

**ORIGINAL
STAMPED IN RED**

RESOLUTION NO.: R-2020-105

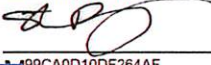
*Authorizing the City Manager to execute a Management Services Agreement
between the City of Columbia and Executive Management and Leasing, Inc.
for the property located at 1401 Main Street*

BE IT RESOLVED by the Mayor and City Council this 15th day of December, 2020, that the City Manager is hereby authorized to execute the attached Management Services Agreement for the property known as 1401 Main Street, or in a form to be approved by the City Attorney, between the City of Columbia and Executive Management and Leasing, Inc, for the terms and conditions therein contained.

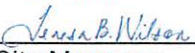
(Funding Source: General Fund and Water and Sewer Fund)

Requested by:

Assistant City Manager Gentry

DocuSigned by:

199CADD10DF264AF...
Mayor

Approved by:

DocuSigned by:

City Manager

Approved as to form:

DocuSigned by:

City Attorney

ATTEST:

DocuSigned by:

City Clerk

Introduced: 12/15/2020
Final Reading: 12/15/2020

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (the "Agreement") is made and entered into between the **CITY OF COLUMBIA**, a South Carolina municipality ("Owner"), and **EXECUTIVE MANAGEMENT AND LEASING, INC.**, a South Carolina corporation ("Manager").

WHEREAS, Owner is the owner of that certain office building located at 1401 Main Street in the City of Columbia, State of South Carolina, generally known as "1401 Main Building" (the "Building"); and

WHEREAS, Owner is desirous of appointing, engaging, and employing Manager to provide certain services in connection with the Building; and

WHEREAS, Owner has full right and authority to appoint, engage, and employ the Manager to assist owner in managing the Building; and

WHEREAS, Manager is desirous of accepting such appointment under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, Owner and Manager, in consideration of these presents, the mutual agreements, premises and covenants herein, and other good and valuable consideration, the receipt, sufficiency, and adequacy of which is hereby acknowledged, do hereby agree as follows:

1. **Appointment of Manager.**

- A. **Property Management Services.** Owner does hereby appoint, engage, and employ Manager as its sole and exclusive agent and representative of Owner for the purpose of providing property management services in connection with the Building as hereinafter set forth, and Manager does hereby accept such appointment and employment for and in consideration of the compensation set forth in Section 3A below, all upon the terms and conditions of this Agreement.
- B. **Relationship.** Manager shall be an independent contractor and not an agent (other than as specifically stated herein), employee, partner of, or joint venture with, Owner. If Manager provides other services to Owner, nothing contained herein shall be deemed to modify, amend or diminish the agreements contained herein, and Manager's responsibilities and duties hereunder shall be considered entirely separate from any other relationship with Owner.
- C. **Manager's Other Interests.** Owner acknowledges that Manager may have ownership or other interests in businesses in the real estate market area of the Building which include the management and leasing of real property, and Owner agrees not to assert any claim against Manager by virtue thereof unless Manager's activities with respect thereto have resulted in Manager's breach of its expressed obligations hereunder.

2. **Term of Agreement.** This Agreement is for a term of twenty-four months (the "Term") commencing on January 1, 2020 (the "Commencement Date") and terminating on December 31, 2022 (the "Termination Date"). The Owner shall have the ability to extend this term an additional two-year term, with the mutual consent of the Manager.

3. **Manager Compensation/Management Fees.**

A. **Property Management Fees.** Owner shall pay to Manager a monthly property management fee (the "Property Management Fee") of Twelve thousand five hundred Dollars (\$12,500.00), payable on the 10th day of each month commencing on the first month of the Commencement Date, and continuing upon the termination of the Term. Upon an extension of this agreement, the management fee structure will remain unchanged unless mutually agreed upon.

4. **Property Management Services.** Owner hereby authorizes and empowers Manager, in the best judgment of Manager, to perform the following in the name and account of Owner:

A. Employ, promote, discharge, supervise, and pay such employees as Manager may determine advisable to be employed in the care, management, or operation of the Building. It is understood and agreed that all employees working for the management company are in the employment of Manager solely, and Owner shall in no manner be liable to such employees. Manager agrees to defend, indemnify and hold harmless Owner from and against any and all claims, demands, and liability whatsoever, including, without limitation, attorneys' fees and costs, arising out of or in connection with such employees, other than matters related to compensation to such employees.

B. Prepare an annual Budget (the "Budget") for the Building operations. Budget years shall reflect the fiscal year of the Owner, which is July 1 through June 30. The proposed Budget shall be submitted by December 15th of each year for the fiscal year commencing the following July. Manager shall use its best efforts reasonably to manage and operate the Building in accordance with the Budget and shall secure the prior approval of Owner for any expense exceeding by more than Twenty-Five Thousand Dollars (\$25,000.00) more than the amount set forth in any line item of the Budget.

C. Subject to the terms of the Budget, make all contracts for electricity, gas, fuel, water, telephone, cable, window cleaning, rubbish removal, laundry service, exterminating, janitorial services, maintenance services, landscaping, equipment maintenance, and other utilities or services or such of them as Manager shall deem advisable and that Tenants in the Building (collectively, "Tenants") are not required to perform.

D. Make or cause to be made all repairs, replacements, alterations, additions, improvements, and decorations in and to the Building as Manager may determine advisable. Expenditures for such repairs, replacements, alterations, additions, improvements, and decorations in excess of Five Thousand Dollars (\$5,000.00) shall not be made without the prior written consent of Owner or in accordance with the Budget, except in an emergency, or if Manager in good faith determines that expenditures are necessary to protect the Building from damage or to prevent injury to persons or loss of life.

E. Purchase all supplies and materials for the Building as Manager may determine advisable.

F. Provide accounting services and procedures relating to accounts payable and accounts receivable with respect to the services provided by Manager for the Building.

G. Collect all security deposits as required under the leases of Tenants in the Building (collectively, "Tenant Leases"). All security deposits collected by Manager shall be deposited in a separate trust account in a bank mutually approved by Owner and Manager

and not co-mingled with funds of Owner or Manager. All security deposits shall otherwise be held, deposited, and/or segregated into separate accounts as may be required to comply with the laws of the State of South Carolina affecting such security deposits and shall be in compliance with acceptable financial and auditing procedures of the Owner.

- H. Collect all rental payments, and other income and amounts due under Tenant Leases promptly upon such amounts becoming due, which shall be deposited into accounts in accordance with Section 8 below.
 - I. Obtain insurance certificates from Tenants as may be required by Tenant Leases.
 - J. Timely bill back to Tenants by March 1st of each year, or otherwise in accordance with the specific terms and conditions of any Tenant Lease, such amounts which may be due Owner under any Tenant Leases.
 - K. Assist as needed in all legal actions or proceedings for the collection of rent or other amounts from the Building, or the ousting, ejection, or dispossessing of tenants or other persons therefrom, and engage attorneys for any such matters. Legal assistance shall be obtained through counsel designated or approved by Owner and such legal action undertaken shall be solely in Owner's name. All such legal expenses, including that of counsel, shall be borne by Owner.
 - L. Cooperate with and assist appraisers, consultants, or counsel retained by Owner to evaluate the Building or to appeal assessed values, but shall not be responsible for such undertakings as part of this Agreement.
5. **Additional Services.** Manager has the resources to perform, or cause to be performed, additional services not otherwise described in Section 4 above, including Building Up-fit coordination services, a Window Replacement project, as well as other projects as identified by the Owner, (collectively, "Additional Services"). Manager shall not be required to perform any Additional Services unless requested to do so by Owner in a written notice and then only if and when Owner and Manager have agreed in writing upon the amount and method of compensation to Manager for such Additional Service. (See Appendix C attached herewith). Manager shall perform all services in accordance with Owner's requirements as outlined specific to each project in advance of a project moving forward, which may include managing vendors approved by owner to perform work on agreed upon projects in compliance with established procedures for doing so. On occasion, the City may elect to undertake projects outside of management contract but agrees to discuss any such decisions with the Manager in advance and coordinate such activities as needed to avoid disruptions to routine activities or other projects in process.

If requested to provide additional services as contemplated above, the Manager shall utilize the following requirements while carrying out these duties.

- A. For procurement of services related to a project management assignment, the Manager shall provide that all services are procured in an inclusive and competitive process. A minimum of three (3) separate proposals for the requested services are required. The City shall be afforded an opportunity to review solicitations prior to release as well as being afforded an opportunity to be present and participate in the proposal receipt, review and award process.

- B. Because the Owner is committed to enhancing opportunities for all segments of the business community, the Owner has set the following aspirational goals. 20% Minority, Women-Owned Business Enterprise participation and 20% Local Business Enterprise participation (LBE as certified by Office of Business Opportunities). The City reserves the right to approve all bids and percentages prior to award.
- C. Terms and Conditions for all vendor agreements which will result from these additional services will be as provided or agreed upon by the City on a project by project basis.
6. **Payment by Owner.** Owner shall coordinate with the City designee to cause prompt payment of all obligations, liabilities, costs, expenses and fees required to be paid by Owner arising on account of or in connection with this Agreement. Manager shall be excused from its obligations under this Agreement if and to the extent performance thereof is hindered by Owner's failure to provide to Manager Adequate Funds within ten (10) business days after receipt of Manager's notice. In no event whatsoever shall Manager have any obligations to advance any of its own funds hereunder or incur any liability or obligations in the performance of its duties hereunder except for obligations to the Owner created hereby. Manager shall continue to make lease payments for the adjacent lots directly to the Lessor and shall submit invoice to the Owner for reimbursement of those costs on a monthly basis.
7. **Expenditures and Reimbursement of Manager.** Owner shall promptly reimburse Manager for any monies which Manager advances or otherwise authorizes the expenditure (i) with the prior approval of Owner for, the account of, or use at, or for the benefit of the Building, or (ii) without the prior approval of Owner if Property Owner in good faith determines is necessary to address an emergency repair or similar situation requiring prompt or immediate attention in an amount not to exceed \$25,000 in the aggregate for such event. Nothing herein contained, however, shall be construed to obligate Manager to make any such advances.
8. **Manager's Maintenance of Funds.** All monies received by Manager from, for, or on behalf of Owner, including without limitation, rents and security deposits, shall be provided to the Owner and deposited by Owner in a bank or savings bank in account(s) maintained by Owner and shall not be co-mingled with the any other funds of Owner and shall be disbursed by Owner in such amounts and at such times as the same are required to pay for obligations, liabilities, costs, expenses and fees (including, without limitation, the compensation and reimbursement of Manager as herein provided) arising on account of or in connection with this Agreement or the Building. The Owner acknowledges the Manager will work closely with Owner's designee to provide deposits into the Owner's account as well as invoices for payment and Owner agrees to process payments in a timely manner. Both the Owner and the Manager shall maintain records of activities associated with operation and maintenance of the property. Manager shall provide monthly records to the Owner of all costs associated with the property and shall work to develop regular reports if requested by the Owner.
9. **Compliance with Laws.** Owner acknowledges that, being the City of Columbia, its departments and agencies has local jurisdiction over the use, maintenance, operation or construction of the Building, including safety and access matters and, in that capacity, is familiar with such laws governing the same and will take such steps as are necessary to comply with such local laws. Manager shall make all reasonable efforts to comply with all statutes, ordinances, laws, rules and orders of any federal, state or local government or department, or officer thereof, having jurisdiction over the use, maintenance, operation or construction of the Building. Manager further agrees from time to time to take reasonable steps to advise Owner with respect to state or federal

statutes, ordinances, laws, rules and regulations mentioned above to ensure that the Building, and the operation thereof, comply with such requirements.

10. **Indemnity and Insurance.** Except for willful misconduct or negligence of Manager, Manager shall indemnify and save Owner harmless from any and all damages including reasonable attorneys' fees from or connected with any negligence, willful misconduct or breach of this Agreement by Manager or its employees or by any third party acting on behalf of Manager. It is expressly agreed that the foregoing provisions of this paragraph shall survive the expiration or earlier termination of this Agreement. Manager shall not be liable to Owner for any error in judgment, except willful malfeasance, bad faith, or negligence arising out of or in connection with this Agreement. Manager shall carry workers' compensation and employer's liability at limits no less than statutory requirements where required to do so by law. Manager shall comply with all local, state and federal laws, and regulations applicable to any employees including minimum wage laws.
11. **Sign.** Subject to Owner's prior specific approval, Owner hereby grants Manager the privilege of displaying Manager's signs in and upon the Building announcing that the Building is under Manager's management.
12. **Non-Liability of Manager.** Manager is not and never shall be liable to any creditor of Owner nor to any claimant against the Building or other property of Owner provided such claim is not brought on by negligence of the Manager.
13. **Manager Standard of Care.** In the performance and discharge of Manager's duties and obligations pursuant to this Agreement, Manager shall act diligently, reasonably and prudently in accordance with the standard of care, diligence, and prudence exercised by reputable managers of projects similar to the Building (the "Standard of Care"). The phrases "best judgment of Manager", "Manager in good faith determines", "Manager deems advisable", "Manager may determine advisable", "best efforts", and similar phrases as used in this Agreement shall require Manager to conform to the Standard of Care.
14. **Default/Termination of Agreement.** Manager shall be in default in this Agreement if Manager fails to comply with any provision of this Agreement but only if such failure is not cured within ten (10) business days after the date of written notice ("Notice Date") from Owner specifying the specific nature of the failure (provided, however, with respect to any matter not curable by the payment of money if curing such failure reasonably requires more than ten (10) business days, the time period for curing shall be extended for up to a total of sixty (60) days so long as Manager promptly commenced to cure the failure after the Notice Date and thereafter prosecutes such cure). In the event of default by Manager, Owner may give notice of such default and terminate the Agreement.
15. **Manager's Lease/Management Office.** Owner acknowledges that Manager has an existing lease for office space within the Building ("Manager's Lease") and Owner recognizes Manager's continuing rights under the Manager's Lease, and further agrees and hereby confirms that Manager shall continue to pay no rent under the Manager's Lease for such time as Manager is performing its services to Owner under this Agreement.

16. **Miscellaneous Provisions.**

- A. Assignment. Neither Owner nor Manager may assign their respective rights under this Agreement without the prior written approval of the other party.
- B. Time of Essence. Time is of the essence in the performance of all obligations under this Agreement.
- C. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In addition, this Agreement may contain more than one counterpart of the signature page, all of which signature pages may be attached to one copy of this Agreement to constitute the entire executed Agreement.
- D. Notices. Any notice, request, demand, consent, approval and other communications under this Agreement shall be in writing, and shall be deemed duly given or made at the time and on the date when either (i) personally delivered, or (ii) sent by U.S. Certified Mail, return receipt requested, postage prepaid, or (iii) sent, postage prepaid, by any reputable delivery service that provides evidence of delivery to the Party being given such notice (such as Federal Express or UPS), or (iv) by facsimile transmission evidenced by written confirmation that the transmission was received; or (v) by electronic mail (provided that the sender of such electronic mail communication shall orally or by email confirm receipt thereof by the appropriate Party), to the address for each Party set forth below:

To Owner:
CITY OF COLUMBIA
1737 Main Street
Columbia, South Carolina 29217
Attention: Teresa Wilson, City Manager
Email: Teresa.Wilson@columbiasc.gov

To Manager:
EXECUTIVE MANAGEMENT AND
LEASING, INC.
1401 Main Street, Suite 670
Columbia, South Carolina 29201
Attention: David R. Loy
Email: dloy@emandl.com

Assistant City Manager for Operations
1113 Recreation Drive (PO Box 147/29217)
Columbia, South Carolina 29203
Attention: Henry Simons, Assistant City Manager
Email: Henry.Simons@columbiasc.gov

Any notice mailed as herein provided shall be deemed to have been received two (2) business days after the date of mailing. Evidence of deposit in Registered or Certified First Class Mail shall constitute sufficient proof of delivery.


- E. Captions, Gender and Number. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. Whenever the context so requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.
- F. Waiver. Any consent to or waiver of a specific provision of the Agreement shall not be deemed or construed to be a consent to or waiver of any other provision of this Agreement. Failure on the part of one party to complain of any act or failure to act on

the part of the other party, irrespective of the duration of such failure, shall not constitute a waiver or modification of rights hereunder. No waiver or modification hereunder shall be effective unless the same is in writing and signed by the party against whom it is sought.

- G. Severability. If any provision of this Agreement shall, in whole or in part, prove to be invalid for any reason, such invalidity shall affect only the portion of such provision, which shall be invalid, and in all other respects this Agreement shall stand as if such invalid provision, or other invalid portion thereof, had not been a part hereof. The parties agree that this Agreement shall be enforced to the fullest extent permitted by law.
- H. Entire Agreement; Amendment. This Agreement is the sole and entire agreement and understanding of the parties with respect to the transactions contemplated herein. All prior agreements, representations or understandings, whether written or oral, shall not be construed to change, amend, alter, repeal or invalidate this Agreement. This Agreement may be amended only by a written instrument executed by the party against whom enforcement is sought.
- I. Governing Law and Jurisdiction. This Agreement has been executed and delivered in the State of South Carolina, and its validity, interpretation, performance, and enforcement and all matters relating thereto, shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina. For purposes of any litigation arising from or related to this Agreement, the parties hereby submit to the jurisdiction of the appropriate state court located in Richland County, South Carolina.
- J. No Adverse Presumption. It is acknowledged that this Agreement arose as the result of arms-length negotiations between the parties and that this Agreement is the product of input by all parties. As a result, any ambiguity or uncertainty is not to be construed against any party.

IN WITNESS WHEREOF, the parties hereto have executed this Management Services Agreement effective as of the day and year of the last signature hereinbelow.

WITNESS:



OWNER:


CITY OF COLUMBIA, a South Carolina municipality

By: 
Teresa B. Wilson, City Manager

Date: 12/22/2020

MANAGER:

EXECUTIVE MANAGEMENT AND LEASING, INC.,
a South Carolina corporation

By: 
David R. Loy, President

Date: 12/22/2020

APPROVED AS TO FORM



Legal Department City of Columbia, SC

APPENDIX A: Projected Facility Budget for Jan 2021 – June 2021

Vendors	Jan '21	Feb '21	March '21	April '21	May '21	June '21
Security Services	\$4,700.00	\$4,700.00	\$4,700.00	\$4,700.00	\$4,700.00	\$4,700.00
Utility Billing Services	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$500.00
Entrance Cleaning	\$65.00	\$65.00	\$65.00	\$65.00	\$65.00	\$65.00
Building Repairs	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
Plumbing Repairs	\$800.00	\$800.00	\$800.00	\$800.00	\$800.00	\$800.00
Electrical Repairs	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00
Janitorial Contract	\$18,062.07	\$18,062.07	\$18,062.07	\$19,213.32	\$19,213.32	\$19,213.32
Paper Supplies	\$1,100.00	\$1,100.00	\$1,100.00	\$1,100.00	\$1,100.00	\$1,100.00
Gas and Electric Utility	\$25,500.00	\$25,500.00	\$26,500.00	\$26,500.00	\$29,000.00	\$32,500.00
Building Management	\$12,500.00	\$12,500.00	\$12,500.00	\$12,500.00	\$12,500.00	\$12,500.00
Resident Engineer	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00
Generator Services (150kw 200kw)	\$0.00	\$0.00	\$0.00	\$1,000.00	\$0.00	\$0.00
Fire Alarm System (Annual)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Elevator Service	\$10,760.55	\$0.00	\$0.00	\$10,760.55	\$0.00	\$0.00
HVAC/Mechanical	\$3,402.00	\$3,402.00	\$3,402.00	\$3,402.00	\$3,402.00	\$3,402.00
SC LLR. (4 Elevators)	\$0.00	\$0.00	\$250.00	\$0.00	\$0.00	\$0.00
Phone Monitoring (Tracer)	\$111.97	\$111.97	\$111.97	\$111.97	\$111.97	\$111.97
Emergency Phones (elevators)	\$271.93	\$271.93	\$271.93	\$271.93	\$271.93	\$271.93
Elevator Inspection (annual)	\$0.00	\$0.00	\$750.00	\$0.00	\$0.00	\$0.00
Subtotal	\$86,873.52	\$76,112.97	\$78,112.97	\$90,024.77	\$80,764.22	\$84,764.22
Parking	\$12,386.20	\$12,386.20	\$12,386.20	\$12,386.20	\$12,386.20	\$12,386.20
Total	\$99,259.72	\$88,499.17	\$90,499.17	\$102,410.97	\$93,150.42	\$97,150.42

APPENDIX B: Projected Project List

Not intended to be all inclusive but instead representative of the known projects that have been discussed to date.

<u>Project Description</u>	<u>Project Estimate</u>	<u>Project Timeline (Year)</u>
*Upfit 1 st floor	\$790,000	2021
*Upfit 3 rd floor	\$790,000	2022
*Upfit 5 th floor	\$790,000	2021
*Upfit 6 th floor	\$790,000	2021
*Upfit 7 th floor	\$790,000	2021
*Upfit 11 th floor	TBD – based on avg cost per SF for any upfit needed to this floor	2021
Window Replacement	TBD, unknown material and support system selections at this time	2021
Parking Lot Modifications	< \$25,000	2021
Roof Modifications	TBD, exploring options at this time	2021/2022
Upfit estimates are based on \$52/SF but may vary based on decisions made by the Owner regarding materials and design of each floor. City will pay actual cost plus management fee once work is bid by Manager and approved by Owner.		

APPENDIX C: Additional Services

DUTIES AND COMPENSATION FOR 1401 BUILDING RENOVATIONS AND UP-FIT ACTIVITIES

The general responsibilities of Manager under this agreement will be to secure, monitor/coordinate the “Facilities Transition and Up-Fit Program” in order to facilitate the timely opening of the new facilities. Manager will monitor the schedule of design and construction activities of the Building and report all information and recommendations to the Owner. When agreed upon, it will be the responsibility of the Manager to secure and direct the activities of the contractors or sub-contractors under this agreement.

Beginning upon the signing of this agreement, the Manager will be available to

- Secure Vendors when requested by Owner per guidelines provided by Owner
- Monitor the activities of all suppliers, vendors, building designers, general contractors, etc., and provide reports to the owner’s representatives of completion status relative to completion target dates; and
- Coordinate owner supplied information and any owner supplied equipment necessary for the completion of all new facilities; and
- Identify any issues affecting the timely completion of each project; and
- Facilitate problem resolution between all parties involved in the Facilities Program
- Manage and coordinate change order request from owner to A/E and contractors or from A/E and contractors to owner
- Review monthly progress billings from all parties to owner.

Compensation to the Manager for services provided as “Additional Services” under this agreement, are in addition to all other compensation previously described in this agreement; and because the level of effort required by the Manager will depend on the decisions made during the course of its activities, a precise fee for the scope of additional services is difficult to determine. For purposes of this section, the upfit for each floor will be considered a separate project. Consequently, the compensation to be paid to the Manager by the Owner for these additional services will be equal to the following model:

- Small projects less than \$50,000, the management fee shall be based on 10 % of the cost of the work being performed unless otherwise negotiated due to project specific details that may impact the typical tasks of the Manager.
- Medium projects, ranging from \$50,000– \$1,200,000, the management fee shall be based on 7% of the cost of the work being performed unless otherwise negotiated due to project specific details that may impact the typical tasks of the Manager.
- Large projects in excess of \$1,200,000, the management fee shall be based on 5% of the cost of the work being performed unless otherwise negotiated due to project specific details that may impact the typical tasks of the Manager.

Any amount (including related professional fees) which is approved by Owner and expended during the term (each a Project Contract) and described in “work orders/purchase orders to be issued at the time the individual assignments are mutually agreed upon by the parties to this agreement. The Fee for each Project Contract shall be payable to Manager within 30 days of the date of the invoice provided to Owner.