Contract for Services

Between

Michigan Property Consultants L.L.C.

And

City of Gladstone, Michigan

January 14, 2019
1

AGREEMENT

Michigan Property Consultants L.L.C. (Consultant), a Michigan Limited Liability Company located at 2719 State Street, Saginaw, MI 48602 and the city of Gladstone, Michigan, a municipality located at 1100 Delta Avenue, Gladstone, MI 49837 (Client), hereby mutually agree to the terms of this contract (Agreement). The Consultant and the Client agree to be responsible for all of their respective obligations created herein.

The Consultant and Client each declare, without reservation, that signatories to this Agreement have the authority and power to cause the Agreement to be a valid instrument. Furthermore, the Consultant’s and Client’s signatories certify that they are authorized to make the representations contained herein and bind their respective entities to the terms and conditions of this document.

The Consultant has been retained pursuant to an Agreement between the city of Gladstone et al and Mr. Michael O’Connor. Language of the Agreement was approved by Michigan’s 47th Circuit Court. That agreement required the retention of Michigan Property Consultants L.L.C. (MPC) for purposes expressed by the court as:

“review the captured assessed value relied upon by the City in fiscal years ending in 2009 through 2018 for the properties in the area identified in the City’s 1992 Development and Tax Increment Financing Plan and the properties in the additional areas identified in the City’s 2009 Amendments to the DDA Plan.”

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The 47th Circuit Court further ordered that “the term ‘captured assessed value’ has the same meaning as the term does in the Recodified Tax Increment Financing Act.”

It is agreed that the work product of Michigan Property Consultants L.L.C. will be governed by the language approved by the 47th Circuit Court. It is acknowledged recommendations of the representative of Michigan Property Consultants L.L.C., will be based upon Joseph Turner’s understanding and belief of the meaning of applicable statutes, guidance from the State Tax Commission, his experience as a certified assessor (Certificate R-1798) and his experience as an instructor of courses in matters of property taxation which have been approved by state officials for the certification and recertification of Michigan’s property tax administrators.

Michigan Property Consultants L.L.C. declares that its representatives are not lawyers and are not competent to offer legal advice. Furthermore, its representatives are restricted from making any recommendations or urging actions which are properly the domain of those who are licensed to practice law. Any references to statutes, ordinances, judicial decisions or other matters of property taxation are made strictly from the point of view of their use by assessment administrators. References or citations may be offered within the Deliverable so that the client or its representatives can evaluate them independently. They may also represent reasoning used to make decisions which led to the recommendations of MPC. Finally, references to statutes, ordinances, judicial decisions or other matters of property taxation relevant to the report may be offered as a means to attain transparency for the parties involved in the dispute.
1. **Scope of Services**

*The Deliverable*

It is agreed that Michigan Property Consultants will provide a written report. The report will include recommendations as required by the court approved agreement. The report shall include support for those recommendations and references from sources such as: appropriate tax rolls, other assessing records, City Treasurer records, geographic areas and boundaries pertinent to DDA plan(s), initial assessed values, captured assess values and other materials or information deemed material to recommendations of the report.

*On site visits*

In order to minimize the financial burden of the City, Michigan Property Consultants will acquire as much information as possible via electronic communication and telephonic conferences. However, MPC’s representative will examine appropriate tax rolls and other documents at their location in Gladstone and make at least one on-site inspection of geographic areas contained within appropriate DDA plan(s).

*Time Period for work*

It is agreed that all work shall be completed within (90 days) of the signing of this agreement. However, should unexpected contingencies arise, the delivery date of the report may be extended upon mutual agreement.

*Numerical data*

Because there are many properties, both real and personal, that may be included within a DDA district and because multiple years of data must be thoroughly examined and because data may change from one year to the next and in the interest of accuracy, the city of Gladstone agrees to provide assessment data, when requested, in Microsoft Excel spreadsheet format unless some other electronic format is mutually agreed to.
Captured Assessed Values

MPC shall determine “captured assessed values” as directed by the court approved agreement for the fiscal years ending in 2009 through 2018 inclusive. Capture assessed values cannot be calculated without a determination of the appropriate “initial assessed value(s). Therefore, recommended captured assessed values will be predicated upon various municipal sources including, but not limited to: appropriate precursor values, maps and written legal descriptions of geographic areas encompassed by DDA plan(s).

The Client agrees to provide information the Consultant deems necessary for determining the appropriate captured taxable values. Where the Client cannot provide necessary information, permission is granted to the Consultant to secure service providers who can obtain the information. Costs of those “service providers” shall be paid by the client. The Client agrees to provide guidance to Michigan Property Consultants L.L.C. when requested to do so for the purpose of acquiring necessary information.

2. Confidentiality

Any information the Consultant receives during performance of its obligations under this Agreement will be treated as “confidential” information and will not be released, either orally or in writing, to anyone outside the Consultant’s company without prior consent of the Client. Public records and any information received by the Consultant that was or is published, broadcast or otherwise available to the public during, or subsequent to the term of this Agreement, are not to be considered “confidential” pursuant to this Agreement.

3. Payment

I. Retainer - Retainer in the amount of approximately ten percent of the agreed upon fee or Nine Hundred Dollars ($900.00) is required for this Agreement.

i. Any fees or charges incurred due to negligence by the Consultant or its representatives shall become the sole obligation of the Consultant and will not
become an obligation of the Client. The Consultant’s potential obligation created through negligence is limited to goods, fees, and compensation for services.

ii. **Fee** - The total of all fees and expenses pursuant to this Agreement is Eight Thousand Nine Hundred Seventy-five Dollars ($8,975.00) unless otherwise agreed to in writing and pursuant to terms and conditions found in Section 3(v).

iii. **Additional Hours & Payments** Should the Client desire to extend services provided by Consultant before the expiration of this contract or the exhaustion of funds retained, the Client may purchase additional Consultant hours at the rates shown in Exhibit R of this Agreement and at rates charged for professionals services secured by the Consultant on behalf of the Client (subject to Section 4).

iv. **Late Fees** U.S. postmarks or carrier certifications of receipt, shall determine the period following submission of a request for payment. If a payment is made 31 or more calendar days after the date of submission (or the agreed upon due date for a payment), a fee of three percent shall be added to the unpaid balance due Michigan Property Consultants L.L.C.

v. **Exhaustion of Retainer** Nothing contained within this Agreement shall relieve the Client from fully compensating Consultant for services rendered, fees, other costs and obligations legitimately incurred pursuant to this Agreement.

4. **Expenses**

MPC shall be responsible for all reasonable costs and expenses incurred by or for Michigan Property Consultants L.L.C. in the performance of services under this Agreement. Reasonable costs and expenses shall include, but not be limited to, postage, long distance phone and fax charges, graphic design and print production (if contracted out to others), other printing costs and specialized consulting work.

For the purposes of this agreement, the agreed upon fee includes travel and lodging costs for two trips to Gladstone. Additional trips shall be billed at Seven Hundred Fifty Dollars per day which includes all travel costs including: fuel, lodging, food and travel time.
In the case of any appeal where an authority of competent jurisdiction has the power to assess “costs and expenses” for the appeal, or of any other kind of “costs” against the Client, those costs shall be borne by the Client. The Client shall hold the Consultant harmless against any liability or claim arising from an appeal process.

5. **Independent Contractor**

   Michigan Property Consultants L.L.C. is an independent contractor and not an employee, agent, servant or representative of the Client.

6. **Applicable Law**

   This Agreement and any subsequent amendments shall be governed by, and constructed in accordance with, the laws of the State of Michigan.

7. **Right to Terminate**

   Either the Client or Consultant, with 30 days written notice, may terminate this Agreement for any reason. If the Client chooses to terminate the Agreement, the Client shall pay Michigan Property Consultants for all services rendered to the date of termination including additional hours of work pursuant to Sections 3 and 4 of this Agreement and any other applicable portion of this Agreement and its attachments.

8. **Attorney Fees**

   This Section is to be superseded by Section 12 whenever possible. This section exists only to address an unusual circumstance where Section 12 provisions may not be implemented. In the event that either party institutes legal action to enforce its rights under this Agreement, neither party shall be entitled to recover its attorney fees.
9. **Declaration of Competency**

Michigan Property Consultants L.L.C. performs its contractual obligations as an independent contractor with experience in the administration of and a general knowledge of Michigan's property tax laws. The company’s competency is in working with local governmental units in the area of property taxation, facilitating the acquisition of business and tax incentives on behalf of a client and in assisting clients in the development of a strategy for acquiring said incentives. Michigan Property Consultants L.L.C. makes no representation that it, nor its employees, are attorney's, have a legal background, can make competent legal decisions or are competent to practice law.

The Consultant makes no representation that it is a qualified environmental consultant nor that it can make competent decisions relevant to issues of environmental hazards and pollution. Each Client is urged to secure proper legal and environmental representation in all matters the Client deems appropriate.

The Consultant routinely subcontracts for services in areas where it lacks expertise. The parties to this Agreement acknowledge this practice and the Client specifically consents to permit Michigan Property Consultants to secure services of other Consultants or service providers when deemed necessary by the Consultant. Fees, costs and other compensation associated with service providers secured by the Consultant shall fall within any expenses guidelines contained in this Agreement including Exhibit R when applicable.

10. **Venue**

Venue of any action brought under this Agreement shall be as determined by the law of the State of Michigan.

11. **Entire Agreement**

This Agreement constitutes the entire Agreement between the Consultant and Client and there are no other contracts or understandings, oral or written, between the parties. No amendment or modification of this Agreement shall be valid or binding upon
the parties unless made in writing and signed on behalf of each party by themselves or their duly authorized representatives.

12. Dispute Resolution

Should a dispute arise, that the parties to this Agreement find irreconcilable, the parties agree to be bound by the judgement and order of a third party. For the purposes of this Agreement this process shall be termed "binding arbitration." Such binding arbitration will be immediately invoked by the written petition of one party to other. The arbitrator may be an individual mutually agreed upon by the parties to this Agreement.

In the event there is no agreement on a third party arbitrator of the dispute between the Consultant and Client within 60 days of invocation of the binding arbitration process, either party may petition the American Arbitration Association (or its successor) to supply an arbitrator to review the petitions of both parties. It is agreed costs of arbitration and other costs associated with the process shall be paid in an equal amount by the parties hereto unless otherwise decided by the arbitrator. Should the arbitrator decide that costs shall be allocated in some other proportion to each party, the parties hereto agree to pay those costs as determined by the arbitrator.

In WITNESS WHEREOF the parties have entered into this Agreement on the date written below:

Date: January 12, 2019

Joseph M. Turner, CEO
Michigan Property Consultants L.L.C.

Date: ______________

Darcy Long, City Manager
City of Gladstone, Michigan

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ATTACHMENT 1

Obligations:

1. Unless the obligation is discharged by the Client, the Consultant will prepare a written document for submission to local government authorities. At a minimum the document will present information and research substantiating the document.

2. Unless the obligation is discharged by the Client, or except in situations where due diligence mandates representation by a professional with specific competencies beyond the scope of the Consultant, the Consultant agrees to participate in meetings between the Client and local governmental units and agencies.

3. In order to achieve timely completion of the Deliverable, the parties hereto agree to work in good faith, share information and communicate in timely and reasonably effective ways.

Initials    _______  _______  _______  _______  _______
EXHIBIT R

Rate Schedule

Consultant: Joseph M. Turner Per Hour $150.00

Clerical Assistance Per Hour $20.00

Specialty Consultants To be mutually agreed

Travel rates for all personnel paid for time traveling from office to designated meeting place - assigned by rate schedule above ½ rates cited above

Initials __________ __________ __________ __________