



CITY of NOVI CITY COUNCIL

Agenda Item 2
June 6, 2011

SUBJECT: Approval of a two-year contract with three one-year renewal options with KMG Prestige for the management of Meadowbrook Commons, commencing on July 1, 2011.

SUBMITTING DEPARTMENT: Parks, Recreation and Cultural Services *jsd*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Meadowbrook Commons is accounted for in the City's Senior Housing Fund (an Enterprise Fund). The source of funding for this project was through Building Authority bonds, which are to be paid from the rents received from the resident's at the facility. The City of Novi's current management contract expires June 30, 2011.

The current contract with KMG Prestige expires on June 30, 2011. In accordance with our purchasing policy, a Requests for Proposal (RFP) was posted on the Michigan Intergovernmental Trade Network (MITN) website (176 firms received the RFP). After a pre-bid meeting attended by five firms, two management companies submitted proposals, and four staff members evaluated the proposals using the Qualifications Based Selection (QBS) process. KMG Prestige was rated the highest.

	Fourmidable	KMG
Evaluator 1	80	160
Evaluator 2	80	160
Evaluator 3	80	160
Evaluator 4	80	160
Total	320	640

KMG Prestige is the current management firm at Meadowbrook Commons. They have a proven track record over the past six years of running a high quality, customer service oriented operation with nearly 100% resident occupancy rates throughout that timeframe.

The proposed fee schedules for KMG Prestige and Fourmidable are as follows:

Monthly flat fee	7/1/10-6/30/11	7/1/11-6/30/12	7/1/12-6/30/13	7/1/13-6/30/14	7/1/14-6/30/15	7/1/15-6/30/16
Fourmidable	<u>N/A</u>	\$4,000	\$4,083	\$4,167	\$4,250	\$4,333
KMG Prestige (recommended)	\$4,447	\$4,444	\$4,488	\$4,578	\$4,715	\$4,856

While the cost of the KMG Prestige proposal is slightly more than Formidable (less than \$600 difference) City staff believe KMG Prestige has the appropriate resources and capabilities to meet the City's quality standards in regards to overall management of the property, marketing, maintenance and daily operations.

RECOMMENDED ACTION: Approval of a two-year contract with three one-year renewal options with KMG Prestige for the management of Meadowbrook Commons, commencing on July 1, 2011.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Fischer				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				

MANAGEMENT AGREEMENT

This Agreement is made this _____ day of June, 2011 between the City of Novi, a Michigan municipal corporation, with address of 45175 West Ten Mile Road, Novi, Michigan 48375 (the "Owner") and KMG Prestige, Inc. (the "Agent"), with address 102 South Main Street, Mt. Pleasant, MI 48858.

1. Appointment and Acceptance. The Owner appoints the Agent as exclusive agent for the management of the property described in Section 2 of this Agreement, and the Agent accepts the appointment, subject to the terms and conditions set forth in this Agreement.

2. Description of Project. The property (the "Project") to be managed by the Agent under this Agreement is a older adult housing development consisting of the land, buildings, and other improvements described as follows:

Name: Meadowbrook Commons

Location: City: Novi County: Oakland

State: Michigan No. of Dwelling Units: 175

3. Basic Information. The Owner will furnish the Agent, when possible, with a complete set of plans for specifications and copies of all guaranties and warranties pertinent to construction, fixtures, and equipment. With the aid of this information and through inspection by competent personnel, the Agent will thoroughly familiarize itself with the character, location, construction, layout, plan and operation of the Project, and especially the electrical, heating, plumbing, air conditioning and ventilating systems, the elevators, and all other mechanical equipment. The Agent has furnished a proposal in response to the Owner's request for proposals, and the terms of that proposal are hereby incorporated unless they conflict with the express terms herein.

4. Marketing. The Agent exercise its best effort to carry out marketing activities subject to the Owner's approval Advertising and other marketing expenses will be considered Project expenses.

5. Rentals. The Agent will offer for rent and will rent the dwelling units, parking spaces, commercial space and other rental facilities and concessions in the Project in a form approved by Owner. Incident thereto, the following provisions will apply:

a. The Agent will show the premises to the prospective tenants.

b. The Agent will take and process applications for rentals. If an application is rejected, the applicant will be told the reason for rejection, and the rejected

application, with reason for rejection noted thereon, will be kept on file for one year. A current list of prospective tenants will be maintained.

- c. The Agent will prepare all dwelling leases and parking permits, and will execute the same in its name, identified thereon as Agent for the Owner. The dwelling leases will be in a form approved by the Owner, but individual dwelling leases and parking permits need not be submitted for the approval of the Owner.
 - d. The Agent, with Owner approval, will prepare rent schedules showing approved rents for dwelling units, and other charges for facilities and services. In no event will such rents and other charges be reduced without Owner approval.
 - e. The Agent will negotiate commercial leases and concession agreements, and will execute the same in its name, identified thereon as Agent for the Owner, subject to the Owner's prior approval of all items and conditions.
 - f. The Agent will collect, deposit, and disburse security deposits, if required, in accordance with the terms of each tenant's lease, and in accordance with all Michigan law pertaining to the collection, retention and disbursement of security deposits. The amount of each security deposit will be set by the Agent, with Owner approval. Security deposits will be deposited by the Agent in an interest bearing account, separate from all other accounts and funds, with a bank or other financial institution whose deposits are insured by an agency of the United States Government. This account will be carried in the Agent's name and designated as "Meadowbrook Commons Security Deposit Account." The City of Novi shall be added as an additional signatory to the security deposit account and the Bank shall be notified that the City of Novi shall not, under any circumstance be removed as a signatory. Additionally, all interest accrued in the account shall inure to the benefit of the project and/or shall be distributed as required by, and in accordance with, State of Michigan law pertaining to the collection, retention and disbursement of the security deposits. The Agent will notify the Owner if the Security Deposit Account cannot be maintained at a level required by law, and the Owner will be responsible for obtaining a Security Deposit Bond or remitting to the account sufficient funds to cover the deficiency.
6. Collection of Rents and Other Receipts. The Agent will collect, when due, all rents, charges and other accounts receivable on the Owner's account in connection with the management and operation of the Project. Such receipts (except for tenants' security deposits, which will be handled as specified in Subsection 5f above) will be deposited in an account, separate from all other accounts and funds, with a bank whose deposits are insured by the Federal Deposit Insurance Corporation. This account will be carried in the Agent's name

and designated as "Meadowbrook Commons Operating Account." The City of Novi shall be added as an additional signatory to the accounts and the Bank shall be notified that the City of Novi shall not, under any circumstance, be removed as a signatory.

7. Enforcement of Leases. The Agent will utilize its best efforts to secure full compliance by each tenant with the terms of their lease. Voluntary compliance will be emphasized, and the Agent, utilizing the services of the Social Services Director when available, will counsel tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by the Agent, to the end that involuntary termination of tenancies may be avoided to a reasonable extent consistent with sound management of the Project. Nevertheless, the Agent may lawfully terminate any tenancy when, in the Agent's judgment, sufficient cause (including but not limited to nonpayment of rent) for such termination occurs under the terms of the tenant's lease. For those purposes, the Agent is authorized to consult with legal counsel to be designated by Owner, to bring actions for eviction and to execute notices to vacate and judicial pleadings incident to such actions and follow such instructions as the Owner may prescribe for the conduct of any such action. Subject to the Owner's approval, attorney fees and other necessary costs incurred in connection with such actions will be paid out of the Operating Account as Project expenses. If it is found that the Agent, its representatives, agents or employees, or any person for whose acts Agent may be liable, has committed any negligent or tortuous act, error or omission, or has engaged in a retaliatory eviction or discriminatory practice, violation of the State of Michigan Consumer Protection Act, and/or any other State or Federal law, the Agent shall be responsible for paying its own legal costs and fees, any damages awarded to the Complainant, and shall reimburse to the Owner any attorney fees and costs paid on behalf of the Owner or the Agent in defense of the matter.
8. Maintenance and Repair. The Agent will maintain the Project in good repair in accordance with state and local codes, and in conformity with "Section V Maintenance and Facilities" of the Agent's proposal, and in a condition at all times acceptable to the Owner including but not limited to cleaning, painting, decorating, plumbing, carpentry, ground care, and such other maintenance and repair work as may be necessary, subject to any limitations imposed by the Owner in addition to those contained herein.

Incident thereto, the following provisions will apply:

- a. Special attention will be given to preventive maintenance and, to the greatest extent feasible; the services of regular maintenance employees will be used.
- b. Subject to the Owner's prior approval, the Agent will contract with qualified independent contractors for the maintenance and repair of air conditioning

systems, electrical systems, elevators, and for the extraordinary repairs beyond the capability of regular maintenance employees. The Owner will be notified if the Agent wishes to use a contractor owned or affiliated with the Agent.

- c. The Agent will systematically and promptly receive and investigate all service requests from tenants, take such action thereon as may be justified, and will keep records of the same.
 - d. The Agent is authorized to purchase all materials, equipment, tools, appliances, supplies and services necessary to properly maintain and repair the Project.
 - e. Notwithstanding any of the foregoing provisions, the prior approval of the Owner will be required for any expenditure which exceeds Two Thousand Dollars (\$2,000.00) in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Project, except for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Project. In the latter event, the Agent will inform the Owner of the facts as promptly as possible.
9. Utilities and Services. The Agent will make arrangements for water, electricity, gas fuel, oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities and telephone services. Subject to the Owner's prior approval, the Agent will make such contracts as may be necessary to secure such utilities and services.
10. Employees. Subject to the Owner's approval, the Agent will designate the number, qualifications and duties of the personnel to be regularly employed in the management of the Project, including a Resident Manager, maintenance, bookkeeping, clerical and other managerial employees. All such on-site personnel will be employees of the Agent and not the Owner. Employees will be hired, paid, supervised, and discharged through the Agent, subject to the following conditions:
- a. The Agent will prepare and maintain job descriptions which set forth the services to be provided by each employee of the Agent who will be working at the Project, or who will be providing off-site services in connection with the management of the Project.
 - b. Compensation, including fringe benefits, of on-site employees will be set by the Agent, subject to the Owner's approval. The Project will reimburse the Agent for compensation, including fringe benefits, payable to personnel considered on-site employees, and for all local, state and federal taxes and assessments (including but not limited to FICA, MESC, FUTA, Workman's Compensation, and payroll/benefit processing). The rental value of any

dwelling unit furnished rent-free to on-site employees will be treated as a cost to the Project.

- c. Compensation of personnel classified as off-site employees will be set by the Agent, and will be treated as a cost to the Agent.
- d. Liability Insurance in an amount of not less than \$2,000,000.00 per incident shall be carried at all times by the Agent to cover any negligent or tortuous act, error or omission of the Agent, its representatives, agents, or employees or any person whose acts Agent may be liable, regardless of whether or not the damages or losses are caused by Owner.

11. Disbursements From Rental Agency Account.

- a. From the funds collected and deposited by the Agent in the Operating Account pursuant to Section 6 above, the Agent will make the following disbursements promptly when payable.
 - (1) Reimbursement to the Agent for compensation payable to the employees specified in Subsection 10b above, and for the taxes and assessments payable to local, state, and federal governments in connection with the employment of such personnel.
 - (2) The amount required to be paid on a semi-annual basis to retire the City of Novi Building Authority Bonds (including the 1999, 2005 and 2010 issues), including all interest thereon.
 - (3) All sums otherwise due and payable by the Owner as expenses of the Project authorized to be incurred by the Agent under the terms of the Agreement, including compensation payable to the Agent, pursuant to Section 21 below, for its service hereunder.
- b. Except for the disbursements mentioned in Subsection 11a above, funds will be disbursed or transferred from the Operating Account only as the Owner may from time to time direct in writing.
- c. In the event the balance in the Operating Account is at any time insufficient to pay disbursements due and payable under Subsection 11a above, the Agent will inform the Owner of the fact and Owner will then remit to the Agent sufficient funds to cover the deficiency. In no event will the Agent be required to use its own funds to pay such disbursements.

12. Budgets. Annual operating budgets for the Property will be approved by the Owner, except as permitted under Subsection 8e above, annual disbursements for each type of operating expenses itemized in the budget will not exceed the amount authorized by the approved budget. In addition to preparation and submission of a

recommended operating budget for the initial fiscal year, the Agent will prepare a recommended operating budget for each subsequent fiscal year beginning during the term of this Agreement, and will submit the same to the Owner at least 30 days before the beginning of the fiscal year. The Owner will promptly inform the Agent of any changes incorporated in the approved budget, and the Agent will keep the Owner informed of any anticipated deviation from the receipt or disbursements stated in the approved budget.

13. Records and Reports.

- a. The Agent will establish and maintain a comprehensive system of records, books, and accounts in a manner satisfactory to the Owner. All records, books, and accounts will be subject to explanation at reasonable hours by the authorized representative of the Owner. Agent shall, during regular business hours, make the books, accounts and records required to be maintained hereunder available to the Owner or the representatives of the Owner for examination and audit by appointment of no less than one (1) days' prior notice. All such audits shall be at the expense of the Owner.
- b. With respect to each fiscal year end during the term of this Agreement, the Agent will arrange for the preparation of those annual financial reports and/or tax returns as required by the Owner, Mortgagee, and/or Regulatory Agencies by a Certified Public Accountant or other person(s) acceptable to the Owner, based upon the preparer's examination of the books and records of the Owner and the Project. Procedures and directives for the preparation of the report and/or tax return will be provided to the preparer, including the format and due dates required by the Owner, Mortgagee, and/or Regulatory Agencies. Compensation for the preparer's services will be paid out of the Operating Account as an expense of the Project.
- c. The Agent will prepare a monthly report comparing actual and budgeted figures for receipts and disbursements, and will submit each such report to the Owner within 15 days after the end of the month covered. In addition, Agent shall furnish the original copy of all invoices, statements, purchase orders and billings received and paid as well as such other information upon request by the Owner.
- d. The Agent will furnish such information (including occupancy reports) as may be requested by the Owner from time to time with respect to the financial, physical, or operational condition of the Project.
- e. By the 15th day of each month, the Agent will furnish the Owner a statement of receipts and disbursements during the previous month, and with a schedule of accounts receivable, payable and general ledger activity. The Agent will reconcile bank statements for the Operating Account and Deposit Account as of the end of the previous month.

- f. The responsibilities of the Agent will include meeting with the Novi City Council, the Novi Building Authority and the City of Novi officers, administrators and staff members as is appropriate to effectively manage the Project, to prepare necessary budgets, and to otherwise keep the Owner informed as to the continued status of the Project.
14. Fidelity Bond. The Agent will furnish, at the Agent's expenses, a fidelity bond which is at least equal to the gross potential income for two months and is conditioned to protect the Owner against misappropriation of Project funds by the Agent and its off-site employees. The Agent shall provide a bond of a like kind to cover the on-site personnel expressed in Section 10 and it shall be paid for from Project income.
15. Bids, Discounts, Rebates, Etc. The Agent will obtain contracts, materials, supplies, utilities, and services on the most advantageous terms of the Project, and is authorized to solicit bids, either formal or informal, for items that can be obtained from more than one source. The Agent will secure and credit to the Owner all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions on the Owner's behalf.
16. Tenant-Management Relations. The Agent will encourage and assist residents of the Project in forming and maintaining such interests, and will maintain good faith communication with such organizations to the end that problems affecting the Project and its residents may be avoided or solved on the basis of mutual self-interest.
17. On-Site Management Facilities. Subject to the further agreement of the Owner and Agent as to more specific terms, the Agent will maintain a management office within the Project.
18. Insurance. The Owner will inform the Agent of insurance to be carried with respect to the Project and its operations, and the Agent, will cause such insurance to be placed and kept in effect at all times. The Agent will pay premiums out of the Operating Account, and premiums will be treated as operating expenses. All insurance will be placed with such companies, on such conditions, in such amounts, and with such beneficial interest appearing thereon as shall be acceptable to the Owner and shall be otherwise in conformity with the mortgage; provided that the same will include public liability coverage,. The Agent will provide reports to the Owner as to all accidents, claims, or potential claims for damage relating to the Project, and will cooperate with the Owner's insurers in connection therewith.
19. Compliance with Governmental Orders. The Agent will take such actions as may be necessary to comply promptly with any and all statutes, laws, ordinances,

codes, regulations, and any and all governmental orders or other requirements affecting the Project, whether imposed by federal, state, county or municipal authority, subject, however, to the limitation stated in Subsection 8e with respect to repairs. Nevertheless, the Agent shall take no such action as long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Agent will notify the Owner in writing of all notices of such orders or other requirements within 72 hours from the time of their receipt.

20. Nondiscrimination. In the performance of its obligations under this Agreement, the Agent will comply with the provisions of any federal, state or local law prohibiting discrimination in housing on the grounds of race, color, sex, creed, disability, national origin, religion, marital status, height, weight, and age (including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241), all requirements imposed by or pursuant to the Regulations of the Secretary (24 CFR, Subtitle A, Part 1) issued pursuant to that Title, regulations issued pursuant to Executive Order 11063, and Title VIII of the 1968 Civil Rights Act.
21. Agent's Compensation. The Agent will be compensated for its services under this Agreement by monthly fees to be paid out of the Operating Account and treated as Project expenses. Such fees will be accrued and credited to Agent in the following month. Each such monthly fee will be an amount as follows:

July 1, 2011 – June 30, 2012: \$ 4,444 per month (\$53,328 per year)
July 1, 2012 – June 30, 2013: \$ 4,488 per month (\$53,856 per year)

City Option for 3rd, 4th, and 5th Year Renewals

July 1, 2013 – June 30, 2014: \$ 4,578 per month (\$54,936 per year)
July 1, 2014 – June 30, 2015: \$ 4,715 per month (\$56,580 per year)
July 1, 2015 – June 30, 2016: \$ 4,856 per month (\$58,272 per year)

22. Term of Agreement. **This Agreement shall be in effect for a period of two (2) years beginning on the 1st day of July 2011, and ending on the 30th day of June 2013. Optional third, fourth, and fifth year renewal options at the above noted rates are also available.** In the event of no other written modification to this contract at the expiration, the term will continue month to month, thereafter, subject, however, to the following conditions:
- a. This Agreement may be terminated by either Party with cause and/or due to the breach of any of the provisions contained in this Agreement. Terminations of the Agreement under this Subsection will be immediate. Agent shall turn over all records, keys or other property belonging to Owner or the Project and vacate the Project upon termination under this Subsection.
- b. In the event a petition in bankruptcy is filed by or against either of the Parties, or in the event either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other Party may terminate this Agreement

without notice to the other, provided prompt written notice of such termination is given.

- c. Upon termination, the Agent will submit to the Owner any financial statements, records, and funds required within thirty (30) days, and after the Parties have accounted to each other with respect to all matters outstanding as of the date of termination.

This agreement may be terminated at any time by either Party without cause, provided at least sixty (60) days advance written notice there is given.

Upon termination or receipt of notice of the termination of this Agreement, whichever occurs first, the Agent shall immediately provide to the Owner the check register and all checks for all accounts. If the records are being stored electronically, a paper copy and a disk copy shall be given to the Owner. The Owner shall also be given a copy of the program necessary to open and run the electronic disk copy, and if copyright laws prohibit the copying of the program, the Owner will be given the name and manufacture/creator of the program. It is agreed between the parties that upon termination of this Agreement or notice of termination, whichever occurs first, that Agent shall immediately cease, desist and otherwise refrain from making payment to any party and /or causing any withdrawals to be made from any of the bank accounts which are opened pursuant to this Agreement. At the time of termination, and any time before, it is agreed that all records being kept by the Agent, for or in relation to the project, are the property of the Owner and shall be provided to the Owner upon the Owner's request at any time.

23. Indemnification. To the fullest extent permitted by law, the Agent shall indemnify and hold harmless the Owner and all of its officials, employees, agents, or officers, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance or nonperformance of the Agent's duties, obligations, and responsibilities under this agreement.

The Agent's indemnity obligation shall include:

- (1) Indemnify if the damages sought were caused in part by the negligence or fault of the Agent or any of its employees, agents, or officers;
- (2) Indemnity for all damages and judgment interest, all costs and fees, including all defense costs, expenses and actual attorney's fees, relating to or arising out of, resulting from or in any way connected with any claim, cause of action or lawsuit requiring indemnity by the Owner;
- (3) Indemnity for all expenses, including costs, expenses and actual attorney fees, incurred in securing indemnity from the Agent if the Agent fails to wrongfully refuses to fulfill any of the indemnity obligations specified and assumed under this Agreement;

(4) The right of the Owner, at its option, to select counsel to defend any claim, cause of action or lawsuit brought against it without impairing any obligation to indemnify imposed upon the Agent hereunder.

24. The parties recognize that at all times the Agent is an independent contractor in regard to the day-to-day operation of the project and as such has the responsibility and liabilities of an independent contractor.

25. Interpretative Provisions.

- a. This Agreement constitutes the entire agreement between the Owner and Agent with respect to the management and operation of the Project, and no change will be valid unless made by supplemental written agreement, executed and approved by the Principal Parties.
- b. This Agreement has been executed in several counterparts, each of which shall constitute and complete original Agreement, which may be introduced in evidence or use for any other purpose without production of any of the other counterparts.

IN WITNESS WHEREOF, the Parties set their hand as of the day and year first above written.

WITNESSES:

CITY OF NOVI, a Michigan municipal Corporation,

David B. Landry – Mayor

Maryanne Cornelius – City Clerk

WITNESSES:

KMG Prestige, Inc.

Stephanie Walker

Paul Spencer
Name (please type)

Stephanie Walker

President & CEO
Title

Signature