other reimbursable items
  6. Lease commencement and expiration dates
  7. Square footage leased
  8. Prepaid rentals or security deposits owed or paid
  9. Delinquency status report
  10. Any other tenant information requested by Authority.

B. The Professional Contractor shall at all times maintain accurate records of all monies received and disbursed in connection with its management. The Authority

shall at all reasonable times have access to such records as well as the books and other records of the Professional Contractor as they relate to the Properties.

#### **V. AUDIT**

- A. At any time during this engagement, the Authority may engage its internal audit staff or a third party generally in the business of performing audits of property management services to perform a review and audit of the Professional Contractor's performance of services, including without limitation, (i) personnel providing such services, (ii) data and records relating to such services to verify integrity, security and privacy of data, and (iii) the performance of the services in accordance with performance standards. The auditor shall have the right to copy and examine any books or records related to this agreement.
- B. The Professional Contractor shall cooperate with the Authority audit, or with any agency having jurisdiction over the Authority's business, including the Detroit City Council. Upon reasonable notice, the Professional Contractor shall afford all persons involved in any such audit with reasonable access to data and information held by the Professional Contractor during regular business hours with reasonable prior notice and adherence to the Professional Contractor's security and safety policies.
- C. If an audit results in a notification to the Professional Contractor that it is not in compliance with any rule, regulation or law in effect as of the effective date and relating to the services performed, the Professional Contractor shall, at its own expense and within a reasonable period of time, comply with such rule, regulation or law.

#### **VI. TRANSFER OF DATA**

- A. No later than the effective date of this Agreement, the Authority shall provide to the Professional Contractor, at the Professional Contractor's expense, copies of accounting books and records, rent rolls, security deposit schedules, payroll records, original leases, correspondence, service contracts and agreements with respect to operation and maintenance of the various systems of the property, together with any other information or data in the Authority's possession for the Professional Contractor to provide Services. The Authority does not warrant that such materials shall be complete, operable, accurate, or in full conformity with the Authority's standards in existence at the effective date, nor does the Authority warrant that such materials represent a complete set of materials necessary for the Professional Contractor to provide the services. The Authority shall retain ownership of all such materials provided to the Professional Contractor for the provision of the services. The Professional Contractor agrees to hold all information provided in confidence, except as otherwise required by law.

**City owned inventory managed under this agreement is approximately as follows:**

## EXHIBIT B

### FEE SCHEDULE

#### **I. MANAGEMENT FEE**

- A. The Authority shall pay the Performance Contractor for performance of the Services a management fee of Seven Hundred Six Thousand and 00/100 Dollars (\$706,000.00) per year ("Management Fee") for the term of the Agreement.
- B. The Management Fee shall be paid to the Professional Contractor in monthly installments of Fifty Eight Thousand Eight Hundred Thirty-Three and 34/100 Dollars (\$58,833.34) each contract year.
- C. The Management Fee includes all travel and personnel expenses of the AUTHORITY under this Agreement.
- D. Management Fee Schedule
- |                  |              |
|------------------|--------------|
| Year One.....    | \$706,000.00 |
| Year Two.....    | \$706,000.00 |
| Year Three ..... | \$706,000.00 |

#### **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 Authority 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 Professional Contractor shall receive at closing five percent (5%) of the gross sale proceeds from the sale of real estate.

Notwithstanding anything stated herein to the contrary, (1) all Property Sales Services Fees shall require the prior written approval of the Authority 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 Authority 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 Authority 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 Authority, the Authority shall pay transaction fees to the Professional Contractor from the actual rents collected in an amount equal to five percent (5%) of the rent in cash to the Authority 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 the Authority, (2) the Authority 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. The Authority shall be under no obligation to pay Lease Services Fees on uncollected rent.

#### C. As-Needed Services Allowance Fees

1. For as-needed services pre-approved by the Authority pursuant to this Agreement, the Authority shall pay the Professional Contractor the amount given for each Task at actual cost with no mark-up or administrative fees.

- 7,500 total properties (approximately)

**Subcontractors:** If the Professional Contractor subcontracts any of the work/services, the supplier/subcontractor must provide the Authority with the identity of each subcontractor, a description of the work to be performed by each subcontractor and proof that each subcontractor has in force, the insurance coverages and limits required above.

**EXHIBIT C**

**PROFESSIONAL CONTRACTOR PROPOSAL**

(See attached hereto)