

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is entered into as of the 9th day of November, 2009, by and between the City of Overland Park ("Client") and Alvarez & Marsal Dispute Analysis & Forensics Services LLC ("Consultant"), a Missouri Corporation having its principal place of business in Kansas City.

WHEREAS, Client desires to engage Consultant as an independent contractor to perform the services outlined in the scope of work described in Exhibit A; and

WHEREAS, Consultant is willing to provide such services on behalf of Client on the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

I. ENGAGEMENT

Client hereby engages Consultant as an independent contractor to perform the services hereinafter set forth, and Consultant hereby accepts such engagement.

II. SERVICES

2.1. Scope of Services

Consultant shall perform those services specifically described in Exhibit A, attached hereto and incorporated by reference herein (the "Contract Services"). The parties may agree at any time to expand or modify the Scope of the Contract Services.

2.2. Subcontract Services

Consultant may not subcontract any of the Contract Services without the written consent of the Client.

2.3 Time of Performance

Upon execution of this agreement, Consultant shall commence performance of the Contract Services in accordance with the time periods set forth in Exhibit A. The "Initial Term" of this Agreement shall commence upon execution of this Agreement and shall expire upon the City's acceptance of the Contract Services. The provisions regarding indemnity and insurance shall survive expiration or termination of this Agreement. Consultant shall make all reasonable efforts to perform the Contract Services within the Initial Term, subject, however, to delays beyond Consultant reasonable control. The term of this Agreement may be extended by mutual agreement of the parties beyond the Initial Term and/or the time periods outlined in Exhibit A for the purpose of Consultant providing any additional services, as may be requested by Client and agreed to by Consultant.

2.4. Assistance From Client

To assist Consultant in performing the Contract Services, Client shall furnish to Consultant, without charge, copies of all available background reports, memoranda, correspondence, ordinances, legislation, rules and regulations, technical data and other information reasonably requested by Consultant that is relevant to the Contract Services to be provided by Consultant.

III. COMPENSATION AND EXPENSES

3.1. Compensation

Client shall pay Consultant for the hours spent by Consultant professional personnel performing Contract Services, subject to paragraph 3.3 contained herein. Client shall also pay Consultant for all Subcontract Services authorized by the Client pursuant to Section 2.2., hereof. It is understood that the amounts payable to Consultant pursuant to the terms of this Agreement are not dependent upon the nature of the conclusions reached or the reports or advice given by Consultant in the course of performing the Contract Services or upon the success or lack of success of the Client's project.

3.2. Expense Reimbursement

Subject to paragraph 3.3, below and in addition to Client's payment of the consideration provided under Section 3.1 hereof, Client shall reimburse Consultant for all out-of-pocket expenses and related administrative expenses incurred by Consultant in connection with its performance of the Contract Services, including, but not limited to, long-distance telephone calls, postage, messengers and other communications expenses, the cost of computer time.

3.3. Maximum Compensation and Reimbursement

Unless otherwise agreed, in writing, by the parties, the maximum total amount payable to Consultant (1) as charges for Contract Services and Subcontract Services pursuant to Section 3.1 hereof; and (2) as reimbursement for out-of-pocket expenses pursuant to Section 3.2 hereof (in the aggregate, the "Maximum Amount"), shall not exceed Twenty-Seven Thousand and Zero One-hundredths Dollars (\$27,000.00). Unless otherwise agreed by the parties, Consultant shall not be required to provide Contract Services or incur any related expenses to the extent the cost of such Contract Services and related expenses would exceed the Maximum Amount.

3.4. Payment Terms

Consultant shall send invoices to Client no more frequently than once per month, reflecting compensation due for services rendered by Consultant and reimbursement due for expenses incurred by Consultant. All expenses claimed shall be listed individually and

shall be accompanied by receipts or other applicable documentation. All invoices are payable upon receipt by Client. If payment for an invoice is not received within sixty (60) days of the invoice date, Consultant reserves the right to suspend performance of all Contract Services until Consultant receives all payments due.

IV. TERMINATION OF AGREEMENT

The parties may terminate this Agreement at any time for convenience or cause upon ten (10) days notice to the other party. In the event the Client terminates for its convenience, Client shall pay Consultant for Contract Services satisfactorily provided by Consultant prior to such termination, and for all expenses incurred by Consultant prior to such termination in connection with the performance of the Contract Services (including, without limitation, the cost of any Subcontract Services agreed to by the parties pursuant to Article II, Section 2.2). Under no circumstances will the Consultant be entitled to anticipated profits or consequential damages.

V. MISCELLANEOUS

5.1 Confidentiality

Consultant shall not release to any person except Client's representatives and others authorized by Client any reports or related materials prepared for Client pursuant to Consultant performance of the Contract Services and maintained confidentially by Client. However, this Agreement does not preclude Consultant from performing any service (whether or not similar in nature to a Contract Service) on behalf of other clients in the city or elsewhere.

All reports and documents prepared, assembled or compiled by Consultant pursuant to the terms of this Agreement are to be considered confidential and Consultant agrees that it will not, without prior written approval by the Client, submit or make the same available to any individual, agency, public body or organization other than the Client, except as may be otherwise herein provided, subject to the provisions of the Kansas Open Records Act.

5.2. Conflict of Interest

Consultant is currently unaware of any conflict of interest with any party affected by this Agreement. Consultant agrees that if any conflict of interest or potential conflict of interest should arise in the future, Consultant shall immediately inform the Client.

5.3. Assignment

Consultant may not assign this Agreement, in whole or in part; without prior written consent of the Client, which will not be unreasonably withheld.

5.4. Governing Law

This Agreement, the rights and obligations of the parties and any claims or disputes relating thereto shall be governed and construed in accordance with the laws of the State of Kansas (excluding the choice-of-law rules thereof).

5.5. Compliance with Equal Opportunity Laws, Regulations and Rules

Consultant agrees that:

- a. Consultant shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin ancestry, or age;
- b. In all solicitations or advertisements for employees, Consultant shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
- c. If Consultant fails to comply with the manner in which Consultant reports to the Commission in accordance with the provision of K.S.A. 44-1031 and amendments thereto, Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the Client;
- d. If Consultant is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, Consultant shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the Client; and
- e. Consultant shall include the provisions of paragraphs (1) through (4) above in every sub-contract so that such provisions will be binding upon such sub-contractors.
- f. Consultant shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all federal, state, and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

5.6. Reports and Documents

- a. Property and Possession.

All reports, studies, analysis, memoranda and related data and material as may be developed during the performance of this Agreement shall be submitted to and be the exclusive property of the Client, which shall have the right to use the same for any purpose without any further compensation to Consultant.

b Status of Documents Upon Termination.

If this Agreement is terminated for cause or for any other reason, all finished or unfinished documents or materials prepared pursuant to this Agreement shall be immediately transmitted to the Client by Consultant.

5.7. Insurance

General -

Consultant shall secure and maintain, throughout the duration of this contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Consultant shall provide certificates of insurance and renewals thereof on forms approved by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

Notice of Claim Reduction of Policy Limits -

Consultant, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

Consultant shall monitor and promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) if the Consultant's limits of protection shall have been impaired or reduced to such extent that the limits fall below the minimum amounts required herein. Consultant shall promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

a. General Liability

| | |
|--------------------------------|-----------|
| General Aggregate: | \$500,000 |
| Personal & Advertising Injury: | \$500,000 |
| Each Occurrence: | \$500,000 |

Policy must include the following:

- i) Broad Form Contractual/Contractually Assumed Liability
- ii) Independent Contractors

Name City of Overland Park as "Additional Insured".

b. Automobile Liability: Policy shall protect the Consultant against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

i) Any Auto

OR

ii) All Owned Autos (if any); Hired Autos; and Non-Owned Autos.

Limits

Each Accident, Combined Single Limits

Bodily Injury and Property Damage: \$500,000.00

Name City of Overland Park as “Additional Insured”.

c. Workers' Compensation and Employer's Liability: This insurance shall protect the Consultant against all claims under applicable state workers' compensation laws. The Consultant shall also be protected against claims for injury, disease or death of employees which, for any reason may not fall within the provisions of a workers' compensation law. The policy limits shall not be less than the following:

| Workers' Compensation: | Statutory Employer's Liability: |
|---------------------------|---------------------------------|
| Bodily Injury by Accident | \$100,000 each accident |
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$100,000 each employee |

If Consultant has no employees, a waiver form provided by the City must be executed.

d. Professional Liability: The Consultant shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000), and shall provide the City with certification thereof.

e. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:

- 1) Is licensed to do business in the State of Kansas;
- 2) Carries a Best's policyholder rating of A- or better;

AND

- 3) Carries at least a Class VIII financial rating.

OR

Is a company mutually agreed upon by the City and Consultant.
Certification of insurance coverage shall be on the City's standard Certificate of Insurance form or on forms acceptable to the City.

5.8. Quality Assurance

Consultant warrants that all work and service performed pursuant to this Agreement, shall conform to or exceed the recognized professional standards prevalent in the field of professional market and financial feasibility studies. Further, the Consultant warrants that all work and service performed pursuant to this Agreement shall be performed with the professional expertise, skills and knowledge of state of the art procedures and techniques in all relevant subject matters. The Consultant accordingly shall be capable of performing the necessary consulting and other service required herein and possess the ready comprehension of the required subject matter and the expertise to provide a reliable market and financial feasibility study for the Oak Park Mall Transportation Development District bond issue.

5.9. Entire Agreement

This Agreement, including the Exhibits and other documents referred to herein, constitutes the entire Agreement among the parties with respect to the transactions contemplated by this Agreement, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for in this Agreement. No amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of the amendment, modification or discharge is sought.

5.10. Notices

All notices, demand, requests or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be hand delivered, mailed by first class, registered or certified mail, return receipt requested, postage prepaid, sent by overnight express mail, postage prepaid, return receipt requested or transmitted by telegram or facsimile, assessed as follows:

(i) If to Consultant:

Alvarez & Marsal Dispute Analysis & Forensics Services LLC
Charles E. Finch, Managing Director
or
Nancy L. Zielke, Director
1100 Walnut Street
Suite 2970
Kansas City, MO 64106

(ii) If to Client:

Kristy Stallings, Deputy City Manager
City of Overland Park
Overland Park City Hall
8500 Santa Fe Drive
Overland Park, KS 66212

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Notice shall be deemed given for all purposes at such time as it is delivered to addressee (with the return receipt, the delivery receipt, or with respect to a facsimile the answerback being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the address upon presentation.

5.11. Future Work

From time-to-time, within the performance period stipulated by this Contract, the Client and Consultant may agree to further work and Consultant and the Client may secure the services of Consultant for additional work. Additional work shall be identified as additional schedules to and shall become part of this Contract.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on their behalf, as of the day and year first written above.

CITY OF OVERLAND PARK

John M. Nachbar, City Manager

Date: _____

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney

Exhibit A

Statement of Work

This is the Statement of Work for the City of Overland Park, Kansas Transportation Development District (TDD) Revenue Bonds Retail Market Study regarding the Oak Park Mall Project. The purpose of the report will be to forecast TDD revenues generated at the Oak Park Mall during the remaining term of the TDD. The report will include both a retail marketability analysis and TDD revenue projection.

Task 1: Study Application Materials

Alvarez & Marsal will review all materials provided by the developer and the City that relate to construction, economics, market absorption, and financial projections, including sales tax projections.

Task 2: Review Developer Assumptions

Alvarez & Marsal will evaluate the assumptions that are built into the developer's financial projections to assist in testing whether they appear to be realistic, consistent, and verifiable. This process will involve the following steps:

- a. Testing of sales projections.
- b. Testing of Overland Park market conditions and trends assumptions to evaluate the TDD sales tax collections and annual growth rates anticipated for the development over the remaining term of the TDD.

Task 3: Assess Competitive/Comparable Developments

Prepare an analysis of those projects that would either compete with the development or provide lessons to be learned regarding the requisite characteristics of a successful project.

This process will include the following steps:

- a. Assessing existing and planned competitive developments in Johnson County and the Kansas City metro area.
- b. Comparing and evaluating the development to existing and planned developments in Johnson County and the Kansas City metro area.
- c. To the extent available, provide historical Johnson County and metropolitan Kansas City retail market trends, trade area retail sales activity, a survey of competitive shopping centers, and retail space demand projections.

Task 4: Transportation Development District (TDD) Revenue Projections

Alvarez & Marsal will estimate the incremental sales taxes that will accrue to the TDD district on an annual basis based on the information provided by the City, the Developer and our own research. Of course actual results may vary significantly from estimates due to unforeseen market changes.

Task 5: Prepare Detailed Report

Alvarez & Marsal will prepare a detailed report that describes our findings based on the information obtained. This report will address the completeness and

reasonableness or, conversely, the deficiencies and inconsistencies perceived in the materials provided.

Project Timeline and Proposed Budget:

Alvarez & Marsal would commence work on November 10, 2009 with a draft report to the City no later than November 20, 2009 and a final report to the City on or before December 7, 2009. These dates can be adjusted accordingly to meet City of Overland Park preliminary and/or final reporting needs.