

**First Amendment to the Agreement for Space Needs and Capital Planning  
Between CITY OF LIVONIA and  
PLANTE & MORAN CRESA, LLC**

This First Amendment (this “**First Amendment**”) to the Agreement for Space Needs and Capital Planning Services is effective as of May 11, 2023 (the “**Effective Date**”), between CITY OF LIVONIA (“**COL**”) and PLANTE & MORAN CRESA, LLC (“**PMC**”). This First Amendment modifies that certain agreement for Space Needs and Capital Planning Services between such parties, dated as of January 18, 2022 (the “**Agreement**”). As used herein and where context dictates, reference to the Agreement may mean the Agreement, as modified by this First Amendment. Where any provision of the Agreement is modified herein, the provisions of this First Amendment shall control; otherwise the terms and provisions of the Agreement shall remain unmodified. All defined terms in this First Amendment shall have the same meanings as set forth in the Agreement, unless the context clearly requires otherwise.

**WHEREAS**, COL and PMC are parties to the Agreement for PMC to provide Real Estate Consulting Services for the City of Livonia Civic Center and fire facilities (the “**Project**”);

**WHEREAS**, COL has requested addition services related to the Project; and

**WHEREAS**, the parties mutually desire to update and modify the Agreement so as to better support and align with the Project’s updated parameters.

**NOW THEREFORE**, for good and valuable consideration the sufficiency of which is acknowledged, COL and PMC agree as follows:

1. **Recitals.** The above recitals are true and correct and are hereby made part of this Amendment.
2. **Changes to the Agreement.** The Agreement is amended as follows:
  - a. **Services.** PMC’s Services are modified as follows:
    - i. Phase 1 Extension – Space Needs Assessment & Capital Planning Services – Scope of Work as outlined in Exhibit A
    - ii. Phase 2 – Part 1 – Real Estate Consulting Services – Space and Site Programming Services - Scope of Work as outlined in Exhibit A
    - iii. Phase 2 – Part 2 – Real Estate Consulting Services – Highest and Best Use Analysis – Scope of Work as outlined in Exhibit A
  - b. **Compensation.** Compensation is modified as follows:
    - i. Phase 1 Extension – Space Needs Assessment & Capital Planning Services

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Fixed Fee- COL shall pay PMC a fixed fee of Forty Thousand Dollars and zero cents (\$40,000.00), payable in equal monthly installments of Eight Thousand Dollars and zero cents (\$8,000.00);

- ii. Phase 2 – Part 1 – Real Estate Consulting Services – Space Programming– Fixed Fee- COL shall pay PMC a fixed fee of Thirty Thousand Dollars and zero cents (\$30,000.00), payable in equal monthly installments of Six Thousand Dollars and zero cents (\$6,000.00);
- iii. Phase 2 – Part 2 Real Estate Consulting Services – Highest and Best Use Analysis – Fixed Fee- COL shall pay PMC a fixed fee of Fifty-Five Thousand Dollars and zero cents (\$55,000.00), payable in equal monthly installments of Eleven Thousand Dollars and zero cents (\$11,000.00);

c. Term. The Agreement's term is modified to conclude five (5) months after execution of this Agreement.

d. Other. Revised Exhibit B, Terms & Conditions to the original Agreement

- 3. **Incorporation Into the Agreement**. When signed by the parties, this First Amendment shall be deemed part of the Agreement and, except as otherwise provided herein shall be subject to all of the terms and conditions of the agreement.
- 4. **Amendment Controls**. In the event of inconsistency between the terms and conditions of this First Amendment and the Agreement, the terms of this First Amendment shall control.
- 5. **Agreement Remains in Force**. Except as expressly modified by this First Amendment, the Agreement remains in full force and effect and the parties acknowledge and agree to be bound by the terms and provisions thereof.
- 6. **Partial Invalidity**. If any term, covenant, condition or provision of this First Amendment or the Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.
- 7. **Counterparts**. To facilitate execution of this First Amendment, the parties may execute this First Amendment in counterparts and exchange signatures by facsimile transmission or by

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electronic delivery of a PDF copy of the executed First Amendment, which facsimile or PDF copy shall be deemed valid and binding.

**[SIGNATURES ON FOLLOWING PAGE]**



**Exhibit A**  
**Scope of Work**

Upon execution of PMC’s proposal dated May 12, 2023, this Exhibit A shall be incorporated into the Agreement between Plante & Moran Cresa, L.L.C. (“**PMC**”) and City of Livonia (“**COL**”). PMC shall provide to COL, in accordance with the terms and conditions set forth in Exhibit B, its Services comprised of the following:

**Phase 1 Extension – Space Needs Assessment & Capital Planning Services**

**Project Related Assumptions:**

- The Project’s anticipated duration is five (5) months
- The Services will include Space Needs & Capital Planning Services of the following locations:
  - Livonia City Fire Department Station 3 – 35000 Seven Mile Rd. Livonia MI 48152
  - Livonia City Fire Department Station 4 – 12300 Middlebelt Rd. Livonia MI 48150
  - Livonia City Fire Department Station 5 – 18910 Middlebelt Rd. Livonia MI 48152
  - Livonia City Fire Department Station 6 & Garage – 37876 Plymouth Rd. Livonia MI 48150
- Any alternations, building additions, or new facilities shall be constructed of normal, durable, and readily available materials, as used in the construction of similar facilities
- COL will provide PMC with all available building and site drawings, previous reports, assessments, equipment/building repair, replacement information and any other pertinent information
- COL designates Jacob Rushlow as COL’s Designated Representative for the purposes of this engagement
- PMC’s review, recommendations, analysis, and conclusions are, in whole or in part, derived from and dependent on information provided by COL, the Project team, and other third parties neither contracted by nor controlled by PMC. PMC’s services do not include a review as to the accuracy of such information. Therefore, PMC provides no opinion on, or assurance of, the reliability of such information. Misstatements may exist that impact PMC’s Services and deliverables.
- The funding source for the Services will be determined by COL which will be communicated to PMC in writing along with any associated funding related requirements.

**Space Needs Assessment Services:**

1. **Review of Previous Reports:** Reviewing previous reports provided by COL relative to COL’s facilities. PMC will meet with COL staff to identify all reliable sources of existing data such as facility inventory lists, plans, maps, studies, etc. If available, existing studies, reports, and plans will be provided to PMC for use in completing the scope of work.

2. **Determine Space Needs:** The activities constituting PMC's Space Needs services may be comprised of the following:
  - a. Conduct tours of COL's facilities and associated sites;
  - b. Assistance developing and distributing user/occupant surveys;
  - c. Conducting clarification interviews;
  - d. Assisting in the development of workplace standards;
  - e. Assisting in defining expansion and contraction requirements;
  - f. Assisting in identifying preferred adjacency requirements;
  - g. Assisting in defining parking and site requirements;
  - h. Assisting in defining preferred amenities,
  - i. Assisting in determining centralized and decentralized (multiple locations) operation requirements;
  - j. Assisting in incorporating current workplace trends; and
  - k. Assisting and advising COL in the review and refinement of space needs and workplace strategy.
  
3. **Utilization and Capacity Analysis:** Based on the findings from COL's site tour and space needs activities, create a utilization and capacity analysis with corresponding floor plans for COL's facilities illustrating current usage and capacities for COL's consideration.
  
4. **Preliminary Findings:** Presenting preliminary findings of PMC's Space Needs and Building Utilization and Capacity Analysis at two (2) meeting with COL administration to review department and operational goals and objectives in comparison to current utilization and capacity information, review and prioritize improvement opportunities identified, and finalize preliminary budget findings.
  
5. **Final Report:** Based on input from COL's administration relative to the preliminary findings and in review of department and operational goals and objectives, provide a final presentation and report to the COL administration, and to City Council at three (3) meetings.

**Capital Planning Services:**

1. **Capital Assessment:** PMC shall perform a cursory capital assessment through one or more site visits to the Project identified in PMC's proposal as well as review previous reports provided by the COL, and capital needs relative to demolition, renovation, and replacement of like-kind.

2. **Due Diligence:** Assisting COL in reviewing the existing due diligence information including:
  - a. Environmental Phase I and Phase II
  - b. Baseline environmental assessment
  - c. Asbestos/Lead surveys or reports
  - d. Survey (ALTA or similar)
  - e. Geotechnical reports
  - f. Other due diligence reasonably necessary for potential redevelopment or sale

If due diligence documentation is not available, PMC will assist COL in hiring and coordinating the services of professionals to obtain this information.
  
3. **Benchmarking:** Conduct benchmarking of current and projected capital projects in relation to market conditions in the greater context of local, regional, and national trends with relation to repurpose, sale, or demolition of the facility/site.
  
4. **Review of Purchase (or Lease) Agreement:** Assisting COL and its legal counsel with reviewing the purchase (or lease) agreement, and advise on the terms and conditions regarding:
  - a. Facility sale
  - b. Purchase agreements
  - c. Option agreements
  - d. Development agreements
  
5. **Capital Planning Improvement Plan:** Meeting with COL's project committee, administration, and City council to discuss facility and technology system improvement needs and generate an implementation strategy based on COL's goals and budget. PMC will assist COL in developing a Capital Planning Improvement Plan that will categorize the areas of need/goals by critical, deferred maintenance, and enhancement in alignment with funding opportunities. PMC will assist COL to review asset management programs to be utilized as a repository of findings for the Capital Planning Improvement Plan.
  
6. **Preliminary Findings:** Presenting preliminary findings of PMC's assessment and analysis at two (2) COL administration meetings to review goals and objectives in comparison to current and projected capital and operations and review and prioritize improvement opportunities identified in relation to preliminary budget findings.
  
7. **Final Report:** Based on input from COL administration relative to the preliminary findings and in review of goals and objectives, provide a final presentation and report to the COL administration, and if requested, at three (3) COL City council meetings.

**Phase 2 Part 1 - Real Estate Consulting – Building and Site Programming Services**

The following key assumptions have been made by PMC In preparing this scope of work, which have been relied upon by PMC in determining the Services, PMC’s compensation, and the terms of this Agreement.

**Project Related Assumptions:**

- The Project’s anticipated duration is five (5) months
- The Services will include Real Estate Consulting Services of the following locations:
  - Livonia City Hall – 33000 Civic Center Dr. Livonia MI 48154
  - Livonia Police Department – 15050 Farmington Rd. Livonia MI 48154
  - Livonia City Fire Department Station 1/Headquarters - 14910 Farmington Rd. Livonia MI 48154
- Any alternations, building additions, or new facilities shall be constructed of normal, durable, and readily available materials, as used in the construction of similar facilities
- COL will provide PMC with all available building and site drawings, previous reports, assessments, equipment/building repair, replacement information and any other pertinent information
- COL designates Jacob Rushlow as COL’s Designated Representative for the purposes of this engagement
- PMC’s review, recommendations, analysis, and conclusions are, in whole or in part, derived from and dependent on information provided by COL, the Project team, and other third parties neither contracted by nor controlled by PMC. PMC’s services do not include a review as to the accuracy of such information. Therefore, PMC provides no opinion on, or assurance of, the reliability of such information. Misstatements may exist that impact PMC’s Services and deliverables.
- The funding source for the Services will be determined by COL which will be communicated to PMC in writing along with any associated funding related requirements.

**Scope of Work:** PMC shall provide Real Estate and Consulting – Building and Site Programming Services to COL upon execution of the initial engagement. PMC’s Real Estate Consulting Services may be comprised of the following:

1. **Review of Relevant Information.** PMC will review all relevant documentation related to the COL facilities and real estate. Unless otherwise specifically indicated by COL in writing, PMC may rely on the relevant information provided by COL. The activities constituting PMC’s Review of relevant Information may be comprised from the following:
  - a. Reviewing previous surveys
  - b. Review of current agreements with surrounding landowners
  - c. Review of Project Development Agreement (PDA)
  - d. Review current design documents for the COL



- e. Review previously completed environmental due diligence such as BEA's, Due Care Plans, Phase I Environmental Site Assessments, and Phase II Environmental Site Assessments
  - f. Other information provided by COL
- 2. Space Programming Services.** PMC will assist COL in the development of its Space Programming needs. The activities constituting PMC's Space Programming Services may be comprised of the following:
- a. Assistance developing and distributing user/occupant surveys;
  - b. Assistance to conduct clarification interviews;
  - c. Assisting in the development of workplace standards;
  - d. Assisting in the development of high-level space needs;
  - e. Assisting in defining expansion, contraction and consolidation requirements;
  - f. Assisting in identifying preferred adjacency requirements;
  - g. Assisting in defining parking and site requirements;
  - h. Assisting in defining preferred amenities,
  - i. Assisting in determining centralized and decentralized (multiple locations) operation requirements;
  - j. Assisting in incorporating current workplace trends; and
  - k. Assisting in the review and refinement of space needs and workplace strategy.
- 3. Milestone Schedule.** PMC will research and summarize milestone schedule information for the COL facilities and real estate. The milestone schedule information is intended to serve as a planning tool and will include proposed Project phasing and delivery method implications. The milestone schedule information may include key tasks and milestones such as:
- a. Procurement
  - b. Facility Design
  - c. Preconstruction
  - d. Regulatory Review (EGLE, Wayne County, Authority Having Jurisdiction, etc.)
  - e. Construction
  - f. Occupancy and Activation
  - g. Close-out Activities
- 4. Conceptual Budget.** PMC will research and summarize conceptual budget information for the Project. The conceptual budget information is intended to capture the Project's anticipated costs. The conceptual budget information will be developed based on the project components related to the COL facilities and Real Estate. The information will be provided in the following format, hard construction (building and site costs), soft costs (professional services, specialty consultants, contingencies), and ancillary costs; The

conceptual budget will include technology infrastructure, furniture, fixtures and equipment allowances.

5. **Summary Report.** After completion of our review, PMC will communicate its findings to COL in a written format (the “Summary Report”), which may include supporting information and data related to the components listed above. Upon request by, PMC will provide up to three (3) in-person or remote presentation of the findings outlined in the Summary Report.

**Phase 2 Part 2 - Real Estate Consulting Services – Highest and Best Use Analysis**

Phase 2 Services shall be performed by PMREIA as a sub-consultant to PMC. The following key assumptions have been made by PMREIA In preparing this scope of work, which have been relied upon by PMREIA in determining the Services, PMREIA’s compensation, and the terms of this Agreement

**Project Related Assumptions:**

- The Project’s anticipated duration is five (5) months
- PMREIA’s services will generally involve an analysis of the highest and best uses for the COL Owned Civic Center
- COL will create a steering committee with whom PMREIA will work pursuant to the Scope of Services
- COL will provide key relevant information to PMREIA including:
  - Title work
  - Survey
  - Topographic survey
  - Environmental Reports
  - Soils reports
  - Utility plans, incl. availability and capacity
  - Programming requirements for public spaces
  - Relevant planning studies for each site

**Scope of Work:** PMC shall provide Real Estate and Consulting Services – Highest and Best Use Analysis to COL upon execution of the initial engagement. PMC’s Real Estate Consulting Services may be comprised of the following:

**Deliverables/Meetings:** At the completion of this assignment, PMREIA will provide COL a final report to summarize findings, the analysis, and recommendations. During the completion of the below scope of work, PMREIA will meet a total of three (3) times with the

City selected steering committee to provide them with updates and to obtain guidance. Additionally, PMREIA will attend up to three (3) meetings with the City Council to discuss the report and its findings.

**Highest & Best Use Analysis** – PMREIA will perform a real estate analysis utilizing both previously collected and current data to assess the property:

- i. Area Assessment - Conduct a thorough walk-through of the subject properties/land and surrounding area(s) to understand their physical characteristics and current market uses that will influence redevelopment.
- ii. Due Diligence – Review of property due diligence reports to understand zoning, master planning, visibility/access, title /survey issues, utility capacity, wetlands/woodlands, traffic counts, eligibility for incentives and environmental (as reports are available). To supplement the aforementioned, interviews with City engineering, planning, and zoning personnel will be conducted as warranted.
- iii. Market Analysis – Assess current market conditions, trends, and market development pipeline to aid in key analysis assumptions such as property values, lease/rental rates, vacancy rates, absorption rates and construction costs. Analysis includes assessing the competitive market set/supply for all asset classes based on in-depth market knowledge, coupled with database sources and key market data. Market data will also be gathered through networking with brokerage, real estate investor/owners and the development community within the market area.

**Development Strategy** – PMREIA will test various uses to determine feasibility and suggest approaches for redevelopment:

- i. Financial Analysis: Consolidate the financial and market data assumptions from the highest and best use into a high-level financial pro-forma to determine the financial viability of the proposed program. The financial proforma will include sources/uses, cash flow schedules, financing scenarios and key return metrics. The analysis may identify potential economic “gaps” in the sources of capital projected.

- ii. Development Approach: Assess/analyze possible development approach scenarios, dependent on programming and market analysis, including joint ventures or ground leases under a public/private partnership structure. The approaches will suggest tools or alternate development options that mitigate any economic gaps forecasted in the Financial Analysis. In anticipation of an RFP/RFQ, an RFI (request for information) may be formally or informally conducted to validate conceptual approaches and or enhance those identified in the analysis.

**End of Exhibit A**

**Exhibit B**  
**Terms and Conditions**

Upon execution of PMC's proposal dated May 12, 2023, this revised Exhibit B shall be incorporated into the Agreement between Plante & Moran Cresa, L.L.C. ("**PMC**") and City of Livonia ("**COL**").

**1. PMC's SERVICES:**

1.1. PMC's services (the "**Services**") include the consulting services designated on Exhibit A to the Agreement and additional services, if any, performed by PMC in connection with its engagement under the Agreement. PMC shall perform the Services in accordance with the Terms and Conditions in this Exhibit B.

1.2. PMC's Services are inherently advisory in nature. PMC has no responsibility for, nor do its Services include, any management decisions or management functions of COL in connection with this engagement to provide the Services outlined herein. PMC and COL acknowledge that PMC shall have no authority, express or implied, to enter into written or oral agreements on behalf of COL, to take any other actions with respect to COL's projects, transactions, or other business affairs of COL, or to commit or otherwise obligate COL in any manner whatsoever. Further, COL acknowledges that COL is responsible for all such management decisions and management functions; for the evaluation of the adequacy and results of PMC's Services and for making decisions and the results of those decisions with regard to the assistance, advice, recommendations, and reporting provided by PMC in connection with its Services; and for establishing and maintaining internal controls, including monitoring ongoing activities, in connection with this Agreement.

**2. COL RESPONSIBILITIES:**

2.1. COL represents that its Designated Representative identified in assumptions to PMC's proposal has the necessary skill, knowledge, experience, and authority to act on COL's behalf to be the contact person for purposes of the communications between COL and PMC and to provide direction to PMC regarding the Project and PMC's Services.

2.2. COL shall provide full information to PMC regarding COL's requirements as necessary for the performance of PMC's Services.

2.3. COL shall provide information, review documents provided by PMC, and render decisions relating to PMC's Services on a timely basis so as not to delay the performance of PMC's Services.

- 2.4. COL shall engage third parties to provide services, including by way of example, surveyors, testing consultants, architects, engineers, attorneys and risk management consultants, as reasonably required for the performance of PMC's Services.
- 2.5. COL shall obtain all permits required for its use and operation of the project, facilities, and systems which are the subject of this engagement, including, by way of example, air and water discharge permits for operation of manufacturing process equipment.
- 2.6. COL represents that it has, or will obtain, adequate financing for the Project which is the subject of this engagement and that the required funds will be available on a timely basis. COL acknowledges that COL 's failure to timely provide necessary funds as required may adversely affect the Project's cost and schedule.
- 2.7. COL shall pay PMC for Services in accordance with the payment terms in the Agreement and these Terms and Conditions. For Services rendered, these rights and obligations shall survive the Agreement's termination or expiration.
- 2.8. COL agrees to report promptly in writing to PMC any default or defect in PMC's services or non-conformance with any provision of this agreement.
- 2.9. COL agrees during the term of this Agreement and for the period of one year after its completion or termination not to solicit for employment, on behalf of COL or any other entity, any PMC staff member or members working on the engagement under this Agreement, including former PMC staff members. COL acknowledges that PMC will incur substantial loss and damage if any of PMC's personnel terminate their employment with PMC to accept employment with COL or another entity engaged by COL, including without limitation the expense to train such personnel and loss of anticipated revenues. Accordingly, any provisions of this Agreement precluding claims for special, incidental and consequential damages, or otherwise limiting damages, shall not apply to actions by PMC to enforce this section.

**3. PMC'S RESPONSIBILITIES:**

- 3.1. PMC shall perform the Services in accordance with the standard of professional skill and care exercised by other consultants performing similar services under similar circumstances.
- 3.2. PMC does not warrant or guarantee the outcome of project pro formas, budgets or other financial projections, or any other analysis (collectively "Analysis") developed by PMC for use in

connection with its Services. Analysis prepared by PMC represents PMC's professional judgment as a consultant. It is recognized, however, that neither PMC nor COL has control over the cost of labor, materials or equipment, market conditions, contractors' methods of determining bid prices or other competitive bidding or negotiating conditions. PMC cannot and does not warrant or represent that the outcome of bids or negotiated prices will not vary from any project budget proposed, established or approved by COL, or from any Analysis prepared by PMC.

- 3.3. PMC shall not be responsible for the failure of engineers, architects, general contractors, subcontractors, vendors, attorneys, or other consultants to carry out their respective duties and obligations to COL. PMC is not responsible for the performance of any party not employed directly by PMC, and PMC is not responsible for the performance of consultants engaged by PMC in connection with PMC's Services under this Agreement.
- 3.4. PMC's Services do not include professional architectural or engineering services. PMC shall not be responsible for the design of any project, for any errors, omissions or other deficiencies in the construction drawings and specifications for a project, for any other error or omissions of architects or other design professionals, if any, in connection with a project, or for the failure of the construction drawings and specifications for a project to comply with the requirements of COL or COL's landlord or subtenants, or with applicable codes or legal requirements. It shall be the responsibility of COL's architects and engineers, not PMC, to identify building code and other legal requirements pertaining to the design of a project for COL. PMC's Services do not include with respect to any existing or planned building or property the identification or resolution of any life safety issues or the non-compliance with any building code or legal requirements.
- 3.5. PMC shall not be responsible for construction means, methods, techniques, sequences and procedures, and safety programs and measures employed by contractors or others in the performance of their contracts, and shall not be responsible for the failure of any contractor or supplier to carry out work in accordance with the construction drawings and specifications or any other contract or legal requirements.
- 3.6. Any acts of PMC in providing consultation, advice and/or recommendations to COL regarding the performance or the default of COL's architect, contractor(s), vendors or other consultant(s), shall not be deemed to be the assumption by PMC of management or control of the architect, contractor(s), vendors or consultants or of COL's project.
- 3.7. PMC is not an attorney at law, and the Services provided by PMC exclude professional legal services. If the scope of PMC's Services includes assistance with the negotiations of agreements

on behalf of COL, such agreements shall be subject to COL's approval. COL shall provide for the review of such agreements by COL's attorneys and insurance consultants as deemed to be appropriate by COL.

- 3.8. PMC shall not be considered in breach of this Agreement, nor be liable, for any delay or failures in performance resulting from circumstances beyond its reasonable control including, without limitation, acts of God, acts of war or terrorism, shortage or disruption of materials or labor, accidents, epidemic, pandemic, quarantine, natural catastrophe or weather, or government acts or omission. Notwithstanding the foregoing, PMC and COL shall make a good faith effort to mitigate any impacts of such circumstances to PMC's Services.

**4. COMPENSATION:**

- 4.1. For the performance of Services, COL shall compensate PMC as provided in the Agreement. Unless provided otherwise in the Agreement, PMC shall submit monthly invoices for Services rendered by PMC to COL. All invoices shall be prepared in accordance with the compensation terms in the Agreement and COL agrees to pay invoices within thirty (30) days after receipt thereof; provided, however, that in the event COL disputes the accuracy for any invoice prepared and presented, payment for the portion which is disputed by COL may be withheld until such dispute is resolved. Time is of the essence with respect to COL's payment obligations hereunder. All billings not in dispute are payable within thirty (30) days of receipt of invoice.
- 4.2. PMC shall be entitled to additional compensation if any of the following occur: increase in the Scope of Services designated on Exhibit A or other changes in the scope of PMC's Services; change in any of the key assumptions of this engagement listed in the Agreement; change in the time period for performance of PMC's Services; change in the nature of the Services required to be performed, including changes that require more effort or resources of PMC; default of COL's architect, engineers, contractor(s), or other consultants or vendors; delay or interruption in the transaction or project; failure of COL to follow the advice and recommendations of PMC; or failure to provide adequate financing for the Project on a timely basis.
- 4.3. Should PMC be required to provide evidence, prepare for hearings, evaluate claims, assist in the review or preparation of claims or defenses, or otherwise participate or assist in the resolution of legal disputes either: (i) on behalf of COL or (ii) resulting from PMC's role providing its Services to COL (unless caused by PMC's gross negligence or intentional misconduct), PMC will be reimbursed on a "Time and Materials" basis, which is defined to mean the numbers of hours of Services performed by PMC's personnel multiplied by PMC's then current standard hourly



rates ("Standard Hourly Rates") plus the direct cost incurred by PMC in performance of such services.

- 4.4. Any taxes or fees, enacted by local, state or federal government subsequent to the date of this agreement, and based on gross receipts or revenues will be added to the amounts due under this agreement, in accordance with any such fees or taxes.
- 4.5. The rights and obligations of this Article 4 shall survive the Agreement's termination or expiration.

**5. LIMITATION ON LIABILITY:**

- 5.1. In no event shall COL or PMC be liable to the other for special, incidental or consequential damages, including without limitation, loss of anticipated profits, revenue or use of capital, loss of use of leased spaces, and penalties imposed under the leases, whether based on contract, tort, negligence, strict liability or otherwise; provided, however, that the foregoing shall not limit or preclude a claim of PMC with respect to compensation due to PMC under this Agreement.
- 5.2. Except for amounts due PMC under this Agreement, either party's liability under this Agreement shall not in any event exceed the amounts of compensation for Services paid to PMC under this Agreement.
- 5.3. Except for actions to enforce payment to PMC, any claim or cause of action arising under or otherwise relating to this engagement must be filed within one (1) year of the events giving rise to the claim or cause of action.
- 5.4. The rights and obligations of this Article 5 shall survive the Agreement's termination or expiration.

**6. ENVIRONMENTAL CONDITION OF SITE:**

- 6.1. PMC's Services shall not include any services or responsibility (including for the detection, identification, prevention, collection of samples, testing of samples, abatement, or disposal) related to known or unknown Constituents of Concern. Constituents of Concern shall include: (i) asbestos, (ii) petroleum, (iii) radioactive material, (iv) polychlorinated biphenyls (PCBs), (v) hazardous waste, (vi) lead, (vii) any viral, bacterial, or any other organism capable of inducing physical distress, harm, illness, or disease (including but not limited to any fungus, mold, mildew, mycotoxins, spores, or scents) or any byproduct thereof, or (viii) any other substance,

product, waste, or other material listed under any other federal, state, or local (meaning any applicable jurisdiction) statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards concerning, any hazardous, toxic, or dangerous waste, substance, or material. The parties further acknowledge that PMC is not, and shall not be considered or required to be, an "owner," "arranger," "operator," "generator," or "transporter" of any Constituents of Concern.

**7. MISCELLANEOUS:**

- 7.1. Nothing contained in this Agreement shall create a contractual relationship or a cause of action in favor of a third party against either COL or PMC. The Services performed by PMC under this Agreement are for the sole benefit of COL, and shall not be relied upon by other parties.
- 7.2. PMC and COL may not assign their rights under this Agreement without the prior written consent of the other.
- 7.3. PMC shall be entitled to use COL's name, photographs, renderings, narrative descriptions and similar materials relating to PMC's Services in connection with publications, awards, press releases, and marketing materials.
- 7.4. Provided that COL has paid all amounts due to PMC under this Agreement, COL shall be entitled to use all studies, reports, summaries, cost estimates, budgets, and other documents prepared by PMC in the performance of its Services; provided, however that COL shall not disclose or permit other parties to use such information and documents. PMC shall be entitled to retain copies of such documents for PMC's files. Notwithstanding the foregoing, PMC shall retain all ownership and intellectual property rights in, and COL shall not use or permit the use by others of, all standard contract provisions and modifications, financial analysis programs and similar tools developed by PMC for PMC's use generally and not developed solely for purposes of this engagement.
- 7.5. Any disputes between COL and PMC relating to PMC's Services or this Agreement shall be governed by the laws of the State of Michigan without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan. Any controversy, dispute, or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding confidential arbitration in accordance with the applicable arbitration rules of the American Arbitration Association. Such confidential arbitration shall be

held in Oakland County Michigan, and the judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction. In the event of any dispute between the parties arising out of or in connection with this Agreement or these Terms and Conditions, the prevailing party shall be entitled to recover its costs incurred in connection therewith, including reasonable attorney fees.

- 7.6. PMC and COL shall each maintain insurance coverage as deemed by each to be necessary for its own protection; provided, however, that COL shall include PMC as an additional insured under COL's general liability insurance policy with respect to claims and losses related to this engagement only. In addition, if PMC provides Services under this Agreement in connection with the construction of a project for COL, the following shall apply: (i) COL's general contractor's/construction manager's general liability insurance for such project shall include PMC as an additional insured; and (ii) PMC and COL shall each waive all rights against each other and the contractors, consultants, agents and employees of the other for any loss or damage, for which property insurance is maintained by the injured party, and PMC and COL each shall require appropriate similar waivers from their contractors, consultants and agents.
- 7.7. No failure by COL or PMC to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, term or remedy for a breach of this Agreement, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition.
- 7.8. The rights and obligations of this Article 7 shall survive the Agreement's termination or expiration.

## **8. TERMINATION**

- 8.1. This Agreement may be terminated by COL upon thirty (30) days prior written notice if PMC is in default under this Agreement and fails to cure such default within such thirty day period. In addition, provided that COL is acting in good faith, COL shall be entitled to terminate this Agreement without cause upon thirty (30) days prior written notice to PMC.
- 8.2. PMC may terminate this Agreement or suspend its Services upon thirty (30) days prior written notice in the event of any of the following defaults by COL and failure of COL to cure such default within such thirty (30) day period: COL fails to make payment of amounts due to PMC under this Agreement; COL fails to follow the advice or recommendations of PMC; or COL otherwise is in default under this Agreement.

- 8.3. If PMC's Services are suspended for more than thirty (30) consecutive days, PMC may terminate this Agreement upon thirty (30) days prior written notice to COL.
- 8.4. In the event this Agreement is terminated for any reason, PMC shall be compensated on an equitable basis for services performed as of the effective date of termination in accordance with this Agreement. Upon any such termination and payment of amounts due to PMC, the parties hereto shall be released of any and all further liability hereunder.
- 8.5. This Agreement shall commence upon execution of the Agreement between PMC and COL and shall continue in effect for the term described in the Agreement, as may be extended by agreement of the parties, unless terminated sooner under the terms of this Section.

**9. THIS AGREEMENT:**

- 9.1. COL and PMC accept the obligations of good faith and fair dealing towards each other with respect to this engagement.
- 9.2. This Agreement includes the proposal executed by PMC and COL, Exhibit A Scope of PMC's Services, Exhibit B Terms and Conditions, and other documents, if any, listed in the Agreement. This Agreement sets forth the entire, integrated agreement between PMC and COL, supersedes all prior proposals, negotiations, representations and agreements, whether written or oral, between PMC and COL, and shall govern the relationship between PMC and COL with respect to all Services provided by PMC to COL in connection with the engagement described in the Agreement. This Agreement may be amended only by written instrument signed by both PMC and COL.
- 9.3. Neither this Agreement nor PMC's performance of Services shall be deemed to create a partnership or joint venture between COL and PMC.
- 9.4. The parties to this Agreement have jointly participated in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as jointly drafted by the parties hereto and no presumption of burden of proof is to arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

**End of Exhibit B**