

**AGREEMENT BETWEEN
CBRE, INC.
AND THE CITY OF ANN ARBOR
FOR PROFESSIONAL SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E Huron Avenue, Ann Arbor, Michigan 48103 ("City"), and CBRE, Inc. ("Consultant") a Delaware corporation, with its address at 2000 Town Center, Suite 500, Southfield, Michigan 48075, agree as follows on this 2ND day of ~~August~~, 2014.
OCTOBER

The Consultant agrees to provide professional services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Service Area/Unit means the City Administrator's Office.

Contract Administrator means the City Administrator, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for or delivered to City by Consultant under this Agreement

Project means Real Estate Marketing and Brokerage Services for City-owned Property, RFP No. 895

Property: Library Lane Parking Structure, Surface Level – 319 S. Fifth Avenue, Ann Arbor, Michigan

II. DURATION

This Agreement shall become effective on July 8, 2014, and shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in this Agreement.

III. SERVICES

- A. Subject to such policy direction and approvals as the City, through the Contract Administrator, may determine from time to time, the Consultant agrees to provide professional marketing and brokerage services ("Services") in connection with the Project as described in Exhibit A. The contract shall consist of three documents. The documents will be used to interpret the Agreement in order of precedence: (i) the Agreement, (ii) the City's Request for Proposal (RFP) No. 895, (iii) Consultant's Response to RFP 895 and any clarifications amendments submitted in response to request by the City in connection with Consultant's Response thereto.

The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes

add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

- B. The City relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Consultant shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

All negotiations with prospective purchasers shall be conducted by Consultant in conjunction with City and City's legal counsel. City and its legal counsel shall be responsible for determining the legal sufficiency of the purchase and sale agreement and all other documents relating to any transaction contemplated by this Agreement; and City and its financial advisors shall be solely responsible for determining the tax consequences of any transaction contemplated under this Agreement.

- D. The Consultant may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONSULTANT

- A. The Consultant shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator.
- B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be payable according to the fee schedule in Exhibit B. The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. The Consultant shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Consultant. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Consultant shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Consultant, its officers and employees. Consultant shall require all of its retained subcontractors to agree to name the City as an additional insured on their commercial general liability policy for any work performed in connection with this Agreement. In the case of all contracts involving on-site work, the Consultant and/or its subcontractor, shall provide to the City, before commencement of any work under this contract, documentation demonstrating it has obtained the policies required by Exhibit C. For purposes of this Agreement "documentation" is defined as a certificate of insurance and evidence of endorsement, satisfactory to the City Attorney, of the City's additional insured coverage.
- B. Any insurance provider of Consultant shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, from any acts or omissions by the Consultant or its employees and agents occurring in the performance of or breach in this Agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209) The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity

- B. Living Wage. The Consultant is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Consultant agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VII. WARRANTIES BY THE CONSULTANT

- A. The Consultant warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Consultant warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Consultant warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

VIII. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to the Consultant, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Consultant acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Consultant. The Contract Administrator shall give the Consultant written notice of such non-appropriation within thirty (30) days after it

receives notice of such non-appropriation.

- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Consultant access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Consultant of any defects in the Services of which the Contract Administrator has actual notice.
- C. The City shall hereby appoint Consultant as its exclusive agent and grants Consultant the exclusive right to solicit and procure prospective purchasers for the Property. Further City shall cooperate with Consultant in bringing about a sale of the Property, shall provide all available information to permit CBRE to properly market the Property in accordance with the terms of this Agreement, and shall immediately refer immediately to Consultant all offers and inquiries received from brokers, prospective purchasers or anyone else interested in the Property.

X. ASSIGNMENT

- A. The Consultant shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Consultant shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Consultant shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONSULTANT, it shall be addressed and sent to:

CBRE, Inc.
200 Town Center, Suite 500
Southfield, Michigan 48075
Attn.: John A. Latessa, Jr., Senior Managing Director

with a copy (which shall not constitute notice) to:

CBRE, Inc.
400 S. Hope Street, 26th Floor
Los Angeles, CA 90071

Attn: Sean Treglia, SVP & General Counsel
Latin America, Government Contracts & Public Policy
Telephone: (213) 613-3747
E: sean.treglia@cbre.com

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
301 E. Huron St., POB 8647
Ann Arbor, Michigan 48107
Attn.: Steven D. Powers, City Administrator

XII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XIII. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., deliverables) prepared by or obtained by the Consultant as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings partially completed drawings, computations, quantities and other data shall remain in the possession of the Consultant as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Consultant.

Unless otherwise stated in this Agreement, any intellectual property owned by Consultant prior to the effective date of this Agreement (i.e., preexisting information) shall remain the exclusive property of Consultant even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

XIV. CONFLICT OF INTEREST

Consultant certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Consultant further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

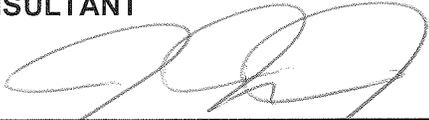
XV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XVI. EXTENT OF AGREEMENT

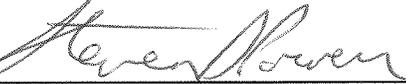
This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Consultant with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Consultant and the City.

FOR CONSULTANT

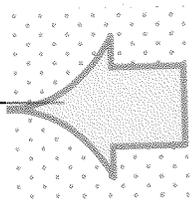
By 

John A. LaRossa Jr.
Its: Senior Managing Director

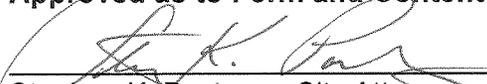
FOR THE CITY OF ANN ARBOR

By 

Steven D. Powers, City Administrator



Approved as to Form and Content



Stephen K. Postema, City Attorney

EXHIBIT A

SCOPE OF SERVICES

General

All Services to be performed in conformance with the terms and conditions of Ann Arbor RFP 895 and Consultant's Response thereto, dated May 16, 2014.

Statement of Work

Phase 1: Site Due Diligence

Consultant will analyze site conditions and constraints including but not limited to:

- Access/Transit
- Zoning
- Existing Uses of Surrounding Property

Phase 2: Vision/Planning

With data collected in previous tasks, Consultant will further consider the following to guide property disposal processes:

- Interview relevant stakeholders
- Engage the City decision team to understand their goals and objectives
- Identify current and future civic needs

Phase 3: Market Analysis

Consultant will prepare a detailed market analysis including considerations of highest and best use, in the context of the City's vision, to include the following market segments:

- Retail
- Residential (including multifamily)
- Office
- Mixed Use/Specialty
- Hotel/Conference
- Parking

The market analysis will be based on evaluating the major factors that determine the City's development potential in realizing the vision for the area, including economic and demographic characteristics, local regulatory considerations, transportation, physical features, property market trends—including market rents, vacancy rates, absorption trends, new construction, sales prices and capitalization rates, and land values, demand assessment, and identification of undersupplied/oversupplied categories.

Phase 4: Feasibility Study

Consultant will prepare a financial analysis and Public-Private Partnership feasibility study with emphasis on the following:

- Economic Development Issues
- Public Investment (including infrastructure)
- Financial/Cash Flow Model
- Risk Assessment
- Phasing

- Including a step-by-step listing and recommended timing of any pre-transaction items required or suggested (demolition, land subdivision, public infrastructure installation, legal arrangements, political approvals, etc.)
- Potential Transaction structures
 - Sales, Ground Leases, Joint Ventures and Public-Private Partnerships

Phase 5: Market Engagement

Consultant will develop and implement RFQ/RFP processes to engage developers, investors, and users aligned with the City's vision, considering the following transaction elements:

- City/State/Federal commitments
- Developer vision vs. City vision
- Civic responsibilities and needs
- Schedule/commitment
- Financial commitments/guarantees/deposits/contingencies

Issuance of any RFQ/RFP will be consistent with City procedures and coordinated with the City's Procurement Officer and City Attorney.

Phase 6: Proposal Evaluation, Partner Selection, Transaction Execution

Consultant will evaluate all proposals on like-kind basis in accordance with any issued RFQ/RFP evaluation/selection criteria and participate in developer selections based on the following considerations:

- Submission quality including objective and subjective criteria
- Interviews of proposal teams
- Proposer financial strength
- Risk issues for all parties

Consistent with Section III of the Agreement, Consultant will assist the City in negotiating and completing all necessary documentation including the following transaction elements:

- Letter of Intent
- Due Diligence
- Agreements for the development of the site
- Condominium documents, leases, and/or purchase documents

Phase 7: Additional Services

If requested by the City, and pursuant to a separate agreement, Consultant will act as the City's representative throughout the construction and development process that may include but not be limited to the following services:

- Construction and project management
- Design consulting
- Green/Sustainability consulting

Timeline

Consultant will prepare a detailed timeline for the Scope of Work, including anticipated number weeks for completion of each Phase of the Work and identified Deliverables. A draft timeline shall be submitted to the Contract Administrator within two week of the commencement date for the Agreement for review and approval. The Timeline may be modified during the term of the Agreement subject to final approval by the Contract Administrator.

EXHIBIT B
FEE SCHEDULE

General

Consultant will be compensated on a fee based on the overall project value of the Project. For purposes of this Agreement, "overall project value" is defined as the total economic value of the Project, including land, construction, architectural and design fees of all elements of the Project.

Consultant is expected to leverage its resources, including subject matter national experts in a diverse range of specialty practices (office, hotel, urban retail, multi-family and senior housing, public institutions, financing, etc.) for this complex public private partnership project, all of which will be included in Consultant's fee. This includes all of the items set forth in Exhibit A, including pre-RFP consulting, the preparation and national distribution of a development RFP, evaluation of proposals, financial analysis and modeling, negotiations of project/development agreement, land lease, subordination agreements, etc.

Cost Breakdown

Consultant proposes to complete the entire scope of work at the following costs:

1. Consultant will be paid a "success fee" of 3.0% of the Overall Project Value of the development by the developer. Consultant's fees are structured such that they are to be fully assumed by third parties as part of a successful transaction with no "out of pocket" cost to the City. Consultant will agree to cap the success fee once the scope of project and overall project values are better known.

In the event the Project is terminated by the City for any reason, Consultant will be paid a fee equal to \$4,000 per month ("Termination Fee") from contract execution through the date of termination to cover expenses.

The "success fee" will be clearly described in any RFP or other document or communication developed to expose the Property to and issued to the market or communicated to developers/investors and paid by the developers/investors as part of their overall development costs. The description shall specify that fees will be due and payable to Consultant within thirty (30) days of execution of a Development, Joint Venture, or other Agreement between the parties, and in no event any later than closing. The City shall not enter into or execute any binding or enforceable agreement with any developer/purchaser for the development and/or sale/purchase of the Property unless

such agreement includes a clear description of the "success fee" which the developer/purchaser shall pay to Consultant and the terms and the mandated payment date. Notwithstanding the immediate foregoing and except as hereinafter provided, the City shall not be obligated to pay to the Consultant any "success fee", commission or other remuneration in connection with the selection of a developer/purchaser or execution of an agreement between the developer/purchaser and the City.

Notwithstanding anything contained in this Agreement including section VIII, the City agrees that developers/purchaser shall be required to pay Consultant a "success fee" in accordance with this Agreement, if, within one hundred twenty (120) calendar days after the expiration or termination of the Agreement, the Property is sold and/or leased to, or the City enters into a contract of sale and/or lease of the Property with, or negotiations continue, resume or commence and thereafter continue leading to a sale and/or lease of the Property to any person or entity (including his/her/its successors, assigns or affiliates) with whom Consultant has negotiated (either directly or through another broker or agent) or to whom the Property has been submitted prior to termination of the Agreement. Any success fee received by Consultant under this paragraph shall first be applied to reimburse the City for any Termination Fee paid to Consultant until the Termination Fee is fully reimbursed, then the remainder to Consultant. The Consultant agrees to submit a list of such persons or entities to the City no later than fifteen (15) calendar days following the expiration or termination of the Agreement, provided, however, that if a written offer has been submitted it shall not be necessary to include the offeror's name on the list.

All inclusive. Fees include all specialty consulting (retail, hotel etc.), travel and other incidental costs of Consultant.

3.1. 2. Co-brokers Fees to cooperating brokers that may be representing investors/developers are not included in the Fee. Consultant is authorized to solicit and cooperate with other real estate brokers who represent prospective purchasers for the Property ("Cooperating Brokers"). Due to the public private partnership transaction contemplated by CBRE's proposal, CBRE shall not share its success fee with nor shall City be obligated to pay any fee or commission to any Cooperating Broker, and neither shall be responsible for payment of any Cooperating Broker fee or commission due and payable as a result of a sale of the Property. Any such Cooperating Broker fee, commission or other compensation shall be the sole responsibility of the purchaser of the Property.

3. Subcontractors. If necessary and on an "as-needed" basis, Consultant will engage subcontractors (such as land planners/massing architects, civil or traffic engineers, geotechnical specialists, outside legal support, etc.) that 1) the City approves in advance, 2) we will jointly select, and 3) Consultant will invoice at cost with no markup to the City of Ann Arbor.

4. Additional Services. Fees for Additional Services outlined in Exhibit A, such as Project and Construction Management, are highly dependent on the nature of the

development and the scope of services requested by the City, and therefore it is difficult to quote in advance. Typically, however, such fees are structured as a monthly consulting fee with an average direct ROI of at least 2-3x the fee.

EXHIBIT C

INSURANCE REQUIREMENTS

A. Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Consultant shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s).

The certificates of insurance shall meet the following minimum requirements.

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Job General Aggregate
\$1,000,000	Personal and Advertising Injury

3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

4. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under .A.2 and .A.3 above of this contract shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

- C.. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.