

**CONSULTANT SERVICES FOR REAL ESTATE
PORTFOLIO STRATEGIC MANAGEMENT SERVICES**

A G R E E M E N T

Contract No. _____

This Agreement is made this _____ day of _____, 2011, by and between the County of Cuyahoga, Ohio (the "COUNTY"), and Allegro Realty Advisors, Ltd., a consulting real estate firm with principal offices located at 1938 Euclid Avenue, Suite 200, Cleveland, Ohio 44115 (the "PROVIDER").

WITNESSETH:

WHEREAS, due to reorganization and other recent significant changes in County Government, it is desired to conduct a comprehensive analysis of current County real estate assets, County government's space needs and develop a plan for the future; and

WHEREAS, on or about June 21st, 2011, the County Executive, under Executive Approval No. EA2011-0819, authorized the Director of the Office of Procurement and Diversity to advertise for real estate portfolio strategic management services (Request For Proposal RQ20610), where said Request For Proposal RQ20610 and related County documents are incorporated herein by reference (RQ20610); and

WHEREAS, the Department of Public Works of Cuyahoga County, Ohio, has requested the employment, by the COUNTY, of the PROVIDER, which, pursuant to a review process, was determined to be the most suitable for this RQ20610; and

WHEREAS, the COUNTY has determined to engage the PROVIDER to perform said real estate portfolio strategic management services relating to all Cuyahoga County owned and leased properties, and

WHEREAS, the PROVIDER has agreed to the terms and conditions indicated herein and did submit a certain "Real Estate Portfolio Strategic Management Consulting Services" bid, dated July 15, 2011 in response to RQ20610 (Proposal), which Proposal is also incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual promises and obligations herein to be observed and performed by the parties hereto, the COUNTY and the PROVIDER hereby agree as follows:

ARTICLE ONE – SCOPE OF AGREEMENT

Section 1 – Scope of Services:

The Scope of Services to be performed under this Agreement shall be as outlined in RQ20610 and the PROVIDER'S Proposal dated July 15, 2011, which are both hereby incorporated into and made part of this Agreement as though expressly rewritten herein.

It is understood and agreed that the provisions of this Agreement shall govern regarding non-scope of service items should there be any variance between the language of the aforementioned proposals and the provisions of this Agreement.

Section 2 – Schedule of Completion/Project Work Schedule:

The PROVIDER shall start work on the various phases of this Agreement within ten (10) days after receipt of a notice to proceed on a specific phase. The PROVIDER has provided a project work schedule in Appendix II of the proposal for the development of the work covered under this contract. Any modifications made to this schedule of completion/project work schedule will only be made by mutual agreement from both the COUNTY and the PROVIDER where the Director of Public Works shall be authorized to make any and all such changes. Updates can be made by the COUNTY every time a task/phase milestone has been completed/approved.

The mutually approved schedule of completion/project work schedule shall be incorporated into this Agreement as fully written herein. However, regardless of said schedule in Provider's Proposal, the "Strategy and Action Plan" shall be submitted to the County within 90 calendar days of the Notice to Proceed. Any permission for the extension of any or all task duration shall not constitute a change in scope.

ARTICLE TWO – CONDITIONS, TERMINATION OF AGREEMENT, INSURANCE AND MISCELLANEOUS ITEMS

Section 1 – General Conditions, the COUNTY's Responsibilities:

The COUNTY shall:

- A).** Provide written approvals, as specified in Article One of this Agreement, or as mutually agreed to by the COUNTY and PROVIDER, in a timely manner. Data, Reports and Studies shall be approved by the COUNTY as to scope, form, content and method of presentation prior to final acceptance by the COUNTY; and
- B).** Make available to the PROVIDER access to all County leased and owned property, facilities and personnel and any other pertinent data on file in the office

of the COUNTY which are applicable to the work covered in this Agreement;
and

Section 2 – General Conditions, the PROVIDER's Responsibilities:

The PROVIDER shall:

- A).** Provide at its own expense, all technical and professional services, labor equipment and materials required for the execution of this Agreement, except as enumerated otherwise and elsewhere in this Agreement. In addition, they shall employ all necessary personnel responsible for the gathering of data, compiling data and reviewing all work covered by this Agreement. Any work covered under this Agreement which requires the stamp of a registered or certified professional shall be stamped with the appropriate seal of the registered or certified professional in the State of Ohio; and
- B).** Comply with all Federal, COUNTY, State and municipal laws, ordinances, resolutions and policies applicable to the work to be done under this Agreement. The PROVIDER shall obtain Federal, State, COUNTY and/or local licenses; permits and/or clearances necessary to fulfill their obligations of this Agreement; and
- C).** Agree that all work under this Agreement shall be done under the direction and supervision of one of the officers or principals of the PROVIDER; and
- D).** Agree that all employees of the PROVIDER shall cooperate with representatives of the COUNTY, who may be involved in the data collection and/or completion of this contract; and
- E).** As part of its duties under this Agreement, have an officer or principal of the firm or project manager in attendance at all meetings called to discuss this project during the active life of this Agreement, whenever such attendance is requested by the COUNTY; and
- F).** Monitor the qualifications, capabilities and capacities of its subconsultants to perform those items of the scope of services which have been delegated to them. Should the PROVIDER be required to change or add subconsultants through the course of this Agreement, the PROVIDER must receive written approval from the COUNTY Director of Public Works. The PROVIDER will be required to notify the COUNTY why a change or addition is required, how the change, addition or deletion will affect their original proposal and how this change, addition or deletion will affect the PROVIDER's ability to meet any other requirements of the COUNTY before receiving written approval. Replacement of a subconsultant from those identified in their proposal does not qualify as a

reason for additional compensation per “Article 3, Section 4 Scope Changes” of this Agreement; and

- G).** Not engage the services of any person or persons in the employment of the COUNTY or any other public body in the State of Ohio for any of the work covered by the terms of this Agreement, without the specific written permission of the COUNTY.

Section 3 – Termination of Agreement:

This Agreement may be terminated by the COUNTY at its sole discretion. In case of such termination, the compensation to be paid the PROVIDER by the COUNTY shall be determined by the COUNTY on the basis of work completed and usable data available to the COUNTY.

Section 4 – Insurance:

- A).** The PROVIDER hereby agrees to save harmless the COUNTY from any and all claims and liability, caused by the negligence, errors or omissions due to the activities of themselves, their agents and/or employees and subcontractors in the performance of the services under this Agreement.
- B).** The PROVIDER shall maintain a general commercial liability policy with the minimum coverage being in the amounts of TWO MILLION DOLLARS (\$2,000,000.00). Said insurance to be placed with an insurance company authorized to do business in the State of Ohio. PROVIDER shall provide evidence of such insurance upon request by the COUNTY.
- C).** The PROVIDER shall secure Worker’s Compensation for all of the PROVIDER’s employees as required by law. A Certificate of compliance from the State of Ohio’s Bureau of Workers’ Compensation shall be provided to the COUNTY upon request.

Section 5 – Miscellaneous:

- A).** The COUNTY reserves the right to inspect any and all equipment, materials and data used or developed for the scope of this Agreement.
- B).** The COUNTY reserves the right to inspect the PROVIDER’s and/or their subconsultant’s facilities and to conduct interviews of personnel previously and/or currently assigned to the project to assure the quality and progress of all authorized work; and
- C).** For the purpose of this Agreement, the agent for the COUNTY and liaison officer on the matter contained herein shall be the COUNTY DIRECTOR OF PUBLIC WORKS and/or such members of her/his staff as designated; and

- D).** The PROVIDER hereby agrees that there will be no charge to the COUNTY for any patent rights which it controls and which may be involved in the work under this Agreement unless such charges have been specified and included in the fees enumerated in Article 3 of this Agreement. The PROVIDER shall advise the COUNTY of any process or patent rights which are not held or controlled by the PROVIDER, but which in the PROVIDER's opinion may be involved in the work contemplated herein.
- E).** All reports and any other records developed by the PROVIDER in the performance of this Agreement shall remain the sole property of the COUNTY. The PROVIDER shall not copy or use such records except to develop contracted work associated with this Agreement. In addition, the PROVIDER shall not transfer any such records to any other party not involved with this Agreement. All of the above shall be delivered to the COUNTY upon completion of this Agreement.
- F).** During the performance of this Agreement, the PROVIDER agrees to itself, its assignees, subconsultants, and successors in interest to comply with all applicable laws, resolutions, regulations and/or policies of the COUNTY, relative to equal employment, affirmative action and Small/Women/Minority Business Enterprise requirements which are herein incorporated by reference and made a part of this Agreement. Failure to comply with any of the aforementioned laws, resolutions, regulations and/or policies may result in the termination of this Agreement.
- G).** The PROVIDER warrants and represents that it has not employed or retained any company, firm or person, other than a bonafide employee working for the PROVIDER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company, firm or person, other than a bonafide employee working for the PROVIDER, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the COUNTY shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, gift, percentage, brokerage fee, or contingent fee.
- H).** The PROVIDER, its employees and subcontractors shall perform all work pursuant to this Agreement as independent contractors and not as employees of the COUNTY or the COUNTY DIRECTOR OF PUBLIC WORKS.

ARTICLE THREE – FEES, PROGRESS REPORTS, FEE PAYMENTS AND SCOPE CHANGES

Section 1 - Fees

In consideration of the terms and obligations of this Agreement, the COUNTY agrees to pay and the PROVIDER agrees to accept the following fees in full compensation for services, labor, material, and equipment necessary to do the work herein specified, including overhead, profit and expenses of every kind incurred in connection with the undertaking and performing of said work.

The COUNTY DIRECTOR OF PUBLIC WORKS has sole discretion, to fund approved increases in scope from various phases of work that will be non-performed or have unspent balances upon completion of that category of work, provided that such transfer of funds does not exceed the maximum fee of this Agreement.

Upon written notice to proceed by the COUNTY DIRECTOR OF PUBLIC WORKS to the PROVIDER, the COUNTY agrees to pay the PROVIDER for the services provided for within this Agreement, as follows:

PHASE I	Current State Assessment	\$ 97,600.00
PHASE II	Future State Assessment	\$ 56,500.00
PHASE II	Strategy and Action Plan	\$ 41,000.00

It will be the responsibility of the PROVIDER to interpret, explain clarify and answer questions about the data, reports and/or studies at no additional fee to the COUNTY.

The maximum Fee for the services provided for within this Agreement shall not exceed ONE HUNDRED NINETY-FIVE THOUSAND ONE HUNDRED DOLLARS AND ZERO CENTS (\$195,100.00).

Section 2 – Progress Reports and Fee Payment:

The fees for the work to be performed under this Agreement, as set forth in Section 1 of this Article, shall be paid as follows:

- A). Partial payments of fees shall be made as the work progresses and as outlined in this Agreement and the PROVIDER'S proposal dated July 15, 2011. Invoices will be prepared and submitted to the COUNTY for payment based on the work performed since the previous invoice or notice to proceed, all of which are subject to audit by the COUNTY or others and possible revision. Each invoice shall include a written progress report that minimally contains a narrative describing what work has been completed since the last invoice and the percentage completion of the major tasks.

- B).** The PROVIDER shall be required to submit invoices in a format that is recommended and acceptable to the COUNTY. Sample copies of this invoicing format shall be provided to the PROVIDER by the COUNTY.
- C).** Invoices for any portion of the work contained within this Agreement shall not be submitted more frequently than monthly; and
- D).** Invoices for those portions of work paid on the basis of costs incurred shall show the name and classification of employee, dates and hours worked current hourly rate and overhead plus direct costs.

Section 4 – Scope Changes:

It is understood and agreed by and between the parties hereto that only those situations, as documented by the PROVIDER, and agreed to by the COUNTY shall constitute a scope change. Fee adjustments for documented scope changes may be appraised and adjusted by mutual agreement.

Until the COUNTY has agreed that a scope change is in effect, the PROVIDER shall continue to proceed with the work necessary to complete the authorized aspects of this contract as hereinbefore outlined. That is, a scope change request shall not constitute a reason for the PROVIDER to delay or suspend work on authorized tasks unless they have been so directed by the COUNTY DIRECTOR OF PUBLIC WORKS. A change in scope of services is defined as any of the following:

- A).** The addition, deletion or substantial alteration of items of work in the project that was not included in the scope of services documents, RQ20610, authorizing legislation or in PROVIDER’S Proposal. And where such substantial changes are beyond the control of the PROVIDER.
- B).** A substantial revision to any reports, studies, etc. which have been previously approved by the COUNTY or are a result of a radical change in policy.
- C).** Unavoidable delays or hindrances beyond the control of the parties to this Agreement which will require extending the time frame of the Agreement.

BY ENTERING INTO THIS CONTRACT I AGREE ON BEHALF OF THE CONTRACTING OR SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY THE COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. I ALSO AGREE ON BEHALF OF THE AFOREMENTIONED ENTITIES AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS

THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above mentioned.

Allegro Realty Advisors, Ltd.

By: 
DAMON M. TASEFF, PRINCIPAL

COUNTY OF CUYAHOGA, OHIO

By: _____
Edward FitzGerald, County Executive