

## **PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement"), made and entered into on the 13<sup>th</sup> day of February, 2023, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("LFUCG"), 200 East Main Street, Lexington, Kentucky 40507, and **CUSHMAN & WAKEFIELD, U.S., INC.**, a Missouri corporation, ("Organization") with offices located at 201 E. Fourth Street, suite 1800, Cincinnati, OH 45202.

### **WITNESSETH**

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

- 1. EFFECTIVE DATE; TERM.** This Agreement shall commence on February 17, 2023 and shall last for a period of 1 (one) year unless terminated by LFUCG at an earlier time, and subject to administrative extension as necessary to complete the engagement contemplated in Exhibit C hereto (the "Project") and at the sole discretion of LFUCG.
  
- 2. RELATED DOCUMENTS.** This Agreement shall consist of the terms herein as well as the following additional documents, which are attached hereto as exhibits and incorporated herein by reference as if fully stated:
  - a. Exhibit "A" – LFUCG RFQ No. 51-2022, Legacy Business Park Site Development
  - b. Exhibit "B" – Organization's Response to RFQ
  - c. Exhibit "C" – Listing Agreement For Sale
  - d. Exhibit "D" – Schedule of Commissions For Sale
  - e. Exhibit "E" – Approach to Development & Marketing (Scope of Work)

To the extent that there is any conflict between or among any of these documents, the terms and provisions of this Agreement shall prevail, followed by terms and provisions of Exhibit "C", "A", "D", "E", and "B" in that order.

- 3. SCOPE OF SERVICES.** Organization shall perform the services outlined in the attached Exhibits for LFUCG in a timely, workmanlike and professional manner (the "Services").
  
- 4. PAYMENT.** LFUCG shall pay Organization 6% of the total sales price for the performance of the Services in accordance with Exhibit "C". Payments shall be made in

accordance with Exhibit "D". Absent any additional written agreement stating otherwise, any travel or other expenses are included in the above payment.

**5. TERMINATION.** LFUCG, through the Mayor or the Mayor's designee, may terminate this Agreement for any reason whatsoever by providing Organization with at least thirty (30) days advance written notice. Notwithstanding the expiration and/or earlier termination of this Agreement, Organization shall be entitled to a commission in accordance with the provisions of the provisions of Exhibit "C" and Exhibit "D".

**6. REPORTING.** Organization shall provide LFUCG with timely reports and updates related to the provisions of the Services in the form and manner reasonably specified and agreed upon by and between Organization and LFUCG.

**7. REGISTRATION; COMPLIANCE; AUTHORITY TO SIGN.** Organization, its affiliate and/or its cooperating broker, to the extent applicable, shall be lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County and shall at all times comply with any and all applicable federal, state, and local laws, ordinances, and regulations. LFUCG may request proof that Organization has timely filed federal, state, or local tax forms which shall be provided by Organization on a timely basis. The persons signing this Agreement on behalf of Organization and LFUCG are fully authorized to do so.

**8. INSURANCE; INDEMNITY.**

The risk management provisions of RFP No. 51-2022, as revised the modifications thereto contained in Exhibit "C", are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to the LFUCG as required therein.

**9. RECORDS.** Organization shall keep and make available to LFUCG any records related to this Agreement as are necessary to support its performance of the services for a period of at least one (1) year following the expiration or termination of this Agreement, or as otherwise required depending upon the source of funds. Books of accounts shall be kept by Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of Organization related to this Agreement and shall be made available to LFUCG upon request.

a. LFUCG shall be the owner of all final documents, data, studies, plans, reports, and information prepared by Organization under this Agreement upon payment in monies owed Organization. Organization shall not be held liable for reuse of documents or modifications thereof by LFUCG or its representatives for any purpose other than the original intent of this Agreement without written authorization of Organization.

b. Organization understands and agrees that this Agreement and any related documents may be subject to disclosure under the Kentucky Open Records Act and will comply with any reasonable request by LFUCG to provide assistance with such a request.

**10. CONTRACTUAL RELATIONSHIP ONLY.** In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

**12. EQUAL OPPORTUNITY; FAIRNESS ORDINANCE.** In performing its obligations hereunder and with respect to all employees sought to be hired in connection with the same, Organization shall provide equal opportunity in employment for all qualified persons, and shall: (a) prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation, gender identity, or handicap; (b) promote equal employment through a positive, continuing program of equal employment to the extent required by applicable law; and (c) direct any subcontractor or agency receiving funds provided pursuant to this Agreement to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices to the extent required by applicable law. Organization agrees to comply with LFUCG's Fairness Ordinance (Ordinance No. 201-99) and all sources of applicable law, including those specified in any Exhibit attached to this Agreement and incorporated herein by reference.

**13. SEXUAL HARASSMENT.** Organization must adopt or have adopted a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints. The policy shall be made available to all employees and clients and shall be posted at all locations where Organization conducts business. The policy shall be made available to LFUCG upon request.

**14. ANNUAL AUDIT.** Organization agrees that all revenue and expenditures related to this Agreement shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not revenue and expenditures during the year audited have conformed to state and local law and regulation. A copy of this audit, or clean audit opinion letter from an independent certified public accountant, shall be submitted to LFUCG each year of the Agreement.

**15. INVESTMENT.** Any investment of the funds received pursuant to this Agreement must fully comply with any restrictions imposed by law.

**16. NO ASSIGNMENT.** Organization may not assign any of its rights and duties under this Agreement without the prior written consent of LFUCG.

**17. NO THIRD PARTY RIGHTS.** This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Organization or LFUCG.

**18. KENTUCKY LAW AND VENUE.** This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in the Circuit Court of Fayette County, Kentucky.

**19. AMENDMENTS.** By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Organization acknowledges that LFUCG may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

**20. NOTICE.** Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

**For Organization:**

Cushman & Wakefield U.S., Inc.  
201 East 4<sup>th</sup> Street, Suite 1800  
Cincinnati, OH 45202  
Attention: Managing Principal

With a copy to:

Cushman & Wakefield U.S., Inc.  
201 East 4<sup>th</sup> Street, Suite 1800  
Cincinnati, OH 45202  
Attention: David Kelly, Managing Director

With a copy to:

Cushman & Wakefield U.S., Inc.  
1290 Avenue of the Americas  
New York, NY 10104  
Attention: Legal Department

**For Government:**

Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
Attn: Craig Bencz

**21. WAIVER.** The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision.

**22. ENTIRE AGREEMENT.** This Agreement, including all exhibits hereto, shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between the parties on the same subject matter.

**23. DISPUTE RESOLUTION.** Subject to either party's right to terminate this Agreement in accordance with Exhibit "C" hereto, LFUCG and Organization agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. In the absence of such termination, Organization shall continue to perform services for the Project and LFUCG shall pay for such services during the dispute resolution process unless LFUCG issues a written notice to suspend work.

**24. FORCE MAJEURE.** Organization shall not be liable for any damages caused by any delay that is beyond Organization's reasonable control, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

**25. INSURANCE AND LIABILITY.** Organization shall maintain the insurance, coverage limits, and insurance conditions required in Section 8 herein during the period of service. LFUCG will be included as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

**26. STANDARD OF CARE.** Services provided by Organization under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Organization makes no warranty or guaranty, either express or implied. Organization will not be liable for the cost of any omission that adds value to the Project. Organization's standard of care shall not be altered by the application, interpretation or construction of any other provision of this Agreement.

**27. SUSPENSION OF WORK.** LFUCG may suspend services performed by Organization with cause upon thirty (30) days advance written notice. Organization shall submit an invoice for services performed hereunder in accordance with Exhibit C and Exhibit D hereto and LFUCG shall pay Organization all outstanding invoices within thirty (30) days.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

BY: \_\_\_\_\_  
LINDA GORTON, MAYOR

ATTEST:

\_\_\_\_\_  
Clerk of the Urban County Council

CUSHMAN & WAKEFIELD, U.S., INC

BY: \_\_\_\_\_  
(NAME, TITLE)

DATE: \_\_\_\_\_

**EXHIBIT "A"**

LFUCG RFQ No. 51-2022, Legacy Business Park Site Development

**EXHIBIT "B"**

Organization's Response to RFQ



**EXHIBIT "C"**

Listing Agreement For Sale

**EXHIBIT "D"**

Schedule of Commissions For Sale

## **EXHIBIT "E"**

Approach to Development & Marketing