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**For DOA-BOD-PROCUREMENT SERVICES SECTION USE ONLY**

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**FORMAL CONTRACT FOR SERVICES  
PART I**

City of Milwaukee  
Department of Administration  
Procurement Services Section

*The provisions of this contract have been reviewed and  
approved by the Office of the City Attorney.*

Distribution:

Original – Procurement Services  
Copy 1 – Consultant  
Copy 2 - Comptroller  
Copy 3 - Department

SERVICE CONTRACT NO.: \_\_\_\_\_  
DEPARTMENT: ADMINISTRATION  
DATE OF AWARD: \_\_\_\_\_  
PURCHASING AGENT: KAREN JEFFRIES  
REQUISITION NO.: \_\_\_\_\_  
PURCHASE ORDER NO.: \_\_\_\_\_  
FUND NO.: \_\_\_\_\_

SERVICE DESCRIPTION (General): **EXCLUSIVE AGENCY AGREEMENT WHEREBY THE SUPERLATIVE GROUP, INC. WILL ACT AS MARKETING CONSULTANT FOR “CIVIC PARTNERSHIP INITIATIVE” IN TWO PHASES: (1) VALUATION OF CITY ASSETS FOR POTENTIAL INCLUSION IN THE INITIATIVE; AND (2) SOLICITATION OF MARKETING PARTNERSHIPS.**

TIME OF PERFORMANCE: PHASE I TO TAKE APPROXIMATELY 90 DAYS (\_\_\_\_\_, 2013 THROUGH \_\_\_\_\_, 2013)  
PHASE II TO BE NO LONGER THAN 5 YEARS

TOTAL AMOUNT OF CONTRACT: **PHASE I COMPENSATION NOT TO EXCEED \$40,000 (Forty Thousand Dollars) PHASE II BASED ON FLAT RETAINER FEE and COMMISSIONS, WITH OTHER LIMITATIONS, OFFSETTING CALCULATIONS, AND PROTECTIONS (See Agreement)**

**MARKETING AGREEMENT**  
**BETWEEN**  
**THE SUPERLATIVE GROUP, INC.**  
**AND**  
**THE CITY OF MILWAUKEE**

This Agreement (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between The Superlative Group, Inc. (“Consultant”) organized under the laws of the State of Ohio, having its principal place of business at 26600 Detroit Road, Suite 250, Cleveland, Ohio, 44145 and the City of Milwaukee, a municipal body corporate and politic, organized and existing under the laws of the State of Wisconsin and the charter ordinances of the City of Milwaukee, with principal offices in 200 East Wells Street, Suite 600, Milwaukee, WI 53202 (“City”) (collectively, “Parties”).

**I. RECITALS**

WHEREAS, the City owns various valuable assets, including property and other potentially valuable naming rights, sponsorship rights, pouring rights, and licensing rights, and may construct or develop other assets which are potential revenue sources;

WHEREAS, as part of the budget, File No. 120675, adopted on November 11, 2012, the Common Council (“Council”) of the City has appropriated \$40,000 to the Operating Account, Account No. 0001-1510-0001-R999-006300 (“Account”), for the purpose of paying for the Phase I services described herein;

WHEREAS, the Department of Administration is authorized to execute this contract and to expend \$40,000 for the Phase I services described herein pursuant to Council Resolution File No. \_\_\_\_\_, adopted on \_\_\_\_\_ (“Resolution”);

WHEREAS, Consultant represents that it is capable, experienced, and qualified to undertake and perform those certain services, set forth herein, as are required to fulfill its duties and obligations under the terms and conditions of this Agreement as an independent contractor and not as an employee of the City;

WHEREAS, Consultant is duly organized, validly existing, and in good standing under the laws of the state of its organization and has full corporate power and authority to carry on its business as now being conducted and has the power and authority to execute, deliver, and perform this Agreement;

WHEREAS, Consultant has taken all corporate or other actions necessary to authorize the execution, delivery, and performance of this Agreement, and this Agreement is a valid and binding obligation of the Consultant enforceable against it in accordance with its terms and conditions except as may be limited by federal, state, local or administrative laws;

WHEREAS, the Parties deem it appropriate and in furtherance of a public purpose to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the Parties agree as follows:

## **II. SCOPE OF SERVICES**

A. Two Phase Agreement. This Agreement shall operate in two phases. In the first phase (“Phase I”), the Consultant shall conduct a valuation of all reasonably possible opportunities to advertise on City-owned property, as well as sponsorships, promotional rights, naming rights agreements, pouring rights agreements, licensing agreements, and/or any other reasonable marketing venture or other advertising opportunity (“Assets”) that could potentially generate revenue for the City as part of a multifaceted marketing initiative (“Civic Partnership

Initiative” or “CPI”). In the second phase (“Phase II”), Consultant will be the exclusive marketing and sales representative for the City, except as to those Assets excluded in writing from this Agreement during Phase I, and will seek to identify revenue opportunities for the City based upon the Assets and to negotiate agreements or contracts related to sale or other monetization of the Assets.

B. The Request for Proposal No. 12126 and its all related documents and/or exhibits, attached hereto collectively as Exhibit A, and Consultant’s Proposal, attached hereto as Exhibit B, are hereby incorporated by reference into this Agreement. If any conflict exists between or among the Request for Proposal and its related documents (Ex. A), the Consultant’s Proposal (Ex. B), and this Agreement, this Agreement shall govern.

### **III. COMPENSATION**

A. Phase I. As full and complete consideration to Consultant for the services of Consultant during Phase I, the City shall pay to Consultant a retainer (the “Phase I Retainer”) in the amount of forty thousand dollars USD (\$40,000) which shall be paid one-half upon the execution and delivery of this Agreement and the remaining one-half after completion of Phase I. according to the City’s prompt payment policy (see Section X).

B. Phase II. The Consultant shall be paid as follows:

1. Commission.

a. New Contracts. The Consultant shall be entitled to fifteen percent (15%) of the “Fair Market Value” (defined below in Section IV) of any consideration paid to the City under any new contract or other new agreement related to the Assets proposed for the first time by Consultant, approved by resolution of the Council, and executed by the appropriate parties (“Initial Commission”).

b. Contract Renewals. The Consultant shall be entitled to ten percent (10%) of the Fair Market Value (“Renewal Commission”) of any consideration paid to the City under any contract renewed by the City that was first proposed by the Consultant for which the Consultant received an Initial Commission.

c. The Initial Commissions and Renewal Commissions (collectively, “Commission(s)”) payable to Consultant shall be calculated at the end of each calendar month beginning with January 2014 or the first month after Phase II begins, whichever is later, and shall be payable to Consultant subject to the limitations in Section III.B.3. below.

2. Retainer. The Consultant shall be entitled to a monthly retainer of \$7,500 per month for the first four (4) months of Phase II and to a monthly retainer of \$5,000 per month for the subsequent fourteen (14) months (i.e., \$100,000 total). Each monthly retainer shall be payable to Consultant monthly (“Monthly Retainers”).

3. Retainers Paid Shall Reduce Commissions.

a. The City shall deduct from any Commission payable to the Consultant the amount of any Retainers (Monthly Retainers and including Phase I Retainer) which have not already been used to reduce a prior Commission payment, until all Retainers have been set-off against Commissions.

b. If in any one month the calculation specified in Section III.B.3.a. above results in no net Commissions payment to the Consultant, the City and Consultant shall each prepare and deliver to the other party a report showing the amount of the gross Commission earned by Consultant, the amount of Retainer applied to reduce the Commissions, and any other details concerning such calculation as will help the parties maintain complete and accurate

calculations for subsequent months. Such report shall identify the third-party making payment to the City, the amount of payment, and the date of payment.

4. Travel and Lodging Expenses. During Phase II, Consultant is also and separately entitled to be reimbursed for actual travel and lodging expenses as limited and detailed in Section V.J. below.

C. All terms in this Section are also subject to the terms in Section VII.

#### **IV. FAIR MARKET VALUE**

A. Definition. “Fair Market Value” (or “FMV”) is the cash consideration payable to and actually received by the City under any new or renewal contract related to the Assets proposed for the first time by Consultant, approved by resolution of the Council, and executed by the appropriate parties. However, where the sponsor or advertiser provides the City non-cash consideration, under any new or renewal contract related to the Assets proposed for the first time by Consultant, approved by resolution of the Council, and executed by the appropriate parties, then the FMV shall be the value that the non-cash consideration or Asset would bring in the open market, where prospective buyers and sellers are reasonably knowledgeable about the asset, the transaction is not among related parties (i.e., the buyer and seller are at arm’s length and behave in their own best interests), neither party is compelled or otherwise pressured to act, and there is a reasonable amount of time to complete the transaction.

B. Where necessary, estimation of FMV related to this Agreement shall be calculated according to generally-accepted and peer-reviewed economics methodologies. Outlier or valuation methodologies not widely accepted or utilized shall not be applied to estimate FMV for the purposes of this Agreement.

C. Consultant and City shall make all reasonable efforts in good faith to determine, estimate, or otherwise agree upon the FMV, where necessary, before the execution of any agreement or other contract between the City and the third-party CPI counterparty. Any FMV proposed by Consultant must be supported with a detailed description of the methodology and quantitative support for such proposed FMV.

D. Should Consultant and City not be able to reach agreement as to FMV, Consultant and City must mutually agree to either (1) select a properly qualified valuation expert by mutual agreement. Such expert will bindingly determine the FMV for the disputed non-cash consideration and/or Asset(s). In such case, Consultant and City shall share evenly in any costs or expenses related to said expert's valuation services and/or written report; or (2) proceed to mediation with a mutually acceptable mediator. Each Party shall have the option of selecting a valuation expert of their own choosing and presenting her valuation opinion to the mediator and each Party shall be individually responsible for their respective expert's fees and costs. The valuation report and any document or information reviewed or relied upon by such expert in the preparation of her report shall be the only evidence which may be considered by the mediator. Each Party shall share in the costs of such mediation equally. If either Party is dissatisfied with the result of mediation, the Parties must enter into arbitration before an arbitrator belonging to the American Arbitration Association. The results of such arbitration shall be binding, immediately enforceable by court order, and nonappealable. Regardless of which of the foregoing two options is selected by the Parties, in no event shall a dispute over FMV be the basis for litigation by either Party.

**V. DUTIES, WARRANTIES, and COVENANTS OF THE CITY**

A. The City shall at all times cooperate with Consultant during Phase I and/or Phase II. The City shall respond to all reasonable requests for information, data, or other documents within a reasonable period.

B. The City shall coordinate and provide Consultant with reasonable and necessary access to relevant City personnel and documents and other data or information.

C. The City shall designate in writing two specific individuals to serve as the primary contact persons for communications between the Consultant and the City.

D. The City, any committee specifically created to administer the CPI (“CPI Committee”) and/or its subject members, the Council and/or its subject members, or other appropriate City officials may assist the Consultant where appropriate and reasonably necessary with solicitations and/or negotiations of Asset agreements or other contracts, at the request of Consultant and at the sole discretion of the City, the CPI Committee or its members, the Council or its members, or other appropriate City officials.

**VI. DUTIES, WARRANTIES, and COVENANTS OF THE CONSULTANT**

A. The Consultant shall assign sufficient personnel to ensure the full execution of this Agreement and compliance with all its terms and conditions.

B. Phase I.

1. Consultant shall conduct a valuation of all Assets that could, in the Consultant’s best business judgment, potentially generate revenue for the City as part of the CPI. This valuation shall be as comprehensive as reasonably possible.

2. The workproduct for Phase I shall include:



a. a written and comprehensive report (“Phase I Report”), which shall include: (i) a detailed description of each potential Asset or group of Asset(s); (ii) for each Asset or group of Assets: (x) where Assets are grouped together, a detailed explanation as to why the monetization of those Assets is maximized as a group; (y) a specific FMV estimate or an estimated FMV range; (z) a detailed explanation of the basis for the FMV estimate and/or methodology used to estimate the FMV; (iii) CPI revenue projections using at least three (3) different scenarios comprised of different combinations of Asset(s) net of all costs, fees, retainers, and commissions for no less than five (5) years; and (iv) a timeline for potential negotiation and execution of CPI initiatives and/or Asset monetizations.

b. should any Asset(s) include or involve sponsorship(s), naming rights, pouring rights, or licensing agreements, Consultant shall propose a comprehensive policy and model agreements based upon industry best practices; and

c. Consultant shall propose a comprehensive advertising policy and model agreements based upon industry best practices; and

d. Consultant shall design, where appropriate in its best business judgment, template Asset agreements or other contract templates.

3. The Consultant shall confer with the CPI Committee, the Council, and/or other appropriate City officials in its best business judgment to develop Asset monetization strategies and to identify potential Assets.

4. The Consultant shall provide periodic updates or reports at the reasonable request of the City, the CPI Committee, the Director of the Department of Administration, or the Director of Purchasing.

5. The Consultant shall prepare and deliver a presentation of its Phase I Report to CPI Committee, the Council, and/or other appropriate City officials.

6. The Consultant shall provide general industry background and education as reasonably necessary.

7. The Consultant acknowledges the City's absolute and unqualified right to exclude any Asset from this Agreement with written notice to the Consultant at any point in time from the date of execution of this Agreement until the date of commencement of Phase II.

8. The Consultant acknowledges the City's right to request that certain Asset(s) be included in Phase I (and thus, by extension, in Phase II) which may include Asset(s) beyond those that the Consultant would have otherwise identified for potential monetization. Prior to the preparation of the Phase I Report, Consultant and City shall agree in writing to a list of such Asset(s) to be included in Phase I and Phase II.

C. City's Right to Exit. Consultant acknowledges the City's absolute and unqualified right to terminate this agreement without cause at the conclusion of Phase I but prior to the commencement of Phase II. Should the City elect to do so, the Consultant's compensation shall be limited to the "Phase I Retainer" as defined in Section III.A.

D. Phase II.

1. The Consultant shall assume primary responsibility for the organization, management, and implementation of the CPI, including (a) identification of potential CPI partners; (b) promotion and solicitation of CPI partnerships, development of promotional and sales materials, and phone and in-person solicitation and sales of CPI partnerships; and (c) negotiation of Asset agreements or other contracts.

2. The Consultant shall confer with the City, the CPI Committee, the Council, and/or other appropriate City officials in its best business judgment to develop strategies, to assist with negotiations, and/or to ensure that any proposed contract conforms to the contracting requirements of the City. The City, the CPI Committee, the Council, and/or other appropriate City officials shall provide such assistance in their respective sole discretion.

3. The Consultant shall provide periodic updates or reports to City, the CPI Committee, the Director of the Department of Administration, or the Director of Purchasing.

4. The Consultant shall provide general industry background and education as reasonably necessary.

5. Monetization of Assets. The Consultant shall at all times in Phase II seek to maximally monetize the Assets of the City as quickly as possible. Consultant shall also at all times seek to maximally monetize any Asset identified by the City in writing at any time from the execution of this Agreement up to the date Phase II commences.

6. Term of Proposed Marketing Agreements. Absent written permission from the City, the Consultant shall propose no initial agreement or other contract related to any specific Asset(s) with a term of longer than twenty-five (25) years. The Consultant shall propose no renewal agreement or other contract with a term of longer than fifteen (15) years.

7. Consultant acknowledges the City's, the Council's, and the CPI Committee's absolute and unlimited right to reject any agreement or other contract, including renewal contracts, related to any Asset(s) proposed by the Consultant during Phase II, whether the reason for such rejection is reasonable or unreasonable.

E. Compliance. The Consultant shall take whatever actions are necessary to ensure that the Consultant complies at all times with this Agreement and all applicable laws. The City

may require the Consultant to certify compliance on a periodic basis. The Consultant shall immediately report to the City in writing as soon as practicable (i) any material violation of this Agreement, (ii) any material violation of law applicable to the Consultant (or any of the Consultant's employees or agents), (iii) any notice of any investigation by any governmental authority of possible violations of applicable law that is reasonably likely to have a material adverse effect on the ability of the Consultant to perform the services under this Agreement, and (iv) any third-party claim or action alleging material violations of applicable law that is reasonably likely to have a material adverse effect on the ability of the Consultant to perform the services under this Agreement.

F. Changes Affecting Consultant. The Consultant shall promptly (and in advance, if reasonably practicable) inform the City in writing of any: (a) material changes in the legal structure of the Consultant, (b) changes in the financial condition of the Consultant that could materially adversely affect the Consultant's capacity to continue to provide services under this Agreement, and (c) any significant changes affecting the management of the Consultant, including changes to the manager(s), employee(s), or other agent(s) who make decisions with respect to this Agreement, as identified in Exhibit D.

G. City Visit. On reasonable notice, a City representative(s) shall be afforded the opportunity to visit Consultant at Consultant's office.

H. Presentations. The Consultant shall make such written and oral presentations or reports as the City, Council, any Council Committee, or the CPI Committee may reasonably request.

I. Records; Public Records Law Compliance; Confidentiality.

1. The Consultant shall maintain accurate and detailed records and accounts of contracts and revenues and/or expenses relating to its activities on behalf of City. All reports, studies, analysis, memoranda and related data and material as may be developed during the performance of this Contract shall be deemed property of the City, which shall have the right to use same for any purpose without any further compensation to the Consultant other than hereinafter provided. The Consultant's records relating to its activities on behalf of the City, including, but not limited to, books, accounts, reports, files, correspondence, and memorandums, shall be open upon reasonable advance notice and during business hours to inspect and audit by the City or by any person or persons designated by the City. Any such inspection and audit shall exclude records relating to the Consultant's proprietary information and other clients' accounts. The Consultant shall make the persons responsible for creating and maintaining such records available to the City during such review for the purpose of responding to the City's reasonable inquiries. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Contract.

2. Both parties understand that the City is bound by the Wisconsin Public Records Law, Wis. Stat. §§ 19.31-39 ("Public Records Law"), and as such, all terms of this Agreement are subject to and conditioned on that law. Under the Public Records Law, the City Records (as they relate to this Agreement or the Account) are subject to public disclosure, unless there is a statutory, common law, or public policy reason for nondisclosure (e.g., trade secrets exception).

3. a. To the extent that confidential information provided by the Consultant to City is exempt from disclosure under the Wisconsin Public Records Law (Wis.

Stat. §§ 19.31-39) or under the federal Freedom of Information Act (5 U.S.C. § 552 et seq.), City shall safeguard the Consultant's exempted confidential information to which it has access in connection with the products and/or services provided under this Agreement, if specifically identified as confidential by the Consultant, and shall use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent disclosure and to use such confidential information solely in connection with this Agreement (Confidential Records).

b. The City acknowledges and agrees that Consultant has agreed to give access to its Confidential Records including but not limited to certified financial statements, which are being provided under a specific pledge of confidentiality. The City agrees to keep these records confidential to the extent allowable under the law. Consultant shall assist City in identifying those records, or portions of records, related to this Agreement that have been provided only after receiving a specific pledge of confidentiality, or which are proprietary or trade secret, and are exchanged pursuant to this Agreement.

4. All of the aforesaid documents and materials received, prepared, or assembled by the Consultant under this Contract are confidential and the Consultant agrees that it will not, without prior written approval by the City, submit or make same available to any individual, agency, public body or organization other than the City, except as may be otherwise herein provided or as may be required by law or legal process. Upon termination of this contract, the Consultant shall deliver all confidential information of the City in its possession to the City within thirty (30) business days of such termination.

5. The Consultant acknowledges and agrees that it is obligated to provide reasonable assistance to the City in retaining and producing records that are subject to the

Wisconsin Public Records Law (specifically the production of records that are maintained by the Consultant in its capacity as a contractor, as required pursuant to Section 19.36(3) of the Public Records Law) and that failure to do so shall constitute a material breach of this Agreement. Consultant agrees that it shall reasonably assist the City and the Milwaukee City Attorney's Office in complying with the Public Records law by, among other obligations, retaining documents according to the terms of this Agreement, assisting with the review of public records requests and related documents, and providing to City documents properly requested under the Public Records Law.

a. The Consultant shall not make any claim against the City if the City makes available to the public any document or information the City receives from the Consultant which is required to be made public by the City pursuant to a court order.

b. In the event the City receives a public records request for records relating to the Consultant, any information designated by the Consultant as its confidential and proprietary information will be considered in conjunction with the City's response to the public records request. The City will allow the Consultant the opportunity to raise and support potential exemptions under the law from public disclosure. Decisions to withhold public disclosure of records subject to this law must be supported by a statement of the public policy basis for denial. The Consultant agrees to cooperate with any reasonable request for assistance by the City and the Milwaukee City Attorney's Office to support nondisclosure decisions. Should a nondisclosure decision by City result in litigation, the Consultant agrees to cooperate and provide reasonable assistance to the City in its legal defense.

c. In the event that City and/or the Milwaukee City Attorney's Office in good faith determines that disclosure of records subject to this law is proper, and the

Consultant disagrees and does not produce records demanded by the City, the Consultant will be solely responsible for litigation expenses and any related costs, fees, or other damages that result from the Consultant's nondisclosure decision including attorney's fees.

d. In the event that City and/or the Milwaukee City Attorney's Office in good faith determines disclosure of records subject to this law is proper, and the Consultant disagrees, files suit to prevent the disclosure or to seek damages after disclosure, and a court or other agreed-upon arbitrator later determines that the disclosure was proper, the Consultant will be reimburse the City for all litigation expenses and any related costs, fees, or other resulting damages including attorney's fees.

6. The Consultant agrees to provide any contractor or other consultant selected by the City with copies of such records reasonably related to the Consultant's activities on behalf of City as are authorized by the City to assist that contractor or other consultant in the performance of its duties as assigned by the City.

7. Except as otherwise authorized by the City or as otherwise permitted by applicable law, records reasonably related to the Consultant's activities on behalf of City shall be maintained for a period of seven years after receipt of final payment under this Agreement. Upon termination of this Agreement and upon the City's request, the Consultant shall tender records related to the Consultant's activities on behalf of City, provided, however, that the Consultant may retain copies of such records as needed to comply with legal, regulatory or reporting obligations or for customary archival or back-up purposes.

J. Consultant As Fiduciary. Consultant shall at all times act as a fiduciary of the City under both equity and law. Consultant shall discharge its duties solely in the interest of the



City with the degree of skill, care, and prudence of a marketing consultant industry professional, in good faith, and with fairness.

1. Conflict of Interest. The Consultant shall at all times avoid both the appearance of and any actual conflict of interest between the Consultant and City. Consultant shall immediately notify the City of any potential perceived or actual conflict of interest between the Consultant and the City.

2. Self-Dealing. Except when specifically waived in writing by the City, the Consultant shall not knowingly:

- a. deal with the Assets of the City in its own interest;
- b. propose any agreement or other contract involving any Asset(s) with a counterparty whose interests are adverse or potentially adverse to the interests of the City;
- c. receive any consideration from any party dealing with the City in connection with any agreement or other contract involving any Asset(s);
- d. deal with itself or with any City employee or elected official, a firm employing a City employee or elected official, or a firm owned or operated by a City employee or elected official. A partial list of City elected officials and employees is included as Exhibit E and may be amended at will by the City with written notice to Consultant;
- e. propose agreements or other contracts involving any Asset(s) with any firm of which the Consultant is a wholly owned subsidiary or of which Consultant is a parent firm.

K. Travel and Entertainment Expenses. No travel expenses shall be reimbursable during Phase I. During Phase II only, the Consultant's actual and verifiable travel expenses shall

be reimbursable with appropriate documentation subject to the following restrictions and limitations on travel expenses:

1. Local Residents. No lodging or other expenses may be billed to the City for any employee, agent, contractor, or principal of the Consultant or any other related party who does work for the City at the instruction of the Consultant under this Agreement who resides in Ozaukee, Waukesha, Milwaukee, Racine, or Kenosha County.

2. Residents Outside of Local Area.

a. Lodging: The maximum amount billable to the City for lodging of employees, agents, contractors, or principals of the Consultant or any other related party who does work for the City at the instruction of the Consultant under this Agreement who reside in a County other than Ozaukee, Waukesha, Milwaukee, Racine, or Kenosha County is \$97.00 per night plus taxes. A receipt is required for any reimbursement. Every reasonable effort should be made to obtain lodging at the lowest rate possible.

b. Meals: The maximum expense allowed for each meal during any 24 hour period is as follows: \$10.00 for breakfast (6:00 a.m. to 12:00 p.m.), \$15.00 for lunch (12:00 p.m. to 6:00 p.m.), \$31.00 for dinner (6:00 p.m. to 12:00 a.m.), and \$5.00 for incidental meal expenses. In no case may meal expenses be reimbursed in an amount greater than \$61.00 for a given day. However, on the first and last day of travel, the maximum total reimbursable amount for meals equals \$45.75 (i.e., seventy-five percent (75%) of \$61.00). Reimbursement for travel days is also further limited in two ways: (1) breakfast is not reimbursable if travel began after 7:00 a.m.; and (2) the individual seeking reimbursement must have traveled for at least one hour before the quarter being claimed and must travel for at least one hour into the quarter being

claimed. A receipt is required for any reimbursement. The purchase of alcohol is never reimbursable.

c. Other: If a personal vehicle is driven, reimbursement will be at a rate of \$0.51 per mile for the first three hundred (300) miles and at a rate of \$0.20 per mile thereafter. Reimbursement for taxi fares requires a receipt. Reimbursement for parking fees requires a receipt. Every reasonable effort should be made to obtain the least expensive parking. Airfare requires express, written pre-approval and reimbursement will require a receipt. Every effort should be made to obtain the least expensive airfare. No baggage fees are reimbursable. Car rental costs require express, written pre-approval and reimbursement will require a receipt. Every effort should be made to obtain the least expensive car rental and no car rental shall be approved if it is reasonably likely that using taxis will result in a cost equal to or less than the car rental. All liability, casualty, collision, etc. car insurance shall be provided by the Consultant and at the Consultant's expense.

3. No entertainment expenses are reimbursable.

4. All reimbursement requests shall be made using the form attached as Exhibit F.

5. The City reserves the right to audit any travel and entertainment reimbursement request and to reject any claim for reimbursement that fails to specifically conform to the limits and restrictions outlined herein.

## **VII. LIABILITY AND INDEMNITY**

A. The Consultant shall be liable for its and its agents' willful misconduct, breach of fiduciary duty, material breach of contract, negligence, fraud, or bad faith in performing its duties and responsibilities under this Agreement and as required by applicable law. For the

purpose of the immediately preceding sentence, the term “Consultant” shall include the Consultant itself as well as its directors, officers, employees, affiliates, contractors, agents and designees.

B. The City shall not be liable for any acts or omissions of the Consultant in connection with the Consultant’s discharge of its duties under this Agreement.

C. In case any action in court or proceeding before an administrative agency is brought against the City or any of its officers, agents, or employees for the failure or neglect of the Consultant in whole or in part to perform any of the covenants, acts, matters or things by this Contract undertaken, or for injury or damage caused by the alleged negligence of the Consultant, its directors, officers, employees, affiliates, contractors, agents or designees, the Consultant shall indemnify and save harmless the City and its officers, agents and employees from all losses, damages, costs, expenses, judgments, or decrees arising out of such action. The City shall tender the defense of any claim or action at law or in equity to the Consultant or Consultant’s insurer, and upon such tender it shall be the duty of the Consultant and Consultant’s insurer to defend such claim or action without cost or expense to the City or its officers, agents, or employees. The Consultant shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Contract and for the results therefrom.

D. In addition, the Consultant will defend the City at the Consultant’s own expense and using counsel at Consultant’s own selection, which counsel shall be acceptable to the City, provided the City may not unreasonably withhold its consent to counsel, against any claim that asserts that the City is liable for loss or damages caused by the Consultant’s alleged acts or omissions which are claimed to constitute willful misconduct, lack of good faith, breach of fiduciary duty, or negligence in performing its duties and responsibilities under this Agreement

and in accordance with applicable laws or Consultant's alleged material breach of this Agreement. The Consultant shall not settle a lawsuit relating to the City unless the City consents in writing to such settlement; such consent shall not be withheld in bad faith.

E. Without limiting the indemnification obligations provided in this Agreement, Consultant shall provide and maintain, at its own expense, errors and omissions insurance policies, as indicated in Section VIII of this Agreement. This provision of the Agreement shall continue to obligate the parties hereto even after the Consultant's duties with respect to the City terminate if the claim or cause of action relates directly or indirectly to alleged acts or omissions which are claimed to constitute willful misconduct, lack of good faith, breach of fiduciary duty, or negligence in performing its duties and responsibilities under this Agreement and in accordance with applicable laws or Consultant's alleged material breach of this Agreement of the Consultant occurring while previously serving the City. This indemnification shall survive any termination of this Agreement.

## **VIII. INSURANCE**

A. General Requirements. A certificate of insurance acceptable to City evidencing the insurance requirements is to be provided. Certification shall state that the insurance policies issued to the Consultant meet the requirements as outlined below. All certificates are to be provided within 30 days of final execution of this Agreement.

All policies shall state that the City shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Consultant's insurers providing the coverage required by City for the duration of this Agreement.

Insurance companies must be acceptable to City and must have a current A.M. Best rating of A- or better. If subcontractors are used, each must meet all requirements in section A and B.

B. The minimum insurance requirements are as follows:

1. Workers' Compensation and Employer's Liability

|                           |                         |
|---------------------------|-------------------------|
| Workers' Compensation     | Statutory Coverage      |
| Bodily Injury by Accident | \$100,000 each accident |
| Bodily Injury by Disease  | \$500,000 policy limit  |
| Bodily Injury by Disease  | \$100,000 each employee |

- Employer's Liability at limits noted above or higher limits if needed to meet Umbrella underlying insurance requirements.
- Coverage shall be modified to include a Waiver of subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.

2. Commercial General Liability

|   |                             |
|---|-----------------------------|
| Commercial General Liability              | \$1,000,000 each occurrence |
| General Aggregate                         | \$2,000,000 aggregate       |
| Personal & Advertising Injury Limit       | \$1,000,000 each occurrence |
| Products - Completed Operations Aggregate | \$2,000,000 aggregate       |
| Medical Expense                           | \$ 5,000 each person        |

- Coverage must be equivalent to ISO form CG0001 or better.
- Coverage must be on an occurrence basis.
- The City of Milwaukee shall be added as an additional insured using ISO form CG2026 or its equivalent.
- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.
- The policy shall include independent contractors (owners/contractors protective) and contractual liability.
- Coverage will apply on a primary and non-contributory basis. We suggest the following wording:

“If you have agreed in a written contract that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the contract was executed prior to the bodily injury, property damage, personal injury or advertising injury, then this insurance will be primary over, and we will not seek contribution from, such insurance.”

- Coverage shall apply to the risks associated with or arising out of the services provided under this contract.

3. Auto Liability

|                       |                           |
|-----------------------|---------------------------|
| Combined Single Limit | \$1,000,000 each accident |
|-----------------------|---------------------------|

|                 |                       |
|-----------------|-----------------------|
| Medical Expense | \$ 10,000 each person |
|-----------------|-----------------------|

- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.

- If the Consultant owns or leases any vehicles, coverage must be for Any Auto (Symbol 1). If there are no owned or leased vehicles then coverage must be for Hired and Non-Owned Autos (Symbols 8 and 9).

- Coverage shall include contractual liability for risks assumed in this contract.

4. Umbrella (Excess) Liability

|                |                            |
|----------------|----------------------------|
| Per Occurrence | \$5,000,000 per occurrence |
|----------------|----------------------------|

|           |                       |
|-----------|-----------------------|
| Aggregate | \$5,000,000 aggregate |
|-----------|-----------------------|

- The Umbrella Liability insurance shall provide coverage excess of the Employer’s Liability, Commercial General Liability and Auto Liability Coverages, including the amendments stated above.

5. Professional Liability Errors and Omissions

|       |                        |
|-------|------------------------|
| Limit | \$5,000,000 each claim |
|-------|------------------------|

|           |                       |
|-----------|-----------------------|
| Aggregate | \$5,000,000 aggregate |
|-----------|-----------------------|

- The retroactive date shall be no later than the date this contract begins.

- The policy shall contain an extended reporting endorsement of at least two years which will be exercised in the event of cancellation or non-renewal of the policy unless the replacement policy contains the original retroactive date.

C. Upon execution of this Agreement, the Consultant shall furnish the City with a copy of current Certificates of Insurance setting forth the insurance policies in force along with

coverage limits required for each coverage item listed above. The Certificates of Insurance shall also state any deductibles or self-insured retentions that apply on the policy.

D. Consultant will ensure continuity of errors and omissions coverage. The Consultant shall provide written notice to the City if it has received notice that its policies will not be renewed.

## **IX. DURATION AND TERMINATION**

A. This Agreement shall become effective and work may begin after Consultant has executed the Agreement and has either (1) been notified in writing to commence work or (2) received from City an original of the Agreement that is complete and fully executed. The Agreement shall continue in effect until terminated as hereinafter provided. In addition to all other remedies inuring to the City should the Contract not be completed by the date specified in accordance with all of its terms, requirements and conditions herein set forth, the Consultant shall continue to be obligated thereafter to fulfill Consultant's responsibility to complete the scope of services and to execute any necessary amendments to this Agreement.

### **B. Term**

1. The term for Phase I shall be ninety (90) days from delivery of a fully executed copy of this Agreement. The term for Phase I may be extended in writing with the mutual consent of both Parties.

2. The term for Phase II shall be five (5) years from the date the Common Council adopts a resolution to proceed with Phase II and/or identifying a list of Assets for the Consultant to market during Phase II. The term for Phase II may be extended in writing with the mutual consent of both Parties.



C. Termination for Cause. If, through any cause, the Consultant shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City Purchasing Director or the Director of the Department of Administration shall thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of the termination. Prior to termination of the Agreement for cause, the City shall notify the Consultant in writing of its intent to terminate, identifying the alleged deficiencies in Consultant's performance, and shall give the Consultant thirty (30) days to cure such deficiencies prior to termination. In such event, all deliverables completed by Consultant as of the date of termination shall at the option of the City, become property of the City.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Consultant, and the City may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due to the City from the Consultant is determined.

D. Termination for Convenience of the City.

1. After the commencement of Phase I, the City may not terminate this Agreement for convenience.

2. After the completion of Phase I but before the commencement of Phase II, the City has an unqualified and absolute right to terminate this Agreement for any reason by written notice to the Consultant.

3. After the commencement of Phase II, the City may terminate this Agreement at any time for any reason by giving at least ten (10) days' notice in writing from the

City Purchasing Director or Director of the Department of Administration to the Consultant. If the Consultant is terminated by the City as provided herein, the Consultant's compensation will be calculated and payable according to the terms in Section III. After notice of termination as provided herein, the Consultant may within five (5) days elect in writing to complete the negotiation of any agreement or other contract, where such negotiation has proceeded to or past the point of: (a) drafting or finalization of a letter of intent; (b) drafting or exchange of term sheets; or (c) exchange of contract or agreement drafts, but the completion of such negotiation shall not continue for more than ninety (90) days after notice of termination. The written notice of this election shall be accompanied by document(s) evidencing the commencement of negotiation as specified above.

**X. TIMELY PAYMENT AND PERFORMANCE APPROVAL**

A. Timely Payment. It is the City's policy to pay all invoices within 30 days. If the City does not make payment within 45 days after receipt of properly completed supporting payment and other required contract documentation, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good-faith dispute and, before the 45th day of receipt, notice of the dispute is sent to the contractor by first-class mail, personally delivered, or sent in accordance with the notice provisions in the contract). If there are subcontractors, consistent with s.66.0135(3), Wis. Stats., the prime contractor must pay the subcontractors for satisfactory work within seven days of the contractor's receipt of payment from the City of Milwaukee, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the contractor fails to make timely payment to a subcontractor, the contractor shall pay interest at the

rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day. Reference Common Council File No. 101137 adopted January 2011.

B. Performance Approval. Compensation for services required under this Contract shall be contingent upon each activity being reviewed for approval by the City approving officer, Sharon Robinson or her designee, and approved by them for payment.

C. Compensation provisions and limitations are detailed above in Section III.

## **XI. MISCELLANEOUS**

A. Payment Monitoring Requirements. All Contractors awarded a contract valued at \$25,000.00 or more are required to participate in training on the City of Milwaukee's contract compliance software. Contractors must complete the training no later than 30 days after the date of contract award. Throughout the contract term, Contractors are required to regularly provide timely payment information in the City's contract compliance software. Please contact the Office of Small Business Development (OSBD) at 414-286-5553 should you have any questions or concerns regarding the training process

B. Performance. Notwithstanding any references to the contrary in the contract documents, the Consultant agrees that the performance of Consultant's work, services and the results therefrom, pursuant to the terms, conditions and agreements of this Contract, shall conform to applicable professional standards.

C. Place of Performance. The Consultant shall conduct Consultant's services as required under the terms and conditions of this Contract at such place or places as is necessary so as to enable the Consultant to fulfill Consultant's obligations under this Contract.

D. Additional Fringe or Employee Benefits. The Consultant shall not receive nor be eligible for any fringe benefits or any other benefits to which City salaried employees are entitled to or are receiving.

E. Taxes, Social Security, Insurance, and Government Reporting. Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the Consultant receiving payment under this Contract shall be the sole responsibility of the Consultant.

The Consultant shall be solely responsible to meet Consultant's insurance needs as required by the City during the terms of this Contract or any extension thereof. A Certificate of Insurance shall be provided to the City as an additional insured providing for a thirty (30) day notice to the City prior to change, termination or cancellation.

F. Subcontracting. The Consultant shall not subcontract for the performance of any of the services herein set forth without prior written approval obtained from the City Purchasing Director, except that the City hereby consents to allow subcontract services to be provided by Jacque Moore of Creative Marketing Resources, Inc., located at 500 West Brown Deer Road, Suite 102, Milwaukee, Wisconsin 53217.

G. Severability. In the event any provision of this Agreement is considered void, illegal or invalid for any reason, said provision shall not affect the remaining provisions of this Agreement. The void, illegal or invalid provision shall be fully severable and this Agreement shall be construed as though the voided, illegal or invalid position had never been inserted in the Agreement.

H. Amendment. This Agreement may be amended any time by the action of the City and Consultant in writing.

I. Entire Agreement. This Agreement, including addenda hereto and ordinances incorporated herein by reference constitute the entire agreement between the parties hereto with respect to the subject matter thereof. It supersedes all prior agreements between the parties hereto relating to matters contained herein and may not be modified, waived or terminated orally.

J. Charter. This Agreement and the Guidelines shall be subject to the City Charter and shall in all respects be construed in a manner consistent with the purposes of the Charter.

K. Notices and Demand. Except as expressly permitted herein, whenever any notice, demand, direction, guideline or instruction is required or permitted to be given, under any provision of the Agreement or applicable law, such notice, demand, direction, guideline or instruction shall be in writing, signed by or on behalf of the person giving the same, and unless otherwise agreed by the parties to such notice, shall be deemed to have been given to or received by the appropriate party as of the date on which it is personally or electronically delivered or, if mailed by first class mail, postage prepaid, on the 5<sup>th</sup> business day after the date of the postmark applied by the United States Postal Service, if mail was delivered to the attention of the person and at the address set forth below.

All notice and communications required in or permitted in writing under this Agreement or applicable law, shall be addressed as follows:

To Consultant:           The Superlative Group, Inc.  
                                  Attn: Myles Gallagher, President  
                                  26600 Detroit Road, Suite 250  
                                  Cleveland, OH 44145  
                                  216-592-9400  
                                  Gallagher@superlativegroup.com

To City:                    City of Milwaukee  
                                  Attn: Sharon Robinson  
                                  Department of Administration

200 East Wells Street, Room 606  
Milwaukee, WI 53202  
414-286-3850  
srobins@milwaukee.gov

With copies to:

City of Milwaukee  
Attn: Rhonda Kelsey  
Purchasing Department  
200 East Wells Street, Room 601  
Milwaukee, WI 53202  
414-286-3501  
Rhonda.kelsey@milwaukee.gov

L. Amendments to Applicable Laws. Any references to a section of the ordinances or other applicable laws, or to any goals or guidelines, shall be deemed to include a reference to any amendments thereof, and any successor provisions thereto; provided however, that such amendments and successor provisions to any ordinance have been provided in writing to the Consultant to the City.

M. Governing law. To the extent not inconsistent with applicable federal laws, the Agreement shall be construed pursuant to, and shall be governed by the laws of the State of Wisconsin. Any dispute arising under this Agreement shall be determined in state court or a U.S. federal court within the State of Wisconsin.

N. Headings. Headings of paragraphs are inserted for convenience of reference. They are not part of this Agreement and not to be considered in its construction.

O. Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

P. Assignment. Neither this Agreement nor any of the rights, duties, or obligations of the parties hereunder, shall be assigned by either party without the express written consent and approval of the other party.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

THE SUPERLATIVE GROUP, INC.

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

IN THE PRESENCE OF:

THE CITY OF MILWAUKEE

\_\_\_\_\_  
Sharon Robinson, Director  
Department of Administration

\_\_\_\_\_  
Rhonda Kelsey, Director  
Purchasing Department

COUNTERSIGNED:

\_\_\_\_\_  
Comptroller  
Date: \_\_\_\_\_

Examined and approved as to form and execution this  
\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Assistant City Attorney



|              |  |
|--------------|--|
| Exhibit List |  |
| Exhibit A    | Request for Proposal No. 12126 and related documents |
| Exhibit B    | Consultant's Proposal                                |
| Exhibit C    | (Intentionally omitted)                              |
| Exhibit D    | List of Key Consultant Personnel                     |
| Exhibit E    | Partial List of Key City Personnel                   |
| Exhibit F    | Reimbursement Form                                   |

1052-2011-2772/192672v7