

## CONSULTING SERVICES AGREEMENT

THIS CONSULTING SERVICES AGREEMENT (this "Agreement") is dated as of the 1<sup>st</sup> day of June, 2013, by and among THE COUNTY OF CUYAHOGA, OHIO (the "County"), a political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio, THE CITY OF CLEVELAND (the "City"), an Ohio municipal corporation, and THE SUPERLATIVE GROUP, an Ohio corporation ("Consultant"). The County, the City and Consultant agree as set forth below:

### **ARTICLE 1 - SCOPE OF SERVICES**

1.1 Project. As used herein, the "Project" shall mean the Medical Mart and Convention Center, and Malls B and C, located in Cleveland, Ohio.

1.2 Services. Consultant's services consist of the research, marketing and sale of naming rights and related sponsorships for the Project, which services are more particularly described in Exhibit A ("Services").

1.3 Standard of Care. Consultant shall perform the Services in accordance with the standard of professional care, skill, diligence and quality that prevails among reputable firms engaged in providing similar services for projects of similar type and scope ("Standard of Care").

1.4 Consultant's Personnel. Consultant shall employ a sufficient number of employees, personnel and subconsultants to perform the Services in a timely manner consistent with the Project Schedule (defined in Section 5.3). If requested by the County or the City, Consultant shall promptly replace any employee or subconsultant of Consultant that the County or the City determines, in their reasonable judgment, is not performing satisfactorily. Any of the foregoing replacements shall be at no additional cost to the County or the City, and any employee, agent or subconsultant selected as a replacement shall be mutually agreed upon by the County and the City.

1.5 Subconsultants. Cleveland State University shall be a subconsultant of Consultant. Any additional subconsultants must be approved in advance by the County and the City, which approval shall not be unreasonably withheld.

### **ARTICLE 2 – COMPENSATION; PAYMENTS**

2.1 Payments for Services. Consultant's compensation for the Services shall be computed as, and shall not exceed the amounts, set forth on Exhibit B. Notwithstanding anything to the contrary set forth herein, the County, and not the City, shall be responsible for payments to Consultant of the Retainer Fee and the Commission Advance (each as defined in Exhibit B). The City shall pay its portion of the Retainer Fee and the Commission Advance to the County in accordance with Article 10 hereof, and shall have no obligation to make direct payments to Consultant.

(a) Payments of the Retainer Fee and the Commission Advance shall be made by the County to Consultant monthly based on invoices delivered to the County by Consultant. Invoices shall be submitted to the County no later than the tenth (10th) day of each month, and

payments shall be due and payable to Consultant within thirty (30) days after receipt by the County of Consultant's invoice.

(b) Payments of the Commission (as defined in Exhibit B) to Consultant shall be made by the County, with respect to naming rights and sponsorships procured by Consultant for the Medical Mart and Convention Center, and by the City, with respect to naming rights and sponsorships procured by Consultant for Malls B and C, no later than thirty (30) days after the County or the City, as the case may be, receives payment for a naming rights or sponsorship pursuant to a signed naming rights or sponsorship agreement procured by Consultant. It shall be an absolute condition precedent to the County's or the City's obligation to pay any portion of a Commission to Consultant that the County or the City, as the case may be, has first been paid by the signatory to the naming rights or sponsorship agreement procured by Consultant (a "Naming Right Signatory"). Subcontractor expressly assumes the risk of non-payment due to the Naming Right Signatory's failure or inability to pay the County or the City (as the case may be), and the County or the City, as the case may be, shall be liable for payment of a Commission to Consultant if and only if (and only to the extent) the County or the City, as the case may be, is paid by a Naming Right Signatory.

2.2 Travel Reimbursable Expenses. Reimbursable expenses for travel outside of Ohio (upon the County and the City's approval) shall be billed at cost, with a not to exceed total cost of \$20,000. Invoices for travel reimbursable expenses shall be submitted monthly by Consultant to the County no later than the tenth (10th) day of each month, and payments shall be due and payable to Consultant within thirty (30) days after receipt by the County of Consultant's invoice. Consultant shall submit, within thirty (30) days after the Effective Date, for the County's and the City's approval, a budget of all anticipated travel reimbursable expenses. Such approved budget shall not be exceeded without the County's and the City's prior written approval.

2.3 Taxes. The County and the City are tax-exempt political subdivisions of the State of Ohio. To the extent applicable to the Services, Consultant shall request, and the County and the City shall furnish to Consultant, necessary sales tax exemption forms. The County and the City shall not assume responsibility for the payment of any personal property taxes for any materials not owned by the County or the City (as applicable), nor shall the County or the City pay any insurance premiums for any coverage of any property not owned by the County or the City (as applicable).

2.4 Right to Withhold Payment. Payments of the Retainer Fee and the Commission Advance may be withheld by the County on account of (a) failure to carry out the Services in accordance with this Agreement or (b) failure of Consultant to make payments properly to its subconsultants.

2.5 Record Retention, Audit. Consultant shall keep and make available for the inspection, examination and audit by the County, the City and their respective authorized employees, agents, representatives, attorneys and auditors, at all reasonable times in a location in Cuyahoga County, Ohio, all data, including the records of all receipts, costs and disbursements made by Consultant, all books, accounts, memoranda and all or any other documents indicating, documenting, verifying or substantiating the cost and appropriateness of any and all expenditures and receipts. Such records shall be kept on the basis of generally accepted accounting principles for not less than four (4) years following the expiration or earlier termination of this Agreement.

### **ARTICLE 3 – REPRESENTATIVES**

3.1 County Representative. The County Representative for the Project is Bonita G. Teeuwen, P.E., Director of Public Works. The County may, by written notice to Consultant and the City, designate another party to act as its representative. The County Representative shall be the representative of the County with respect to the administration of this Agreement and is authorized to act on the County's behalf with respect to the Project.

3.2 City Representative. The City Representative for the Project is \_\_\_\_\_. The City may, by written notice to Consultant and the County, designate another party to act as its representative. The City Representative shall be the representative of the City with respect to the administration of this Agreement and is authorized to act on the City's behalf with respect to the Project.

3.3 Consultant Representative. The Consultant Representative for the Project is Myles C. Gallagher, Consultant's President and Chief Executive Officer. The Consultant Representative shall be the representative of Consultant with respect to the administration of this Agreement and is authorized to act on Consultant's behalf with respect to the Project. The Consultant Representative shall not be replaced without the prior written consent of the County and the City. In the event that the Consultant Representative becomes incapacitated or is otherwise unable to perform, any proposed replacement shall require the written consent of the County and the City. In the event a replacement acceptable to the County and the City is not presented within seven (7) days, then the County and the City may the right to terminate this Agreement in accordance with Section 9.1 hereof.

### **ARTICLE 4 – COUNTY AND CITY APPROVALS**

4.1 Approval Rights. Notwithstanding anything to the contrary set forth in this Agreement, the County, with respect to the Medical Mart and Convention Center, and the City, with respect to Malls B and C, shall maintain the right to reject, in their respective sole discretion, potential names, sponsors, proposed marketing devices and mediums, and other program-related decisions. Subject only to the limitations set forth in Section 4.1.1 hereof, the County shall have the sole right to approve potential names and sponsors for the Medical Mart and Convention Center, and the City shall have the sole right to approve potential names and sponsors for Malls B and C.

4.1.1 Pursuant to Section 18.15 of that certain Definitive Agreement, dated as of November 18, 2010, by and between the County and the City (the "Definitive Agreement"), the County and City have agreed that they (a) shall not agree to a naming rights sale to any person or entity that directly competes (or through an affiliate directly competes) with Merchandise Mart Properties, Inc. or Cleveland MMCC LLC (or their respective affiliates) in the showroom, trade show or convention business, (b) shall not agree to a naming rights sale that may be considered obscene or vulgar by the general public, and (c) shall not agree to a naming rights sale, or any other rights pursuant to which all or a portion of the Project (including, specifically, Malls B or C) is named as requested by a donor, without first obtaining the opinion of nationally recognized bond counsel that entering into such sale, grant or other agreement will not adversely affect the status of any Recovery Zone Economic Development Bonds, as defined in Section 1400U-2 of the

Internal Revenue Code, issued in connection with financing the construction of the Project or Malls B or C.

4.2 Timely Approvals. The County and the City shall furnish the required information and services, and shall render approvals and decisions, with reasonable promptness to minimize delay in the orderly progress of the Services; provided, however, that it shall be Consultant's responsibility to timely advise the County and the City of all time requirements and restraints with respect to such approvals and decisions.

4.3 Consent in Writing. Unless otherwise specifically provided herein, no consent or approval by the County or the City permitted or required under this Agreement shall be valid or be of any validity whatsoever unless the same shall be in writing, signed by the party by or on whose behalf such consent is given.

## **ARTICLE 5 - TIME OF PERFORMANCE**

5.1 Term. The term of this Agreement shall commence on the Effective Date and shall terminate on the second (2nd) anniversary of the Effective Date, unless otherwise terminated sooner in accordance with the terms and conditions of this Agreement ("Term").

5.2 Renewal Option. Consultant may extend the Term for an additional **[three (3)]** year renewal term on the same terms and conditions as herein set forth in this Agreement ("Renewal Term"). If Consultant elects to extend the Term for the Renewal Term, then Consultant shall provide the County and the City with written notice of such intent by the date that is ninety (90) days before the expiration of the Term. During the Renewal Term, there shall be no Retainer Fee or Commission Advance, but the Commission and all other terms and conditions of this Agreement shall remain the same.

5.3 Project Schedule. Consultant shall perform the Services in a timely manner consistent with the schedule attached hereto as Exhibit C ("Project Schedule").

5.4 Time is of the Essence. Time is of the essence in the performance of the Services under this Agreement. By executing this Agreement, Consultant confirms that the time for completion of the Services as set forth in the Project Schedule is a reasonable period for completion of the Services.

## **ARTICLE 6 - EXTENSIONS OF TIME**

6.1 Extensions of Time. If the performance by any party of an obligation hereunder shall be delayed for any reason beyond such party's reasonable control, then the time for the performance thereof shall be extended for a period equal to the greater of (a) the number of days of such delay or (b) the number of days reflecting the impact of the incident causing the delay, provided that the party claiming delay has provided the other parties with written notice of the occurrence of such delay in accordance with Section 6.2. Any delay caused by acts of God, wars, riots, embargoes, act of civil or military authorities, fires, floods, quarantines, or unusually severe, unfavorable or catastrophic weather conditions shall be deemed a delay caused by reasons

beyond a party's reasonable control, but financial inability to perform shall not be considered a delay beyond a party's reasonable control.

6.2 Notice of Delay. Should any party contend that it is entitled to an extension of time for completion of any obligation under this Agreement, it shall, within five (5) days of the occurrence of the cause of the delay, notify the other parties in writing of the existence of the delay, setting forth (a) the cause for the delay, (b) a description of the portion or portions of Services affected thereby, and (c) all details pertinent thereto. Within five (5) days after the expiration of any such delay, the delayed party shall deliver to the other parties a subsequent written application for the specific number of days of extension of time requested. It is a condition precedent to the consideration or prosecution of any claim for extension of time that the foregoing provisions be strictly adhered to in each instance, and if any party fails to comply, then it shall be deemed to have waived the claim.

## **ARTICLE 7 – ADDITIONAL SERVICES**

No claim for extra compensation or additional services shall be made unless a written change order therefor is executed by the parties hereto prior to the commencement of any claimed additional work or services. Failure of Consultant to obtain the County's and the City's prior written authorization for additional work or services shall be deemed a waiver of any claim for compensation relating to such additional work or services.

## **ARTICLE 8 – COMPLIANCE WITH LAWS**

8.1 Applicable Laws. Consultant, its employees and subconsultants, shall comply with laws, ordinances, codes, rules and regulations of governmental entities that are applicable to Consultant's performance of the Services, including those relating to safety, health, fair employment practices or equal employment opportunity. In addition, this Agreement is subject to all applicable County ordinances, including, but not limited to: (a) the Cuyahoga County Ethics Ordinance, (b) the Cuyahoga County Inspector General Ordinance, and (c) the Cuyahoga County Board of Control, Contracting and Purchasing Ordinance (the "County Ordinances"). Consultant shall comply with all County Ordinances as an integral part of this Agreement. Copies of all County Ordinances are available at <http://council.cuyahogacounty.us/>.

8.2 Anti-discrimination. Consultant agrees that in its employment of labor, skilled or unskilled, relating to the Services there shall be no discrimination exercised against any person because of race, religion, national origin, sex, ancestry, age, disability, sexual orientation, or veteran status, and that violation thereof shall be deemed a material breach of this Agreement.

8.3 Debarred Contractors. Notwithstanding any provision herein to the contrary, in the performance of any of Consultant's obligations hereunder, Consultant shall not use or permit any consultant, subconsultant, contractor or subcontractor to use, any individual or entity (including any entity that is owned or controlled by any individual) which is the subject of a debarment or suspension hearing or has otherwise been debarred or suspended by the County or any other governmental entity from performing work or services for the County. Consultant shall provide to the County, for its review and approval, a list of all proposed consultants, subconsultants, contractors, subcontractors, individuals and entities intended to perform and of the Services prior

to any engagement or entering into any contract or purchase order with respect to any Services to be performed under this Agreement.

8.4 Taxes and Contributions. Consultant shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any local, state or federal law that are measured by the wages, salaries, or other remuneration paid to persons employed by Consultant for Services performed under this Agreement, and further agrees to obey all lawful rules and regulations and to meet all lawful requirements that are now or hereafter may be issued or promulgated under the respective laws by and duly authorized state or federal officials. Consultant shall indemnify and save harmless the County from such contributions or taxes or liability.

## **ARTICLE 9 – TERMINATION**

9.1 Termination for Default. This Agreement may be terminated by the County, the City or Consultant, with respect to any or all of them, upon thirty (30) days' prior written notice should a party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination, and provided that such failure has not been cured within such thirty (30)-day period. The written notice of default shall set forth in reasonable detail the nature of the claimed default. In the event of any such termination, the County, with respect to the Medical Mart and Convention Center, and the City, with respect to Malls B and C, shall have the right to finish the Services by whatever method they, in their respective sole discretion, may deem expedient. The right to terminate is in addition to all other rights and remedies available at law or in equity in connection with the breach of this Agreement.

9.2 Termination for Convenience. This Agreement may be terminated by the County, with respect only to the Medical Mart and Convention Center, or by the City, with respect only to Malls B and C, in their respective sole discretion, without cause and for their convenience, upon not less than fourteen (14) days' written notice to the other parties hereto. In the event of such termination by the County or the City without cause, Consultant shall be entitled to payment for Services performed and travel reimbursable expenses incurred prior to the date of termination, but shall not be entitled to any payment for any lost profit or fee on Services not performed. Notwithstanding anything to the contrary herein, upon any termination of this Agreement, Consultant shall deliver (or cause to be delivered) to the County and the City copies of all work product (including any deliverables described in Exhibit A) completed up to the time of termination in both hard copy and such electronic form as the County and City may reasonably request.

9.3 Effect of Termination. If this Agreement is terminated by the County with respect the Medical Mart and Convention Center only or by the City with respect to Malls B and C only, then (a) the non-terminating party and the Consultant shall amend this Agreement to reflect the removal of the Medical Mart and Convention Center or Malls B and C, as appropriate, and (b) the terminating party shall have no further obligations under this Agreement.

## **ARTICLE 10 – AGREEMENTS BETWEEN THE COUNTY AND THE CITY**

10.1 City Reimbursements to the County. The City shall pay to the County, at the times and in the manner set forth in this Article 10, one-half (1/2) of the amounts the County pays to Consultant for the Retainer Fee, Commission Advance, and reimbursable expenses pursuant to Section 2.2 hereof. The City's responsibility to pay one-half (1/2) of the foregoing amounts is referred to herein as the "City's Share of Consultant Payments".

10.2 County's Naming Rights. Pursuant to Section 18.15 of the Definitive Agreement, the County has the right to sell naming rights to (a) the Medical Mart, (b) the Convention Center, or (c) a portion of the Medical Mart or Convention Center ("County Naming Rights"). Within fourteen (14) days after its receipt of any funds pursuant to the sale of such County Naming Rights ("County Naming Rights Sale"), the County shall, after deducting the Commission paid and any out-of-pocket expenses and other costs incurred by the County in connection with procuring the naming rights sponsorship, pay to the City an amount equal to 50% of such net funds actually received minus the City's Share of Consultant Payments (but only to the extent that the County has not received payment in full from the City for the City's Share of Consultant Payments).

10.3 City's Naming Rights. Pursuant to Section 18.15 of the Definitive Agreement, the City has the right to sell naming rights to (a) Mall B, (b) Mall C, or (c) a portion of Mall B or C ("City Naming Rights"). Within fourteen (14) days after its receipt of any funds pursuant to the sale of such City Naming Rights ("City Naming Rights Sale"), the City shall, after deducting the Commission paid and any out-of-pocket expenses and other costs incurred by the City in connection with procuring the naming rights sponsorship, pay to the County an amount equal to 50% of such net funds actually received plus the City's Share of Consultant Payments (but only to the extent that the County has not received payment in full from the City for the City's Share of Consultant Payments).

10.4 Payments by the City in the Event of Termination or Non-Renewal. If this Agreement is terminated in whole, or is not renewed by Consultant, or if the City terminates this Agreement with respect to Malls B and C only, then, within thirty (30) days after such termination or non-renewal, the City shall pay to the County one-half (1/2) of the Retainer Fee, Commission Advance and reimbursable expenses that the County had paid to Consultant as of the date of such termination or non-renewal.

10.5 Use of Funds. Pursuant to Section 18.15 of the Definitive Agreement, the funds received by either the County or the City pursuant to a County Naming Rights Sale or a City Naming Rights Sale (individually or collectively a "Naming Rights Sale"), whether directly from the purchaser of the naming rights or as a result of the above-referenced naming rights revenue sharing arrangement between the City and the County, shall be set aside in separate maintenance, operating and improvement fund to be used solely for the Medical Mart or Convention Center (in the case of funds received by the County), or Mall B or C (in the case of funds received by the City).

10.6 No Revenue Sharing. Pursuant to Section 18.15 of the Definitive Agreement, the revenue sharing arrangement between the County and the County referenced in Sections 10. 2

and 10.3 hereof shall not apply to the following: (a) funds donated for a specific improvement (both hardscape and soft-scape elements) to Mall B or C, whether in connection with the Cleveland Group Plan Commission or otherwise, whereby the funds shall be expended for the addition or construction of such improvement and, once completed, the improvement is named as requested by the donor; and (b) gifts or donations received by the County or the City for the Project from donors (whether known or anonymous) in which the County or the City, as applicable, may use the gift or donation as it deems necessary or as intended by or agreed with the donor so long as, in either case, such use is for the direct benefit for the Medical Mart or Convention Center (with regard to the County), or Mall B or C (with regard to the City).

## **ARTICLE 11– INSURANCE; INDEMNIFICATION**

11.1 Insurance. Consultant shall carry and maintain, at its own cost, with such companies as are reasonably acceptable to the County and the City, liability insurance that shall include, at a minimum, the limits of liability and other requirements set forth in Exhibit D.

11.2 Indemnification. Consultant hereby indemnifies, defends and holds harmless the County, the City, and their respective officers, board members, employees and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorneys' fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions of Consultant, its employees or agents, or (b) breach or default by Consultant under any terms or provisions of this Agreement.

## **ARTICLE 12– MISCELLANEOUS**

12.1 Jurisdiction and Venue. The County, City and Consultant (a) irrevocably consent to the exclusive jurisdiction of any state court located within Cuyahoga County, Ohio, in connection with any matter based upon or arising out of this Agreement, (b) agree that process may be served upon them in any manner authorized by the laws of the State of Ohio, and (c) waive and covenant not to assert or plead any objection which they might otherwise have under such jurisdiction or such process.

12.2 Confidentiality. Consultant shall hold in strictest confidence all non-public information it obtains from or about the County or the City and shall not use such information other than for the performance of the Services. Consultant shall cause its employees, subconsultants or agents to whom such information is transmitted to be bound to the same obligation of confidentiality to which Consultant is bound.

12.3 Press Releases. Consultant shall not issue a press release, advertisement, publicity material, or similar matter or participate in a media interview concerning the Project without the prior written consent of the County and the City.

12.4 No Personal Liability. No covenant, obligation or agreement under this Agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or officer, or employee of the County or the City in other than their official County or City (as applicable) position, and neither the members of the County Board or the City Council, nor



any official executing this Agreement, shall be liable personally by reason of the covenants, obligations or agreements of the County or the City contained in this Agreement.

12.5 No Waiver of Regulatory Authority. Notwithstanding anything herein to the contrary, Consultant acknowledges that nothing set forth in this Agreement shall serve as a waiver, impairment or compromise of the County's or the City's regulatory authority with respect to the Project, and the County and the City shall not be responsible for damages or delays resulting from the proper and timely exercise of its regulatory authority.

12.6 Severability. If any section, provision or portion of this Agreement shall be invalid or unenforceable for any reason, then such invalidity or lack of enforceability shall not affect the validity or enforceability of any other section, provision or portion thereof. To the extent an interpretation of a section, provision or a portion thereof can be made that will make it valid or enforceable, the parties agree that the interpretation making it valid or enforceable should be chosen.

12.7 Entire Agreement. This Agreement represents the entire and integrated agreement between the County, the City and Consultant, and supersedes all prior negotiations, representations or agreements, either written or oral.

12.8 Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

12.9 Amendment. No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the parties hereto with the same formality as this Agreement.

12.10 Assignment. Consultant shall not assign or transfer any interest in this Agreement without the prior written consent of the County and the City, which consent the County and the City may each withhold in their respective sole discretion. The County and the City may each assign their respective interest in this Agreement at any time without the consent of Consultant to any successor in interest to their respective ownership or other property interests in the Medical Mart, Convention Center, Mall B or Mall C, as the case may be.

12.11 Agreement Binding on the Parties. The terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable solely by the County, the City and Consultant, and their respective permitted successors and assigns, and nothing in this Agreement or by virtue of the transactions contemplated hereby, whether express or implied, shall be construed to constitute, create or confer rights, remedies or claims in or upon any person (as third-party beneficiary or otherwise) not a party hereto, or to create obligations or responsibilities of the parties to such persons, or to permit any person other than the parties hereto and their respective successors and assigns to rely upon or enforce the covenants, conditions and agreements contained herein, except as otherwise specifically provided herein.

12.12 Relationship of Parties. The relationship of the parties under this Agreement is that of independent parties, each acting in its own best interests. Notwithstanding anything in this

Agreement to the contrary, no partnership, joint venture or relationship of principal and agent is established or intended hereby between or among the Parties.

12.13 Notices. Any notice or communication between the parties required or permitted to be given under this Agreement shall be deemed sufficiently given if delivered personally or mailed by U.S. registered or certified mail, return receipt requested, which shall be deemed delivered when either the return receipt is signed or refused, and addressed as follows:

If to the County:       Office of Procurement & Diversity  
                                  Attn: Lenora Lockett, Director  
                                  County Administration Building  
                                  1219 Ontario Street, Room 110  
                                  Cleveland, Ohio 44113  
                                  Fax: (216) 443-7206

With a copy to:       The County of Cuyahoga  
                                  Attn: County Executive  
                                  1219 Ontario Street, 4th Floor  
                                  Cleveland, Ohio 44113  
                                  Fax: (216) 443-7602

With a copy to:       Cuyahoga County Department of Law  
                                  Attn: County Director of Law  
                                  1219 Ontario Street, 4th Floor  
                                  Cleveland, Ohio 44113  
                                  Fax: (216) 698-2744

With a copy to:       Department of Public Works  
                                  Attn: Bonnie Teeuwen, Director  
                                  County Administration Building  
                                  1219 Ontario Street, 4th Floor  
                                  Cleveland, Ohio 44113

With a copy to:       Thompson Hine LLP  
                                  Attn: Jeffrey Appelbaum, Esq.  
                                  3900 Key Center  
                                  127 Public Square  
                                  Cleveland, Ohio 44114  
                                  Fax: (216) 566-5800

If to the City:           The City Of Cleveland  
                                  Attn: Office of the Mayor  
                                  Cleveland City Hall  
                                  601 Lakeside Avenue, Room 202  
                                  Cleveland, Ohio 44114  
                                  Fax: (216) 664-2815

With a copy to:        Attn: \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  Fax: \_\_\_\_\_

With a copy to:        City of Cleveland, Law Department  
                                  Attn: Director of Law  
                                  601 Lakeside Avenue, Room 106  
                                  Cleveland, Ohio 44114  
                                  Fax: (216) 420-8560

If to Consultant:       \_\_\_\_\_  
                                  Attn: \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  Fax: \_\_\_\_\_

With a copy to:        \_\_\_\_\_  
                                  Attn: \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  Fax: \_\_\_\_\_

12.14 Further Assurances. The parties shall each execute, acknowledge and deliver, without additional consideration, such further assurances, instruments and documents, and shall take such further actions, as the parties shall reasonably request of the other in order to fulfill the intent of this Agreement and the transactions contemplated thereby.

12.15 Counterparts. This Agreement may be signed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

12.16 Electronic Signatures. All documents related to this Agreement requiring County signatures may be executed by electronic means, and such electronic signatures affixed by the County to such documents shall have the same legal effect as if the signatures were manually affixed to a paper versions of the documents. Consultant shall be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and shall comply with the County's electronic signature policy.

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IN WITNESS WHEREOF, the Parties have each caused their duly authorized representatives to execute this Agreement as of the Effective Date.

**THE COUNTY OF CUYAHOGA, OHIO**

Edward FitzGerald, County Executive

By: Ed FitzGerald/apr

Name: 2013-06-20 11:56:27

Title: \_\_\_\_\_

**THE CITY OF CLEVELAND**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE SUPERLATIVE GROUP**

By: Myles Gallagher

Name: Myles Gallagher

Title: President & CEO

## **LIST OF EXHIBITS**

Exhibit A	Scope of Services
Exhibit B	Consultant's Compensation
Exhibit C	Project Schedule
Exhibit D	Insurance Requirements

## **Exhibit A**

### **Scope of Services**

- 1. Generally.** Consultant shall assist in the development of revenue generating naming rights and a corporate sponsorship marketing program for the Project. Consultant shall provide research, marketing and sales services to assist the County and the City in maximizing revenues from naming rights and sponsorships for: (a) the Medical Mart and Convention Center, (b) Malls B and C, and (c) other specific components of the Project as identified by the County, the City and the Cleveland Group Plan Commission ("Commission").
- 2. Scope of Services.** Consultant's Services shall include:
  - A. Evaluation of Project Assets. Consultant shall evaluate the Project's tangible and intangible assets for potential naming rights and corporate sponsorship opportunities. Consultant shall meet with various members of the County, the City, the Commission, and the operator of the Medical Mart and Convention Center (the "MMCC Operator") to understand the Project and existing marketing and sponsorship activity for the Project, as well as other venues in the city and region. Consultant shall calculate values using the following criteria: assessments of the qualitative benefits, the quantitative benefits and the relative media value for each asset as described in Section C below.
  - B. Research.
    - i. Consultant shall conduct market research and analysis, including reviewing other convention and medical properties and government entities. Consultant shall contact potential sponsors and evaluate companies that may be interested in a corporate sponsorship programs.
    - ii. Such research shall include: (a) brand value as related to the marketability of the brand in scope with sponsorship opportunities; and (b) an estimated value for each asset and identification of limitations, legal or otherwise, impacting the marketability of those assets.
    - iii. Consultant shall work with Cleveland State University to develop, analyze, and benchmark the value of the Project brand in the Greater Cleveland area.
    - iv. Consultant shall analyze pre-existing County and City sponsorship and naming rights agreements. Such analysis shall include price, fulfillment obligations, relative value for each party reviewed, and values against similar contracts with other entities.
    - v. Consultant shall review all relevant statutes, signage regulations, and rules to ensure the County and the City's marketing opportunities. Consultant shall communicate with Cuyahoga County's and Cleveland's legal and procurement departments to ensure that the asset database is being developed in a manner consistent with existing policies.

- vi. Consultant shall analyze marketing and sponsorship initiatives by other agencies and public entities. Consultant shall collaborate with City and County representatives, private corporations, and other stakeholders to gauge the level of interest and enthusiasm for marketing partnerships.

C. Valuation Process.

- i. Media Value. The first step in Media Value involves understanding the number of possible "impressions", or the number of possible advertising or sponsorship platforms available to reach the target audience.
  - a) In assessing the Media Value, Consultant shall identify the number of available impressions for television, print and online exposure. Consultant shall scale such impressions from "valued impressions" to "waste impressions", adjusting the Media Value accordingly.
  - b) Consultant shall assess of the value of engaging the target audience, and the quality of exposure received. Understanding the value of each impression with respect to a specific demographic or target audience is an important part of Media Value. The term 'quality of exposure' shall be determined based on: (1) how prevalent the Sponsor's 'ID' (Name) is through the exposure period, and (2) the 'impact' its placement has.
  - c) Consultant shall assess the cost of engaging the target audience and achieving high quality exposure. This will be an assessment of the cost of delivery (to the sponsor), and may include direct costs (installing a hard sign), overhead costs (maintaining a sponsored walkway or media platform) or development costs.
- ii. Quantitative Benefits. Quantitative benefits reflect the ability to adequately measure the return on investment that sponsors can expect to receive. Quantitative benefits include the direct or tangible benefits available to the sponsor. These typically form a significant portion of the overall sponsorship value because each item is identified and guaranteed to the Sponsor.
  - a) Quantitative benefits shall be separated into several categories including: (a) On-site Signage; (b) Event Tickets (e.g. Medical Mart Event); (c) Marketing Collateral; and (d) Display Opportunities.
  - b) Consultant shall analyze the quantitative benefits of each impression and build a profile of the sponsorship value. Using industry standards and its extensive experience, Consultant shall use pre-impression or rate card values to assign a price or value to each benefit identified.
- iii. Qualitative Benefits. Qualitative benefits, or intangible benefits, add value to sponsorship, but fall outside traditional media platforms, and are often difficult to quantify. The qualitative benefits represent the premium value a sponsorship demands over alternative marketing investments.



- a) Qualitative benefits are classified into five broad categories: (a) Prestige of Property; (b) Value of Audience; (c) Sponsorship Activation; (d) Sponsor Protection and (e) Geographic Reach.
  - b) Consultant shall analyze the Qualitative Benefits of the various naming rights and sponsorship opportunities for the Project to evaluate the price or value for each asset.
- D. Marketing Strategy. Consultant shall develop, deliver and implement a naming rights and sponsorship marketing strategy for the Project. The marketing strategy shall:
  - i. Present successes and failures in other markets in regard to comparable projects and markets.
  - ii. Provide packaging opportunities to raise the value of specific assets or groups of assets.
  - iii. Include recommendations for the best approach to maximize revenues, in-kind and other benefits to the County and the City.
  - iv. Identify all tangible and intangible assets that lend themselves to sponsorship, in order of the most marketable to the least marketable based on value, resulting in a quantifiable list of assets for sponsorship indicative of the Cleveland sponsorship market and relate directly to the monies available in the market.
  - v. Prioritize Project assets for solicitation of naming rights and sponsorships.
  - vi. Suggest innovative ways to package Project assets to attract potential partners and sponsors (i.e., available arrangements), while incorporating the latest in innovative sponsorship practices from municipal, collegiate, and professional sports in the U.S. and Europe.
  - vii. Determine the fair market value (including cash, in-kind services and other benefits) for naming rights and sponsorships for the Project, including (a) the Medical Mart and Convention Center, (b) Malls B and C, (c) other specific components of the Project as identified by the County, the City and the Commission. Consultant shall also identify which assets are high value opportunities. Consultant shall consult with the MMCC Operator on sponsorship and naming opportunities and shall work collaboratively with the MMCC Operator on an overall sponsorship policy.
  - viii. The marketing plan shall include: (a) a full assessment, evaluation, and valuation of aligned assets; (b) estimation of revenue generated by assets; (c) strategy prioritization and a communication plan; and (d) a target list assessment.
- E. Sponsorship Policy. Consultant shall draft a naming rights and sponsorship marketing policy that outlines guidelines for establishing naming rights and corporate sponsorship agreements. This policy shall:

- i. Differentiate between naming rights, corporate sponsorships, and gifts, grants, and unsolicited donations, identify which revenue would be considered under each category, and identify which are and are not subject to this policy.
  - ii. Identify which industries, categories and products are generally not eligible for naming rights and corporate sponsorships.
  - iii. Identify the available naming rights and sponsorship arrangements.
  - iv. Identify any conflicts or limitations of the County, the City and the Commission codes, policies and procedures that impact implementation of a naming rights and corporate sponsorship program.
  - v. Consultant shall identify limitations for some sponsorships and how such limitations could affect sponsorship pricing. Consultant shall recommend specific sponsorships that should be pursued to maximize revenue generation.
  - vi. Establish a process for obtaining, evaluating, soliciting, selecting and establishing naming rights and corporate sponsor relationships that are consistent with the County's and the City's procurement policies.
- F. Implementation of the Marketing Strategy; Sales Campaign. Upon the acceptance and approval of the Marketing Strategy by the County, the City and the Commission, Consultant shall develop and implement a successful sales campaign. As part of such sales campaign, Consultant shall:
- i. Collaborate closely with the County, the City and the Commission regarding their recommendations.
  - ii. Develop collateral and presentation materials, which shall provide specific information for potential investments and partnerships as a part of the corporate-sponsorship program, including: (a) Market/Demographic data; (b) Measured media value; (c) Value justification for unmeasured media; (d) Sponsorship benefits and options; (e) Options for renewal; and (f) Financial investment.
  - iii. Develop an introductory package to send out to all prospective companies outlining the Project and providing contact information, and follow-up on introductory packages, including meeting with personnel and prospective companies to answer questions.
  - iv. Promote the sales campaign with a description of the Project's initiatives through a myriad of resources.
  - v. Identify and contact potential partners and sponsors to solicit naming rights and sponsorship opportunities. Consultant shall fully utilize its contact database of thousands of regional and national corporate contacts, and identify and research prospective corporations through various subscribed databases to match the marketing needs of corporations with the logical, most valuable marketing assets.

- vi. Identify high value opportunities, and begin with marketing the most valuable asset (as determined by the County, the City, the Commission and Consultant), and then successfully market the remainder of the identified assets.
- vii. Assist the County and the City in developing any necessary documents, including requests for proposals, bids, contracts, and to produce a guide of the City and the County to implement individual naming rights and sponsorship agreements.
- viii. Use its expertise to assist the County, the City and the Commission (as appropriate) in negotiating agreements with potential sponsors in an effort to maximize the revenue stream. Consultant shall assist in negotiating the agreements and implementing all signed agreements.
- ix. Assist in preparing press releases with the County's and the City's media relations departments, and other required communications, announcing the new naming rights partner(s). Consultant shall work with the County and the City to develop meaningful public relations.
- x. Provide timely, but no less often than weekly, updates to the County, the City and the Commission regarding the sales campaign progress.

### **3. Methodology**

A. Project Schedule. Consultant's Services shall comply with the Project Schedule attached hereto as Exhibit C.

B. Project Reporting.

- i. Consultant shall consistently engage the County, the City and the Commission stakeholders and departments in the Services, including providing weekly written reports of Services conducted and progress made.
- ii. Consultant, the County, the City and the Commission shall meet weekly to ensure that all delegated tasks are accomplished in accordance with the Project Schedule. Consultant shall ensure that all decisions are consistently made in a timely manner and that the chain of communication is left unbroken.
- iii. All written communications (i.e., correspondence, schedules, e-mails) shall be shared with the entire project team to keep members cognizant of all adjustments and updates.

C. Project Management; Staffing.

- i. Myles Gallagher, President and CEO of Consultant shall serve as the Consultant Representative throughout the duration of the Project. Mr. Gallagher shall supervise all phases of the Services.

- ii. Kevin O’Brien, Executive Director of the Center for Public Management at Cleveland State University, shall supervise a team, which will include CSU research staff, and Consultant's Jeff Orloff and Michael Gonzalez, in developing the inventory and fair market value of all tangible and intangible assets for the Project, and all other components directed by the County, City, and Commission.
- iii. Myles Gallagher and Kyle Canter, Director of Municipal Marketing and Infrastructure Projects, shall supervise the sale of naming rights and sponsorships with assistance throughout by the Project team.
- iv. Consultant's staffing for the Project shall be as set forth below:



**Percentage of time commitment:**

Percentages are allocated based on estimated need and workload. The project manager will ensure that percentages will increase based on need, as necessary.

**Delegation:**

Work will be delegated from the Project Manager

**Type of Work:**

Research administration will primarily be supervised by Cleveland State University's Kevin O'Brien to his research team, alongside Jeff Orloff and Michael Gonzalez. Kyle Canter will manage running tasks by partners and serve as assistant project manager throughout. The project manager has final authority within Superlative as to task delegation and accomplishment.

- v. At all stages, the Project team shall abide by the Project Schedule.

## **Exhibit B**

### **Consultant's Compensation**

1. Retainer. Consultant shall be paid by the County a retainer of \$10,000 per month for twenty-four (24) consecutive months ("Retainer Fee") beginning on the first month occurring after the Effective Date. In no event shall the Retainer Fee exceed \$260,000, which amount includes the not to exceed amount of \$20,000 for travel reimbursable costs.
2. Commission.
  - A. Consultant shall be paid by the County an advance on commissions of \$10,000 per month for twenty-four (24) consecutive months ("Commission Advance") beginning on the first month occurring after the Effective Date. In no event shall the Commission Advance exceed \$240,000. All amounts paid by the County to Consultant as part of the Commission Advance shall be credited against the commission payments owed pursuant to 2(B) and 2(C) below.
  - B. Consultant shall be paid a commission fee equal to seven and one half percent (7.5%) of the amount paid in cash, cash equivalents or immediately available funds to the County or the City, as the case may be, under any agreement for naming rights or sponsorship sales from any party set forth on Attachment B-1.
  - C. Consultant shall be paid a commission fee equal to fifteen percent (15%) of the amount paid in cash, cash equivalents or immediately available funds to the County or the City, as the case may be, under any agreement for naming rights or sponsorship sales from any party that is not listed on Attachment B-1.
  - D. The commission described in Sections 2(B) and 2(C) above is referred to throughout this Agreement individually and collectively as the "Commission".
3. Miscellaneous.
  - A. Consultant acknowledges that its Services include consulting with the MMCC Operator on sponsorship and naming rights opportunities and working cooperatively with the MMCC Operator to implement the final sponsorship policy and marketing strategy referenced in Exhibit A hereof. To the extent any such consultation results in sponsorships within the Medical Mart and the Convention Center that benefit the MMCC Operator or for which the MMCC Operator receives revenue, neither the County nor the City shall be responsible for payment of any commission or other compensation for such sponsorships. Consultant shall be responsible for negotiating any compensation directly with the MMCC Operator for sponsorships within the Medical Mart and the Convention Center that benefit the MMCC Operator.

## **Attachment B-1**

### **Prospective Naming Rights and Sponsorship Entities**

The Cleveland Clinic

Healthcare Information and Management Systems

**[Add others as applicable]**

**Exhibit C**  
**Project Schedule**

**[Note: This schedule is referenced in Section 3 of, and attached as Appendix #1 to,  
Superlative's 9.07.12 Proposal**

## **Exhibit D**

### **Insurance Requirements**

Consultant shall maintain the insurance coverages set forth below.

#### **A. Limits (all limits required below are annual limits)**

##### **1. Commercial General Liability**

\$1,000,000 Each Occurrence  
\$2,000,000 Annual Aggregate  
\$1,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury

##### **2. Business Automobile**

\$1,000,000 Combined Single Limit

##### **3. Workers' Compensation**

Statutory State Workers' Compensation - Coverage A  
and applicable federal

##### **4. Employers' Liability (Stop Gap)**

\$1,000,000 Per Accident  
\$1,000,000 Disease – Policy Limits  
\$1,000,000 Disease – Each Employee

#### **B. Other Requirements**

**1. Commercial General Liability.** Such insurance (with coverage at least as broad as ISO CG 00 01--occurrence form) shall cover liability arising out of claims for bodily injury or death and property damage occurring in or upon the Project resulting from Consultant's activities thereon.

**2. Business Auto Liability Insurance.** Such insurance (providing scope of coverage at least as broad as ISO policy form CA 00 01) shall cover liability arising out of Consultant's use of vehicles in connection with this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

**3. General.** All policies shall: (a) be written by insurance companies with a A.M. Best Company's rating of not less than "A:VII"; (b) provide that coverage shall not be canceled unless at least thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the County and the City; (c) shall be endorsed to add the County, the City, and their respective employees, board members and officers as additional insureds; and (d) apply separately to each insured and additional insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Prior to commencing Services, Consultant shall deliver to the County and the City certificates of insurance evidencing that the



required coverages have been obtained and such certificates shall name the County and the City as the Certificate Holders. At the County or the City's request, Consultant shall provide to the County and the City a certified copy of any policies required to be maintained by Consultant.