

## **Professional Services Contract**

**THIS CONTRACT** (the "Contract") is made this 15th day of August 2011, by and between **CUYAHOGA COUNTY**, (the "County") and Erin L. Kovacic (the "Appraiser").

### **ARTICLE 1.**

#### **TERM and PERFORMANCE**

- 1.1 Term.** The term of this Contract (the "Term") shall begin on: a) the date first written above, or b) the date this form contract is approved by the State of Ohio Tax Commissioner, whichever is later (the "Effective Date"), and end on December 31, 2012 (the "Expiration Date"); the Expiration Date may be extended as set forth herein ("Term" includes any extension of the Expiration Date under this Contract). In the event Appraiser is, for any reason, unable to start the work described herein on the Effective Date, then the Appraiser shall immediately notify the Fiscal Officer. The Term is subject to prior termination in accordance with Section 1.2 and Article 5, below.
- 1.2 Satisfactory Performance of Duties.** Notwithstanding any other provision of the Contract, this Contract shall continue only for such time as the services rendered by Appraiser are satisfactory to the Fiscal Officer, in his sole discretion.

### **ARTICLE 2.**

#### **DUTIES & RESPONSIBILITIES OF APPRAISER**

- 2.1 Generally.** Appraiser shall field review, verify physical characteristics of, and value parcels of real property within Cuyahoga County, Ohio, as assigned by the County Project Manager, defined below (the "Contract Parcels"; individually, a "Contract Parcel"). Appraiser acknowledges that he/she understands the identity of these parcels of real property and that he/she further understands the nature of the services which he/she is required to perform with respect to these parcels of real property. Appraiser further agrees to perform all services requested of him/her by the Fiscal Officer in accordance with the directions as provided by the project supervisor and/or project administrator identified to Appraiser by the Fiscal Officer (the "County Project Manager").
- 2.2 Valuation.** Appraiser agrees to furnish to the County: (A) a Field Review Form ("red books") signed by Appraiser, indicating the value of land, the value of the buildings, and the total value of land and buildings, and (B) the property classification and land use code for each Contract Parcel ("A" and "B" together, the "Project"). The resulting values of land, the buildings, and the total of land and buildings, of each parcel shall be delivered to the Fiscal Officer not later than March 31, 2012 (the "Project Completion Date"). Appraiser acknowledges that the Project is intended to assist the County in meeting its requirement for a sexennial reappraisal in accordance with Section 5715.33 of the Ohio Revised Code (the "Update").
- 2.3 Reports.** Appraiser shall, upon the written request of the County, report on the progress of the Project on D.T.E. form 108.
- 2.4 Times of Performance.** To the extent that the performance of this Agreement requires Appraiser to be at the County's designated office, Appraiser shall perform this contract between 8:30 a.m. to 4:30 p.m., Monday through Friday. All other services required to be performed by Appraiser may be performed at such times determined to be appropriate by

Appraiser. Appraiser shall devote the required time, ability, and attention to the duties set forth herein in order to complete the Project pursuant to the terms of this Contract.

- 2.5 Work Space.** At the commencement of this contract, Appraiser shall have the option to utilize furnished work and office space at a location designated by the Fiscal Officer. Appraiser shall also be permitted to work from his/her home office.

### **ARTICLE 3.**

#### **COMPENSATION & RETAINAGE**

**Compensation.** Subject to Section 3.2, below, Appraiser shall receive compensation under this Contract in accordance with this Section 3.1; provided that such compensation shall not exceed **\$48,000.00**, inclusive of the Orientation remittance provided for in Section 3.3, below.

- 3.1.1** Appraiser shall be paid for each Contract Parcel for which he/she completes the services assigned pursuant to the following payment schedule:

- a. Residential: \$ 3.50 per parcel
- b. High-End Residential: \$ 10.00 per parcel

- 3.1.2** Appraiser shall receive payment for services rendered within twenty (20) days of the County's review and approval of such services for any or all of the Contract Parcels.

- 3.2 Retainage.** The County will withhold 10% of each payment pending completion of the Project (the "Retainage").

- 3.2.1** The County shall pay Appraiser 80% of the Retainage within twenty (20) days of the Project Completion Date, provided that Appraiser has completed the Project to the full satisfaction of the County.

- 3.2.2** The County shall pay Appraiser the balance of the Retainage within twenty (20) days of the end of the Expiration Date, as may be extended, provided that Appraiser is in full compliance with the terms and conditions of this Contract and all County materials provided to Appraiser have been returned to the County.

- 3.3 Orientation.** The Appraiser shall attend an approximately 5-business-day orientation session prior to commencement of work on the Project. Appraiser shall be paid a \$200.00 per diem for attending the orientation session, not to exceed \$1,000.00, as part Appraiser's first remittance.

- 3.4 Force Majeure.** In the event that the Project can not be completed by the Project Completion Date due to a *Force Majeure Event*, as defined below, the Term shall be extended by the parties provided that: (a) Appraiser notified the Fiscal Officer of such *Force Majeure Event* within five (5) business days of the occurrence of same; and (b) the Fiscal Officer concurs in the validity of such *Force Majeure Event* and the effect thereof on the Project Completion date. For purposes of this Contract, "Force Majeure Event" shall mean the occurrence of any of the following: acts of God; the confiscation or seizure by any Government Authority; insurrections; wars or war-like action (whether actual or threatened); national strikes; landslides, lightning, earthquakes, fires, hurricanes, storms, floods or other severe weather; explosions; civil disturbance or disobedience; riot, sabotage, terrorism or

threats of sabotage or terrorism; change in law that prohibits or materially interferes with development or construction of the Project; or other cause that is not within the reasonable control of the Party claiming the right to delay or excuse performance on account of such occurrence. Notwithstanding the foregoing, "Force Majeure Event" shall not include an inability to pay debts or other monetary obligations in a timely manner.

#### **ARTICLE 4.**

#### **ADDITIONAL REPRESENTATION AND COVENANTS OF APPRAISER**

- 4.1 Status of Appraiser.** The relationship of Appraiser to the County shall be that of an independent contractor. No principal-agent or employer-employee relationship is created by this Contract. Appraiser will be solely responsible for reporting, withholding and/or paying all employment related taxes, payments and/or withholdings, including, but not limited to federal, state, and local income taxes, social security, medicare, unemployment or disability insurance and Worker's Compensation Insurance.
- 4.2 Engaging in Other Employment and Contracts.**
- 4.2.1** In order to assure that there is no conflict of interest between the County's responsibilities regarding valuation of real property and Appraiser, Appraiser shall provide the County Project Manager with a list of all parcels of real property within Cuyahoga County, Ohio which he/she has any form of an ownership interest in and/or which he/she is presently performing any form of real property appraisal services with respect thereto. Appraiser shall, from time to time during the Term, provide the County Project Manager with an updated list of such parcels.
- 4.2.2** During the Term Appraiser shall not directly or indirectly render any form of real estate appraisal services or service of a business, commercial, or professional nature with reference to any Contract Parcel.
- 4.2.3** During the Term Appraiser shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity, engage or participate in any business that is conflicting with the business of the County. During the Term Appraiser shall not, directly or indirectly, solicit for employment or employ any employee of the County for any reason, whether the employee is employed on the date of this Contract or at any time during the Term.
- 4.3 Prior Agreements.** Appraiser represents that he/she has disclosed to the Auditor any employment agreements and/or any other agreements, which impose any restrictions on Appraiser. Appraiser represents that he/she is under no obligation which in any manner may prohibit and/or restrict his/her authority to sign this Contract and/or to perform the services which this Contract requires.
- 4.4 Confidential Information.**
- 4.4.1 County Information.** Appraiser shall not, during the Term, directly or indirectly, use, disseminate, or disclose to any person, firm, or other business entity for any purpose whatsoever, any information related to the County's process or systems not generally known in the industry which was disclosed to or acquired by Appraiser as

a consequence of or through the performance of this Contract; including, without limitation, information regarding the County systems, data base, processes, and related matters, and also includes information relating to research, development, procedures and manuals.

- 4.4.2 Third-Party Information.** Appraiser represents that he/she has not disclosed and will not disclose any confidential and proprietary information belonging to a third party, without first obtaining the written consent from the third party and the Fiscal Officer.
- 4.5 Ownership of Data.** Appraiser shall hold in a fiduciary capacity for the benefit of the County all information obtained by Appraiser in performance of the Project which may be directly or indirectly related to the business of the County.
- 4.5.1** All data collected in conjunction with the services contemplated herein shall remain the property of the Auditor and no use or copying of such data shall be made except in connection with this Contract without the written permission of the Auditor.
- 4.5.2** To protect the interests of the County, Appraiser agrees that during or after the termination of this Contract, all documents, records, notebooks, computer files, and similar repositories containing such information, including copies of such items then in Appraiser's possession or work area, whether prepared by the County or others, are the property of the County and shall be returned to the County. All files, records, documents, drawings, specifications, equipment, and similar items relating to the business of the County, whether prepared by Appraiser or otherwise coming into his/her possession, shall remain the exclusive property of the County and shall not be removed from the County office under any circumstances without the prior written consent of the Fiscal Officer.
- 4.5.3** Appraiser shall not at any time use any information, data, computers, computer generated data or any other form of information which he/she may have access to as a result of this contract for the purpose other than the performance of this contract.
- 4.6 Insurance.** Appraiser shall provide evidence of automobile liability insurance with limits of \$1,000,000, with the County as a named insured, upon execution of this Contract.
- 4.7 Indemnification.** Appraiser shall indemnify, defend and hold harmless the County from and against any and all Losses, in contract or in tort, arising, directly or indirectly, from, out of or in connection with: (a) any material breach of any representation or any warranty made by Appraiser in this Contract or in any other certificate or document delivered by Appraiser pursuant to this Contract; (b) the negligence of Appraiser or any other person performing services in connection with the Project on behalf of Appraiser; and (c) any breach by Appraiser of any covenant or obligation of Appraiser under this Contract.
- 4.8 County Policies.** Appraiser acknowledges that he has received and read the County's Policies and Procedures manual.

**ARTICLE 5.**  
**TERMINATION**

- 5.1 Termination for Cause.** If Appraiser willfully breaches or habitually neglects the duties required to be performed under this Contract, the Fiscal Officer, in his sole discretion, may immediately terminate this Contract by giving written notice of termination to Appraiser without prejudice as to any other remedy to which the County may be entitled either at law, in equity, or under this Contract.
- 5.2 Termination for Convenience.** Either party, by thirty (30) days written notice to the other, may terminate this Agreement at any time for any reason.
- 5.3 Option to Terminate if Appraiser Permanently Disabled.** If Appraiser becomes temporarily or permanently disabled such that, in the Fiscal Officer's reasonable discretion, Appraiser will be unable to complete the Project by the Project Completion Date, the Fiscal Officer may terminate this Contract by giving written notice of termination to Appraiser.
- 5.4 Effect of Termination on Compensation.** In the event this Contract is terminated in accordance with this Article 5, Appraiser shall be entitled to compensation earned for completion of any portion of the Project prior to the date of termination in accordance with the schedule set forth in Section 3.1, provided that the County shall have the right to withhold any and all funds in accordance with Article 3. Appraiser shall be entitled to no further compensation.

**ARTICLE 6.**  
**GENERAL PROVISIONS**

- 6.1 Public Comment.** Appraiser acknowledges that he/she has been expressly advised and agrees that the Fiscal Officer or the County Project Manager is the official spokesperson for the County before the public and news media, and therefore any invitations to comment publicly regarding any matter which pertains to the business of the County shall be declined and referred to the County Project Manager.
- 6.2 Notices.** Any notice to be given under this Contract by either party to the other may be effected either by personal delivery in writing or by certified mail, postage prepaid, return receipt requested. Notice delivered personally shall be deemed received upon actual receipt; notice sent by certified mail shall be deemed received on the date the return receipt is either signed or refused. Mailed notices shall be addressed to the parties at the addresses appearing below; either party may designate a different address upon written notice to the other party in accordance with this Section 6.2.

**To County:** Cuyahoga County Fiscal Officer  
1219 Ontario Street, 2<sup>nd</sup> Floor  
Cleveland, Ohio 44113

**Copy to:** Cuyahoga County Law Department  
1219 Ontario Street, 4<sup>th</sup> Floor  
Cleveland, Ohio 44113  
Attn: Law Director

To Appraiser: Erin L. Kovacic



- 6.3 **Background Check/Drug Testing.** The County may require Appraiser to undergo a criminal background check, including fingerprinting, and drug testing.
- 6.4 **Amendments.** This Contract may not be amended or supplemented except by a writing executed by the County and the Appraiser.
- 6.5 **Subcontracting.** No portion of the Project may be subcontracted by Appraiser absent the written consent of the County.
- 6.6 **Laws Governing Contract.** This Contract shall be governed by and construed in accordance with the laws of the State of Ohio.
- 6.7 **Attorneys' Fees and Costs.** If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, each party shall pay their own attorneys' fees and costs.
- 6.8 **Expense Reimbursement.** There are no expenses for which Appraiser will be reimbursed.
- 6.9 **Entire Agreement.** This Contract supersedes all other oral and written agreements between the parties and this Contract contains all of the covenants and agreements between the parties.
- 6.10 **Electronic Signature.** The Parties agree to conduct this transaction by electronic means and agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed by the County to this Agreement shall have the same legal effect as if that signature was manually affixed to a paper version of this Agreement. The Parties also agree, 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 signature policy of Cuyahoga County.

*{Balance of page intentionally left blank; signature page follows.}*

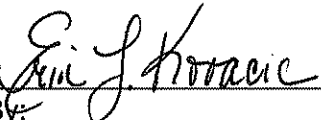
**IN WITNESS WHEREOF**, the Parties have each caused their duly authorized representatives to execute this Agreement as of the date aforesaid.

CUYAHOGA COUNTY, OHIO

  
\_\_\_\_\_  
Edward FitzGerald, County Executive

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

APPRAISER

  
\_\_\_\_\_  
By: \_\_\_\_\_

Date: 7.12.11

The legal form and correctness of the  
within document is hereby approved.

By: \_\_\_\_\_