

11-519

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
WESTERN RESERVE LAND CONSERVANCY
AND
COUNTY OF SUMMIT

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Exhibit A: Scope of Services

Exhibit B1: Akron Community Foundation Grant Award Letter

Exhibit B2: GAR Foundation Grant Award Letter

Professional Services Agreement

This Professional Services Agreement ("Agreement") is entered into between the County of Summit, an Ohio political subdivision, with its principal place of business located at 175 South Main Street, Eighth Floor, Akron, Ohio 44308, executed by Russell M. Pry, Executive ("County") and Western Reserve Land Conservancy ("Company"), an Ohio non-profit corporation with its principal place of business located at 12768 Chillicothe Road, Chesterland, OH 44072.

INTRODUCTION

A. The County desires to engage Company to provide certain consulting services related to the creation and operation of a land reutilization corporation, and Company agrees to provide the professional services, on the terms and conditions below.

B. The Board of Control under Directive No. _____ has approved the procurement of these services from Company by County.

C. The Council of the County of Summit under Resolution No. _____ has approved the procurement of these services from Company by County.

In consideration of the mutual covenants contained in this Agreement, County and Company agree as follows:

AGREEMENT

SECTION 1: SERVICES

1.1 Engagement. County engages and authorizes Company to, and Company will provide County with certain professional consulting services related to the creation and operation of a land reutilization corporation, as more fully described in Exhibit A, Scope of Services (collectively the "Services"). Exhibit A is deemed to be part of this Agreement as if fully rewritten in it.

1.2 Term. The term of this Agreement will commence effective as of the date signed by the County Executive and continue until Company has provided the services described in Exhibit A, unless County terminates this Agreement earlier under Section 8 below. There will be no modification of this term without the express, written consent of County.

1.3 Deliverables. Company shall deliver its performance of services in accordance with the Services set forth in Exhibit A.

1.4 Monitoring and Evaluation. Both County and Company must monitor the manner in which the terms of the Agreement are being carried out. Measurable objectives have been designed on Exhibit A together with timelines to evaluate the extent to which the objectives are being achieved.

1.5 No Further Subcontracting. This Agreement is a contract for services to be performed personally by one or more employees of Company. Company may not subcontract or delegate performance of Services to any other persons without the express written consent of County.

1.6 Independent Contractor. Company will perform Services under this Agreement as an independent contractor, and not as an employee of County. Company will be responsible for the

payment of all federal, state, and local taxes arising out of Company's performance of the Services.

1.7 Approval of Employees. County may approve individual employees of Company to work on any project assigned under this Agreement and may approve or reject the work of any such employee. If County rejects any employee of Company during the term, Company must promptly remove the employee from the project and, if requested by County, offer a replacement employee if available. Furthermore, Exhibit A sets forth the employee(s) initially approved by the County to perform the Services.

SECTION 2: COMPENSATION

2.1 Compensation. As compensation for the Services, Company shall solicit and receive grant or other funds directly from certain non-profit agencies and organizations located within Summit County. As of the execution of this Agreement, the Company acknowledges receipt of grant award letters from the Akron Community Foundation in the amount of \$15,000.00 and the GAR Foundation in the amount of \$25,000.00. Copies of said grant award letters are attached hereto as Exhibits B1 and B2, respectively. Company acknowledges that said grant funds, together with any and all grant or other funds received from non-profit agencies and organizations located within Summit County represent and shall be the sole compensation for the Company for the Services rendered to the County and that County shall not be responsible for payment of any further compensation to Company. County agrees to use its best efforts to assist Company with obtaining any additional grant or other funds from non-profit agencies and organizations located within Summit County.

2.2 Sole Consideration. Company acknowledges and agrees that it is not entitled to any compensation, commissions, bonuses, benefits, reimbursement, leave, severance or termination pay, cancellation fees, or other consideration under this Agreement or for Services rendered, except as expressly provided in this Section 2.

SECTION 3: COMPANY WARRANTIES

3.1 Independent, Licensed Business. Company represents and warrants that it:

- 3.1.1. is a separate, independent, licensed non-profit corporation;
- 3.1.2. is duly licensed and authorized to perform Services under this Agreement; and,
- 3.1.3. makes its professional services generally available to a wide variety of other entities on a regular basis.

3.2 Standards. Company represents and warrants that it will perform Services in accordance with the highest ethical and professional standards and any general standards of its industry and all on-site rules, security procedures, and other standards specified by County.

3.3 Qualified Employees. Company represents and warrants that all employees of Company are properly trained, licensed, sufficiently experienced and otherwise qualified and capable of performing the Services assigned them.

3.4 Originality. Company represents and warrants that all materials prepared or provided by Company under this Agreement will be original and created by Company.

3.5 Clear Title. Company represents and warrants it has the legal power to convey, and will convey to County, clear title and all other rights in all materials prepared or provided by Company under this Agreement, free of any liens, encumbrances, licenses, royalties, or other third party rights.

3.6 Third Party Rights. Company represents and warrants that no materials prepared or provided, and no Services rendered, by Company under this Agreement will violate or infringe on any patent, copyright, trademark, trade secret, contract, privacy, publicity, or other right of any third party, nor contain defamatory matter or injurious instruction.

3.7 Lawful Use. Company represents and warrants that all materials prepared or provided by Company under this Agreement will be suitable for the use proposed by County as expressed in this Agreement or statement of work without violating any statute, ordinance, or governmental regulation.

3.8 Privacy. Company represents and warrants that it will not divulge the details or findings of this study to anyone or any organization other than the County without the express written consent of the County.

SECTION 4: CONFIDENTIAL INFORMATION

4.1 Confidential Information. The term "Confidential Information" means information of any kind not generally known to competitors or the public which becomes known to Company (whether or not developed by Company) at any time as a consequence of or through Company's performance under this Agreement or relationship with County by County. Confidential Information includes but is not limited to computer program codes, software and database technologies, computer architectures, technical methods, financial information, customer information, cost and pricing information, and business and marketing plans. Confidential Information includes Confidential Information belonging to County.

4.2 Ownership. Company acknowledges and agrees that any Confidential Information disclosed to Company or developed by Company in the course of performing Services under this Agreement does not belong to Company, but is and will remain the property of County.

4.3 Preservation of Secrecy. Company must take all reasonable measures to preserve the secrecy of all Confidential Information at all times, including at a minimum the measures Company takes to protect its own trade secrets.

4.4 Limits on Use, Disclosure, and Copying. Company must not at any time, during or after the commencement of this Agreement by County, make use of, disclose to a third party, or make copies of any Confidential Information, except as necessary to perform Services or as authorized in writing by the party owning the Confidential Information.

4.5 Return of Materials. Upon termination of any project, and at any other time upon request, Company must immediately return to County all documents and other materials which contain, embody, summarize, discuss, reveal, or are derived from any Confidential Information.

SECTION 5: NO CONFLICT OF INTEREST

5.1 No Conflict of Interest. Company represents and warrants that no elected official, officer, employee, or agent of Summit County who has any responsibility in connection with this Agreement has any personal financial interest, direct or indirect, in this Agreement. Company represents and warrants that it is not a party to any contract or subject to any other obligation which precludes Company from performing Services for County.

5.2 Third Party Proprietary Materials. Unless otherwise authorized, Company must not disclose to County, nor use in connection with Company's providing of the Services by County, any confidential or proprietary information, technology, works, inventions, or other materials belonging to any third party.

5.3 Property. Promptly upon termination of Company's retention with County, Company must return to County all of County's property including, but not limited to all computer disks, files, records, sketches, renderings, drawings, blueprints, notes, correspondence, reports, and other tangible media containing information prepared by Company or received by Company in connection with or by virtue of its retention by County, and all copies, reproductions or summaries.

SECTION 6: REPORTS AND RECORDS

6.1 Maintenance of Records and Reports. Company must maintain and provide to County upon demand the following records and reports:

- 6.1.1 Accounting and fiscal records adequate to enable County or the State of Ohio or any duly-appointed law enforcement agency to audit and otherwise verify that funds provided under this Agreement are used for the purpose stated in this Agreement.
- 6.1.2 Other records and reports as required by Summit County to enable County to comply with local, state and federal statutes and regulations. The County shall have the right to audit which includes the right of the County's internal auditing department to access any proprietary software and hardware systems to audit and verify compliance including but not limited to generating system reports and summaries, verifying passwords and other security protections and verifying proper functioning.

6.2 Retention of Records. Company must maintain all records related to this Agreement for three years after County makes final payment under this Agreement and all other pending matters are closed. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, Company must retain the records until completion of the action and all issues that arise from it or until the end of the three-year period, whichever is later.

SECTION 7: EQUAL OPPORTUNITY EMPLOYMENT/NON-DISCRIMINATION

7.1 Non-Discrimination. Neither Company, its employees, agents, or representatives may discriminate in any manner in the performance of duties and responsibilities under this Agreement by reason of race, handicap, color, religion, sex, age or national origin, disability, gender identity as defined in Section 101.02(f) in the Codified Ordinances of the County of Summit and sexual

orientation as defined in Section 101.02(r) in the Codified Ordinances of the County of Summit or any other factor as specified in Title VI of the Civil Rights Act of 1964 or Section 504 of the Rehabilitation Act of 1983 and subsequent amendments. Company, its employees, agents, representatives, or subcontractors must comply with all appropriate federal and state laws regarding discrimination.

7.2 Equal Opportunity Employer. Company expressly represents that it is an Equal Employment Opportunity employer as defined in and is in compliance with all Equal Employment Opportunity statutes, rules, regulations, and executive orders and amendments.

SECTION 8: TERMINATION

8.1 Termination. The County may terminate this Agreement immediately upon written notice to Company. Upon termination of this Agreement, Company must immediately cease all activities relating to the Agreement and immediately deliver to County all work in progress, all property of County, and all information and other materials received or developed under this Agreement. At the County's request, Company must also assist County in efficiently transitioning the project to the new contractor who will continue with the project.

SECTION 9: GENERAL

9.1 Indemnification. Company agrees to defend and indemnify County and its elected officials, agents, and employees, against all claims, actions, demands, judgments, settlements, damages, liabilities, losses, and costs of any kind, including but not limited to reasonable fees of attorneys and experts, arising from or related to any of the following by Company or its officers, employees, contractors, or agents: (1) negligence, willful, or malicious act or omission; (2) willful violation or infringement of any patent, trademark, copyright, trade secret, contract, or other right of any third party; (3) unauthorized use or disclosure of Confidential Information; or (4) any breach of this Agreement.

9.2 Insurance. Company will maintain levels of liability insurance consistent with other similar entities in the industry and of sufficient levels to cover any claims arising out of this Agreement or the performance of the Services by Company. Company shall indemnify and hold County harmless for any claims exceeding the coverage maintained by the Company.

9.3 Employee Compliance. Company must ensure that all employees of Company are informed of and agree in writing to abide by all applicable terms of this Agreement applicable to them prior to performing any Services.

9.4 No Authority to Bind. Neither party has the power or authority to bind the other party to contracts or other obligations.

9.5 Injunctive Relief. Company acknowledges that a material breach of this Agreement would cause immediate and irreparable damage to County which could not be compensated adequately by monetary damages. Accordingly, Company consents to the entry of appropriate injunctive relief, in addition to any damages that may be awarded, to prevent, stop, or cure any actual or threatened breach of this Agreement.

9.6 Governing Law. This Agreement is to be governed by and construed in accordance with the laws of the State of Ohio.

9.7 Forum. The parties agree that the forum for any claim, action, arbitration, mediation, or litigation arising from this Agreement will be Summit County, Ohio. The parties agree that jurisdiction and venue for any matter involving any parties to this Agreement is proper in the Akron Municipal Court and/or the Summit County Court of Common Pleas and/or the U.S. District Court for the Northern District of Ohio, Eastern Division, Akron.

9.8 Publicity. Company will not use the name of County for any commercial purpose without prior written consent of County. County expressly acknowledges use by Company of County's name for uses consistent with its non-profit purposes.

9.9 Assignment. Neither party may assign rights or delegate any obligations created by this Agreement without the prior written consent of the other party, which consent must not be unreasonably withheld. Any assignment in violation of this Agreement is void. This Agreement must be binding upon the heirs, successors, legal representatives and permitted assigns of the parties.

9.10 Force Majeure. Neither party must be considered in default in the performance of any obligation hereunder, except the obligation to make payment, to the extent that the performance of such obligation is prevented or delayed by fire, flood, explosion, strike, war, insurrection, embargo, government requirement, civil or military authority, act of God, or any other event, occurrence or condition which is not caused, in whole or in part, by that party, and which is beyond the reasonable control of that party. The parties must take all reasonable action to minimize the effects of any such event, occurrence or condition.

9.11 Severability. If any provision of this Agreement is found invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, the remainder of this Agreement must continue in full force and effect.

9.12 Reservation of Rights. A delay or failure in enforcing any right or remedy afforded hereunder or by law must not prejudice or operate to waive that right or remedy or any other right or remedy, including any remedy for a future breach of this Agreement, whether of a like or different character.

9.13 Review by Legal Counsel. Each party has had the opportunity to review this Agreement with the assistance of legal counsel. Accordingly, the rule of construction that any ambiguity in this Agreement is to be construed against the drafting party is not applicable.

9.14 Notices. Every notice and demand required under the terms of this Agreement must be in writing and must be sent by certified mail, return receipt requested, or by other means of delivery requiring a signed receipt, to the other party's address first set forth above. All notices are effective upon receipt. A party may change its address by giving written notice to the other party in accordance with this Article.

9.15 Enforcement Costs. Company must reimburse County all attorney's fees and other costs that the County reasonably incurred in any successful action to stop, cure, prevent, or obtain recovery for any actual or threatened breach of this Agreement.

9.16 Amendment and Waiver. This Agreement may not be amended, supplemented, or waived except by a writing signed by the parties. The waiver of any particular right or claim must not constitute a waiver of any other right or claim. This Agreement may be extended to achieve additional goals of the County with the written consent of both parties.

9.17 Entire Agreement. This Agreement, including Exhibit A, the County's Request for Proposal and Company's Proposal states the complete, final, and exclusive agreement of the parties concerning the subject hereof and supersedes all prior oral or written agreements, representations, promises, negotiations, and other communications between the parties.

9.18 Unresolved Findings of Recovery. Pursuant to Ohio Revised Code §9.24, Company represents and warrants that no unresolved findings of recovery have been issued against Company by the Auditor of the State of Ohio.

Intending to be legally bound, the parties have signed this Professional Services Agreement effective as of the date signed by the County's Executive.

COMPANY
WESTERN RESERVE LAND
CONSERVANCY

COUNTY OF SUMMIT

By: 
Richard D. Cochran, its President

By: _____
Russell M. Pry, Executive

Date: 11/29/11

Date: _____

Approved as to form:

Deborah S. Matz, Director, Department of
Law, Insurance and Risk Management

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Western Reserve Land Conservancy
Thriving Communities Institute

FROM VACANCY TO VIABILITY

SCOPE OF SERVICES

Phase One: Research and Creation of the County Land Reutilization Corporation

- A. Thriving Communities will assist Summit County leaders in performing due-diligence into the roles and responsibilities of a land reutilization corporation, including facilitating and attending meetings between Summit County leaders and staff and other land reutilization corporations throughout the State and meetings with local taxing districts and stakeholders regarding the benefits of the land reutilization corporation.
- B. Thriving Communities will assist Summit County leaders in drafting the required resolutions for the creation of the Summit County Land Reutilization Corporation (SCLRC) in a manner consistent with Sections 1724 of the Ohio Revised Code.
- C. Thriving Communities will provide to Summit County staff model drafts of a land reutilization corporation code of regulations and other documents necessary in the organization of the SCLRC. Consultant will work with designated staff in individualizing documents to meet the requirements of Summit County.
- D. Consultant will meet regularly (biweekly or weekly, as required) with land bank “working group” (members to be defined by county) until all required documents are approved and the land bank is ready to begin operational phase. Additional consultation via phone and/or e-mail will be provided as necessary.
- E. Consultant will meet with SCLRC Board or their representatives to determine the immediate goals of the land bank, develop policies and procedures for acquisition and disposition of properties, discuss staffing of the land bank and other set-up activities.

Phase Two: Initiating Land Bank Operations

- A. Thriving Communities will provide Summit County with a digital versions of the “Playbook”. This document includes a narrative of the land bank activities and interactions with various county agencies. A comprehensive set of forms is included. In addition, current statutes relating to the land bank and copies of the enabling legislation are provided.
- B. Consultant will meet with various county offices to discuss the role of each office with regard to the county land bank and to assist in implementing any changes required to current office processes.
- C. Consultant will facilitate the SCLRC entering into Memoranda of Understanding with municipalities and townships regarding land bank operations within their jurisdiction.
- D. Consultant will conduct additional work group sessions as requested by the SCLRC.

Phase Three: Land Bank Support

- A. Thriving Communities will provide ongoing support to land bank staff for six months following the initial property acquisition.
- B. The above referenced services will be provided by Robin Darden Thomas, Land Bank Program Director for Thriving Communities Institute of the Western Reserve Land Conservancy, with administrative support from Thriving Communities’ and WRLC staff.