

DETROIT WATER & SEWERAGE DEPARTMENT

CITY OF DETROIT BUILDING AUTHORITY  
PROFESSIONAL SERVICES AGREEMENT  
WITH

SDG ASSOCIATES, LLC

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement"), dated and made effective as of this 19th day of April, 2018, by and between the CITY OF DETROIT BUILDING AUTHORITY, a public authority and body corporate organized and existing under the authority of Act 31, Public Acts of Michigan, 1948 (First Extra Session), as amended, located at 1301 Third Street, Suite 328, Detroit, Michigan 48226 (herein called the "Authority"), and SDG ASSOCIATES, LLC., a Michigan limited liability company, located at 615 Griswold, Suite 103, Detroit, Michigan 48226 (hereinafter called the "Design Professional").

WITNESSETH:

WHEREAS, the Authority desires to engage the Design Professional to provide a building/site property consolidation assessment for the existing building, adjacent surface lot and vacant lot on the opposite side of Hickory Street at the Eastside Payment Center located at 13303 E. McNichols, Detroit, Michigan 48205 (the "Project"); and

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

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

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

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

ARTICLE I  
Engagement of Design Professional

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

1.02 The relationship of the Design Professional and the Authority shall be that of an independent Professional and no liability or benefits, such as retirement benefits or liabilities, pension rights or liabilities, holiday pay, sick pay, vacation pay, personal injury or property insurance rights or liabilities, or such other rights, provisions or liabilities arising out of a contract of hire or employer/employee relationship either express or implied shall arise or accrue to either party as a result of this Agreement and undertaking.

ARTICLE II  
Level of Performance, Documents and Dispute Resolution

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

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

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

ARTICLE III  
Contract Term

3.01 The Services to be performed by the Design Professional pursuant to the terms of this Agreement shall begin on the date that a Notice to Proceed is sent by the Authority to the Design Professional (the "Effective Date") and shall be complete not later than **April 30, 2019** (the "Contract Term"), unless the term of this Agreement is otherwise extended in writing by the Authority.

ARTICLE IV  
Compensation

4.01 The Authority agrees to pay the Design Professional for the proper performance of the Services described in Exhibit A hereto a fee not to exceed Nineteen Thousand Six Hundred and 00/100 (\$19,600.00) Dollars.

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

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

ARTICLE V  
Method of Payment

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

- (a) The date of performance of the Services.
- (b) A description of the Services rendered for that billing period.

5.02 The Design Professional shall be paid for the proper performance of Services approved by the Authority in accordance with the payment schedule attached to Exhibit A hereto.

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

Authority's final payment to the Design Professional, the Design Professional will have waived such claims and the right to assert the claims.

ARTICLE VI  
Assignments

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

ARTICLE VII  
Termination

7.01 The Authority may terminate this Agreement in whole or in part for cause upon giving written notice of termination (herein called "Notice of Termination") to the Design Professional at least fifteen (15) days before the Effective Date of the termination, should the Design Professional: (1) fail to fulfill in a timely and proper manner its obligations under this Agreement; (2) violate any of the covenants, agreements, or stipulations of this Agreement; (3) cease conducting business in the normal course by reason of insolvency, bankruptcy or any similar proceedings, whether voluntary or involuntary, filed under any present or future bankruptcy or other applicable law; or (4) admit in writing its inability to pay its debts generally as they become due. The Design Professional shall be liable to the Authority for damages sustained by the Authority by virtue of the Design Professional's breach and shall be liable for any reasonable costs the Authority might incur enforcing or attempting to enforce this Agreement, including reasonable attorneys' fees. The Authority may withhold any payment(s) to the Design Professional for the purpose of set-off until such time as the exact amount of damages due the Authority from the Design Professional is determined. It is expressly understood that the Design Professional will remain liable for any damages the Authority sustains in excess of any set-off. If this Agreement is so terminated the Authority may take over the Services, and prosecute the same to completion by contract with another party or otherwise, and the Design Professional shall be liable to the Authority for any and all costs incurred by the Authority thereby.

7.02 The Design Professional may terminate this Agreement in whole or in part for cause upon giving Notice of Termination to the Authority at least fifteen (15) business days before the Effective Date of the termination, should the Authority fail to fulfill in a timely and proper manner its obligations under this Agreement. The rights provided to the Authority in the event of the Design Professional's breach as set forth in Section 7.01 shall be equally provided to the Design Professional.

7.03 The Authority may terminate this Agreement without cause, in whole or in part, for its convenience, at any time, without incurring any further liability whatsoever, other than as stated in this Article VII, by issuing a Notice of Termination to the Design Professional of such termination, specifying the Effective Date thereof, at least

fifteen (15) business days prior to the Effective Date of such termination. If this Agreement is so terminated, the Authority will pay the Design Professional only for the Services rendered prior to such termination, including any retainage for the Services previously performed. The amount of the payment shall be computed by the Authority on the basis of the Services rendered and accepted by the Authority; any expenses incurred prior to termination; bona fide termination settlement costs reasonably incurred by the Design Professional, as determined by the Authority relating to the commitments which had become firm prior to the termination, but only to the extent that the Design Professional could not have mitigated the same; and such other costs as, in the reasonable judgment of the Authority, represent a fair value of the Services provided, less the amount of any previous payments made. The parties expressly agree that in no case shall payment under this Section 7.03 exceed the maximum sum payable provisions in Section 4.01 and any compensation due the Design Professional for any duly authorized Amendments hereto increasing the scope of work hereunder.

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

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

7.05 Upon completion or other termination of this Agreement, all finished or unfinished original documents or copies (when originals are unavailable), data, studies, briefs, drawings, maps, models, photographs, files, intermediate materials estimates,

memoranda, computations, papers, supplies, recordings, videotapes, notes or other materials (herein collectively called the "Work Product") prepared by the Design Professional under this Agreement or in anticipation of this Agreement shall become the Authority's sole and exclusive property, whether or not in the Design Professional's possession, free from any claims or retention of rights thereto on the part of the Design Professional. The Design Professional shall promptly deliver to the Authority all of such property and the Authority shall return all the Design Professional's properties to it, as well as pay all fees for Services that the parties mutually agree are due to the Design Professional and are not in dispute. The Design Professional acknowledges that any intentional failure or delay on its part to deliver the Work Product to the Authority will cause irreparable injury to the Authority not adequately compensable in damages and for which the Authority has no adequate remedy at law, and the Design Professional accordingly agrees that the Authority may, in such event, seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Work Product. The Authority shall have full and unrestricted use of the Work Product for the purpose of completing the Project. The Design Professional may retain copies of the Work Product at its own expense.

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

#### ARTICLE VIII Amendments

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

8.02 No Amendment to this Agreement shall be effective and binding upon the parties, unless it expressly makes reference to this Agreement, is in writing and is signed and acknowledged by duly authorized representatives of both parties. No verbal order or instructions shall in any way change or modify this Agreement. No verbal conversation, understanding, or agreement with any officer or employee of the Authority, or any other person, either before or after the execution of the Agreement shall affect or modify any of the terms, conditions or obligations contained herein.

ARTICLE IX  
Conflict of Interest

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

ARTICLE X  
Confidential Information

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

ARTICLE XI  
Indemnity

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

- (a) Any negligent or tortious act or omission of the Design Professional or any of its personnel, employees, agents, consultants or subcontractors, or any entities associated, affiliated or subsidiary to the Design Professional now existing or hereafter created, or their agents and employees.
- (b) Any failure by the Design Professional, its personnel, employees agents, consultants or subcontractors to perform its obligations, either implied or expressed, under this Agreement.

- (c) Any act, failure to act or misrepresentation by the Design Professional or any of its agents, personnel, employees, consultants or subcontractors in connection with the Project.

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

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

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

11.04 The indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design Professional under workers' compensation acts or other employee benefit acts. In addition, the Design Professional agrees to hold the Authority and the City of Detroit harmless from the payment of any deductible on any insurance policy to the degree of Design Professional's fault.

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

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

## ARTICLE XII Insurance



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

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

- (a) Worker's Compensation insurance which meets Michigan statutory requirements and Employers Liability insurance with minimum limits of \$500,000.00 each accident. The Design Professional agrees that it will obtain a similar covenant with respect to Worker's Compensation insurance from any consultant or subcontractor retained by the Design Professional to render any of the Services. This insurance shall be kept in force and effect until receipt of final payment by the Design Professional. This insurance is mandatory if the Design Professional has employees.
- (b) Professional Liability (errors and omissions) insurance with minimum limits of \$1,000,000 each claim. This insurance shall be kept in force and effect for six (6) years after receipt of final payment by the Design Professional to the extent such insurance is commercially available to the Design Professional for the duration of the six (6) year period; \* and
- (c) Automobile liability insurance covering all owned, non-owned, or hired automobiles with minimum limits for bodily injury of \$250,000 each person and \$1,000,000 each occurrence and minimum limits for property damage of \$500,000 each occurrence. Such insurance shall comply with the provisions of the Michigan No Fault Insurance Law. This insurance shall be kept in force and effect until receipt of final payment by the Design Professional.

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

12.04 Design Professional agrees to notify the Authority in writing of any material change or cancellation or non-renewal of any of the required policies at least

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

thirty (30) days prior to such material change, cancellation or non-renewal and failure to do so will constitute material breach of this Agreement.

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

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

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

### ARTICLE XIII Fair Employment Practices

13.01 In accordance with the United States Constitution and all federal legislation and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, Title VI and VII of the Civil Rights Act of 1964 (P.L. 88-352, 78 STAT. 252), and United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to that Title, and in accordance with the Michigan Constitution and all state laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Michigan Civil Rights Act (P.A. 1976 No. 453) and the Michigan Handicappers Civil Rights Act (P.A. 1976 No. 220) the Design Professional agrees that it will not discriminate against any person, employee, consultant or applicant for employment with respect to his (her) hire, tenure, terms, conditions or privileges of employment or hire because of his (her) religion, race, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. The Design Professional recognizes the right of the United States and the State of Michigan to seek judicial enforcement of the foregoing covenants against discrimination against itself or its subcontractors.

13.02 The Design Professional agrees to comply with all rules and procedures adopted by the Human Rights Department. The parties hereto shall promptly furnish any information required by the City or the Human Rights Department of the City of Detroit pursuant to this Article.

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

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

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

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

#### ARTICLE XIV

##### Notices

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

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

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

If to Professional Professional: SDG ASSOCIATES, LLC  
615 Griswold Street, Suite 103  
Detroit, Michigan 48226

14.02 Notices shall be deemed received three (3) days after the day of mailing. Either party to this Agreement may change its address for the receipt of Notices at any time by giving Notice thereof to the other as herein provided. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

ARTICLE XV  
Representations and Warranties

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

- (a) The Design Professional covenants that it is not, and will not become, in arrears to the Authority or the City upon any contract, debt or other obligations.
- (b) The Design Professional is fully qualified and capable and has the requisite skills necessary to perform the Services pursuant to the terms and conditions set forth therein.
- (c) Design Professional represents and warrants that it has full power to enter into this Agreement, to enter into the obligations described herein, to execute and deliver this as well as any and all other documents to be executed and/or delivered in connection herewith, and to incur the obligations provided for herein, all of which have been duly authorized by all proper and necessary action of the Design Professional.
- (d) Design Professional represents and warrants that, as of the Effective Date and throughout the Contract Term of this Agreement, Design Professional has not been and is not in arrears to the State of Michigan for any debts whatsoever (including, but not limited to, back taxes), nor is or was Professional in default or in litigation regarding any issues with the State of Michigan, US Federal Government, Wayne County, Oakland County, Macomb County or the City.
- (e) Design Professional represents and warrants that it has the necessary financial resources, employees, vehicles and equipment available to provide the Services required by this Agreement.
- (f) Design Professional represents and warrants that it is not, jointly or severally, party to any contract or agreement or subject to any other restriction or unusually burdensome order of any regulatory commission, court, board or agency, which may materially and adversely affect its ability to provide the Services. The execution and performance of this Agreement and the documentation related hereto, will not result in the creation of any other encumbrance or charge upon any asset of Design Professional pursuant to the terms of any other agreement. No provisions of any existing mortgage, indenture, contract or agreement affecting Design Professional's

operations and/or assets is in effect which would conflict with or in any way prevent the execution, delivery or enforcement of the terms of this Agreement.

- (g) To the best of Design Professional's knowledge, it has not received any written notice from any governmental authority that the Design Professional is now in violation of any governmental orders, regulations, statutes or ordinances dealing with the Design Professional's operations. In the event any such notice from any governmental authority is received by Design Professional between the Effective Date and throughout the Contract Term, which Professional does not reasonably contest, Design Professional shall correct the same at Design Professional's expense as promptly as possible.
- (h) Design Professional has not entered into any contracts or made any commitments which would bind the Authority as a successor in interest.
- (i) Design Professional has not entered into any other existing agreements which will conflict with its obligations hereunder.
- (j) To the best of Design Professional's knowledge, all documents heretofore and hereafter provided to the Authority are, and shall be complete, true, and accurate in all material respects.
- (k) Design Professional has not contracted for the furnishing of labor or materials which will not be paid in full by Design Professional in the ordinary course.
- (l) Design Professional has no notice of, and there is no pending or threatened litigation, administrative action or examination, claim or demand whatsoever relating to the Design Professional and/or its operations and/or assets, or the Services contemplated herein, before any court or any federal, state or municipal government department, commission, board, bureau, agency or instrumentality thereof, the outcome of which may materially adversely affect Design Professional and/or Design Professional's ability to perform the Services in accordance with this Agreement.
- (m) No federal, state or local taxing authority has asserted any tax deficiency, lien, or assessment against the Design Professional which has not been paid or the payment for which adequate provision has not been made to the Authority's reasonable satisfaction.
- (n) That Design Professional and the principals and/or partners and/or owners and/or officers of Design Professional are citizens of the United States of America as defined in Section 1445 of the Internal Revenue Code.
- (o) This Agreement, and all related documents will, when executed and delivered by Design Professional, be the valid, legal and binding agreements or obligations of the Design Professional, enforceable in accordance with their respective terms, having been duly authorized by all requisite corporate action.

- (p) Design Professional has complied with all applicable City clearance and hiring policy requirements, including execution and delivery of a Request for Income Tax Clearance, Vendor Clearance Request, Covenant of Equal Opportunity, Hiring Policy Compliance Affidavit and Slavery Era Records and Insurance Disclosure Affidavit.
- (q) Design Professional hereby warrants and represents to and covenants with the Authority that each and every warranty, representation, and covenant set forth in this Agreement shall be true for the period from the Effective Date and throughout the Contract Term of this Agreement.

ARTICLE XVI  
Miscellaneous

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

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

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

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

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

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

16.07 The rights and remedies set forth herein are not exclusive and are in addition to any of the rights and remedies provided at law or in equity. The Agreement and all actions arising hereunder shall be governed by, subject to and construed according to the laws of the State of Michigan. The Design Professional agrees, consents and submits to the personal jurisdiction of any competent court in Wayne County, Michigan for any action arising out of this Agreement. The Design Professional agrees that service of process at the address and in the manner specified in Article 14 will be sufficient to put the Design Professional on notice, and the Design Professional hereby waives any and all claims relative to such notice. The Design Professional also agrees that it will not commence any action against the Authority because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement, in any courts other than those in the County of Wayne, State of Michigan, unless original jurisdiction can be had in the United States District Court, Eastern District, the Michigan Court of Appeals or the State Supreme Court.

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

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

16.10 Neither party shall be responsible for force majeure events. In the event of a dispute between the parties with regard to what constitutes a force majeure event, the Authority's determination shall be controlling. However, in the event of an occurrence of any circumstance(s) beyond the control of the Design Professional, the Authority may, at its option, terminate this Agreement, pursuant to Article VII herein.

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

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

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

16.14 [INTENTIONALLY OMITTED].

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

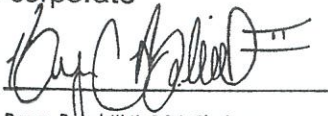
16.16 Design Professional and each of its subcontractors, if any, shall comply with all anti-kickback laws, including the Copeland Anti-Kickback Act (18 USC §874), and is prohibited from inducing, by any means, any person employed in connection with the Project to give up any part of the compensation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

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




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

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

  
By: Bryan Barnhill II, DBA Chairman  
Bryan Barnhill, III

Its: Chairman

  
By: Christopher T. Jackson

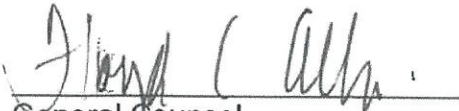
Its: Treasurer

SDG ASSOCIATES, LLC, a Michigan limited  
liability company

  
By: WESLEY SIMS

Its: CHIEF FINANCIAL OPERATING OFFICER

APPROVED AS TO FORM:

  
General Counsel,  
City of Detroit Building Authority

## EXHIBIT A

### SCOPE OF SERVICES

The purpose of this Property Condition Assessment "PCA" is to conduct a comprehensive review of the subject property (buildings and site) and document readily visible material and building system defects that might significantly affect the value of the property. This PCA also provides assessments of existing conditions that might have a significant impact on the continued operation of the facility during the requested term of assessment.

This PCA shall include but is not limited to the following:

(a) *Basic services.* Site visit; limited interviews with property management and maintenance personnel; inquiries or attempted inquiries with appropriate local government authorities (e.g., building department and fire department) and a review of available construction documents as provided by the building management, operational testing of building systems or components, and identification of the presence or absence of asbestos, PCBs, or toxic soils on the property.

(b) *Consultation.* The Design Professional shall advise and consult with the Authority and Construction Manager, as required.

(c) *Reports.* The Design Professional shall prepare a written property condition assessment report which shall include its professional recommendations on what is required to bring the subject property up to the applicable building code standards. The report shall be provided to the Authority, Construction Manager and to the contractors constructing the Work if necessary.