

## **Professional Services Contract**

**THIS CONTRACT** (the "Contract") is made this 14 day of May 2012 (the "Effective Date"), by and between **CUYAHOGA COUNTY** (the "County"), on behalf of the Cuyahoga County Fiscal Officer (the "Fiscal Officer") and **John Q. Ebert** (the "Consultant").

### **RECITALS**

**WHEREAS**, the County has previously issued Request for Qualifications RQ AU12-23247 (the "RFQ") for a Property Tax Administration Consultant to review the results of the County's in-house 2012 sexennial reappraisal (the "Project"); and

**WHEREAS**, Consultant responded to the RFQ and was found by the County to be qualified to conduct an independent review of the Project.

### **ARTICLE 1.**

#### **TERM and PERFORMANCE**

- 1.1 Term.** The term of this Contract (the "Term") shall commence on 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 Consultant is, for any reason, unable to start the work described herein on the Effective Date, then the Consultant 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 this Contract, this Contract shall continue only for such time as the services rendered by Consultant are satisfactory to the Fiscal Officer, in his sole discretion.

**End of Article 1**

### **ARTICLE 2.**

#### **SCOPE of WORK**

- 2.1 Generally.** Consultant acknowledges that the Project is intended to conduct an independent review of the County's efforts to satisfy its requirement for a sexennial reappraisal in accordance with Section 5715.33 of the Ohio Revised Code and related sections of the Ohio Administrative Code, and to provide a narrative report to the County as to whether, in the Consultant's professional opinion, the County followed acceptable procedures and techniques for determining *ad valorem* taxes (the "Project Report").

**2.2 Scope of Work/DELIVERABLES.** Consultant shall:

- 2.2.1 provide the Fiscal Officer with a detailed Project plan outlining the schedule of activities for his review and approval;
- 2.2.2 provide bi-weekly Project status reports to the Fiscal Officer, or his designated project manager (the "Project Manager") as to activities schedules, status and progress to date;
- 2.2.3 provide the Fiscal Officer with a draft Project Report for review on a date as reasonably determined by the Project Manager;
- 2.2.4 provide the Fiscal Officer a final Project Report on a date as reasonably determined by the Fiscal Officer; and
- 2.2.5 at the request of the Fiscal Officer, make a formal presentation of the Project Report to the Department of Taxation (DTE), County officials, and the Public.

**2.3 Access to Information.** The Project Manager shall provide Consultant with any and all information generated by the Project, Consultant reasonably determines necessary to perform the Project .

**2.4 Times of Performance.** To the extent that the performance of this Contract requires Consultant to be at the County's designated office, Consultant shall have access to same on any Business Day (as defined below). All other Project services required to be performed may be performed at such times determined to be appropriate by Consultant. Consultant 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. For purposes of the Contract, "Business Day" means between the hours of 8:30 a.m. and 4:30 p.m. on any day the County's offices are not authorized or required to be closed for business; any reference herein to "day" or "days" rather than "Business Day" shall mean a calendar day.

**2.5 Subcontracting.** No portion of the Project may be subcontracted by Consultant absent the written consent of the Fiscal Officer.

**2.6 Work Space.** At the commencement of this Contract, Consultant shall have the option to utilize furnished work and office space at a location designated by the Fiscal Officer. Consultant shall also be permitted to work from his home office.

**End of Article 2**

**ARTICLE 3.**  
**COMPENSATION & RETAINAGE**

- 3.1 Compensation.** In consideration of Consultant performing the Project as set forth herein, Consultant shall receive compensation under this Contract in accordance with this Article 3 in an amount not to exceed \$150,000.00 (the "Compensation").
- 3.2 Rate of Compensation.** During the Term, the County shall pay Consultant the Compensation in 4 equal installments of \$30,000.00 each, on the following schedule:
- a. Effective Date;
  - b. June 15, 2012;
  - c. July 15, 2012;
  - d. Upon presentation of the Project Report in accordance with Section 2.2.5; provided that, in the event the Fiscal Officer determines such presentation is not necessary, the date of such determination.
- 3.3 Invoicing.** Consultant shall invoice the County on the form attached hereto as Exhibit A (an "Invoice"), for Project services performed during the period shown on such invoice. County agrees to notify Consultant within 10 Business Days of receipt of an Invoice in the event the Fiscal Officer or Project Manager determines additional information is required to approve an Invoice. Consultant agrees to provide the County such additional information as the County may reasonably request to justify the hours and charges shown on an Invoice for the purposes of approving same. The County reserves the right to reject any Invoice in the event such requested information is not provided.
- 3.4 Payment.** The County shall endeavor to pay any approved Invoice within 20 days of its approval.
- 3.5 Force Majeure.** In the event that the Project cannot be completed by the Termination Date due to a *Force Majeure Event*, as defined below, the Term shall be extended by the parties provided that: (a) Consultant notified the Project Manager 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 completion of the Project. 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 the Project; or other cause that is not within the reasonable control of the Consultant. Notwithstanding the foregoing, "Force Majeure Event"

shall not include Consultant's inability to pay debts or other monetary obligations in a timely manner.

End of Article 3

**ARTICLE 4.**

**ADDITIONAL REPRESENTATION AND  
COVENANTS OF CONSULTANT**

- 4.1 Status of Consultant.** The relationship of Consultant to the County shall be that of an independent contractor. No principal-agent or employer-employee relationship is created by this Contract. Consultant 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 Consultant, Consultant shall provide the Project Manager with a list of all parcels of real property within Cuyahoga County, Ohio which he has any form of an ownership interest in and/or which he is presently performing any form of real property appraisal or other consulting services with respect thereto. Consultant shall, from time to time during the Term, provide the Project Manager with an updated list of such parcels.
- 4.2.2** During the Term, Consultant shall not directly or indirectly render any form of real estate appraisal or other consulting services or service of a business, commercial, or professional nature with reference to any parcel of real property in Cuyahoga County, Ohio not otherwise disclosed to the Project Manager under paragraph 4.2.1.
- 4.2.3** During the Term, Consultant 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, Consultant 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.** Consultant represents that he has disclosed to the Project Manager any employment agreements and/or any other agreements, which impose any restrictions on Consultant. Consultant represents that he is under no obligation

which in any manner may prohibit and/or restrict his authority to sign this Contract and/or to perform the Project.

#### **4.4 Confidential Information.**

**4.4.1 County Information.** Consultant 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 Consultant 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.** Consultant 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.** Consultant shall hold in a fiduciary capacity for the benefit of the County all information obtained by Consultant 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 Project shall remain the property of the County and no use or copying of such data shall be made except in connection with this Contract without the written permission of the Fiscal Officer.

**4.5.2** To protect the interests of the County, Consultant 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 Consultant'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 Consultant 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** Consultant 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.** Consultant shall provide evidence of automobile liability insurance with the County named as a co-insured or additional insured at the following levels:

Bodily Injury	\$250,000.00 per person, \$500,000.00 per accident
Property Damage	\$50,000.00 per accident, \$100,000.00 aggregate
Comprehensive	\$250,000.00 per person, \$500,000.00 per accident.

Consultant shall provide proof of such insurance upon execution of this Contract. Consultant shall provide an exact copy of such insurance policy or policies upon request of the Project Manager.

- 4.7 Indemnification.** Consultant 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 Consultant in this Contract or in any other certificate or document delivered by Consultant pursuant to this Contract; (b) the negligence of Consultant or any other person performing services in connection with the Project on behalf of Consultant; and (c) any breach by Consultant of any covenant or obligation of Consultant under this Contract.

End of Article 4

## **ARTICLE 5.**

### **TERMINATION**

- 5.1 Termination for Cause.** If Consultant 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 Consultant 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 Contract at any time for any reason.
- 5.3 Option to Terminate if Consultant Permanently Disabled.** If Consultant becomes temporarily or permanently disabled such that, in the Fiscal Officer's reasonable discretion, Consultant will be unable to complete the Project by the Termination Date, the Fiscal Officer may terminate this Contract by giving written notice of termination to Consultant.
- 5.4 Effect of Termination on Compensation.** In the event this Contract is terminated in accordance with this Article 5, Consultant shall be entitled to compensation earned for completion of any portion of the Project prior to the date of termination in accordance with Article 3. In such event, Consultant shall be entitled to no further compensation.

End of Article 5

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

- 6.1 Public Comment.** Consultant acknowledges that he/she has been expressly advised and agrees that the Fiscal Officer or the 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 Project of other business of the County shall be declined and referred to the 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, returned 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 Consultant:** John Q. Ebert  
1710 Thrushwood Circle  
Okemos, Michigan 48864

- 6.3 Background Check/Drug Testing.** The County may require Consultant 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 Consultant.
- 6.5 Laws Governing Contract/Forum.**

**6.5.1** This Contract shall be governed by and construed in accordance with the laws of the State of Ohio.

**6.5.2** This Contract is subject to all applicable County ordinances, including, but not limited to: i) the Cuyahoga County Ethics Ordinance, ii) the Cuyahoga County Inspector General Ordinance, and iii) the Cuyahoga County Board of Control, Contracting and Purchasing Ordinance (the "County Ordinances").

Contractor shall comply with all County Ordinances as an integral part of this Contract. Copies of all County Ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

**6.5.3** Any suit, action, or proceeding brought under this Contract shall be in a state or federal court of competent jurisdiction located in Cleveland, Ohio, and the Parties agree to the exclusive jurisdiction and venue of such court to resolve same.

**6.6 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.

**6.7 Expense Reimbursement.** There are no expenses for which Consultant will be reimbursed.

**6.8 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.

**6.9 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 Contract shall have the same legal effect as if that signature was manually affixed to a paper version of this Contract. 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.

**End of Article 6**

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



IN WITNESS WHEREOF, the Parties have each caused their duly authorized representatives to execute this Contract as of the date set forth below.

Edward FitzGerald, County Executive  
CUYAHOGA COUNTY, OHIO

2012-05-30 09:04:47

Edward FitzGerald, County Executive

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

CONSULTANT

John Q. Ebert

Tax ID #

NA

Date: MAY 8, 2012

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

Bill Mason, Cuyahoga County Prosecuting Attorney

By:

Gregory G. Huth, Esq.

Assistant Prosecuting Attorney

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