

**Contract for Legal Representation of the Employer/Contracting Authority
before the Cuyahoga County Human Resource Commission**

This Contract is entered by and between the County of Cuyahoga, Ohio, on behalf of the Cuyahoga County Executive (the "County"), and Giffen & Kaminski, LLC ("Giffen & Kaminski" or "Firm"), effective March 1, 2012.

Whereas, Cuyahoga County desires to retain outside legal counsel to represent the County and its appointing authorities in connection with matters before the Human Resource Commission;

Whereas, the County completed a Request for Qualifications (RQ23105) for these services;

Whereas, the law firm of Giffen & Kaminski was selected to provide these services pursuant to the Request for Qualifications; and

Whereas, Giffen & Kaminski is desirous of providing the needed legal services to the County.

NOW, THEREFORE, for valuable consideration the validity and sufficiency of which is hereby acknowledged, the County and Giffen & Kaminski agree as follows:

1. *Services.* Giffen & Kaminski shall, as requested by the Cuyahoga County Department of Law on a case-by-case basis, provide the following services at the following rates:

A. Giffen & Kaminski shall represent Cuyahoga County and its appointing authorities before the Cuyahoga County Human Resource Commission and its hearing officers at the following rates:

- Layoffs and Job Abolishments: \$235.00 flat fee per matter;
- Reclassification and Pay Equity: \$325.00 flat fee per matter;
- Discipline/Terminations: The County will pay Giffen & Kaminski for discipline/termination matters on an hourly basis, with a maximum, not-to-exceed cap on each matter as follows:
 - \$165 per hour for time spent by Kerin Kaminski;
 - \$125 per hour for time spent by any other lawyers; and
 - The maximum, not-to-exceed cap for a discipline/termination matter shall be six thousand dollars (\$6,000.00).

B. The County and Giffen & Kaminski shall meet on March 1, 2012, to go over the legal issues and how the representation will proceed. The County shall pay Giffen & Kaminski for two lawyers' time at the hourly rate of \$165.00 per hour for attending this conference.

C. The County may also request Giffen & Kaminski to represent the County and its appointing authorities in court in connection with any of the matters handled by Giffen & Kaminski before the Human Resource Commission. Should the County determine that it needs such representation and Giffen & Kaminski agrees to undertake it, the flat fee and hourly rates for such representation shall be determined by the Cuyahoga County Director of Law in coordination with Giffen & Kaminski.

2. *Vendor Ethics Training.* Giffen & Kaminski agrees to complete Cuyahoga County's vendor registration requirements and to undergo Cuyahoga County's vendor ethics training, administered by the Cuyahoga County Inspector General, for out-of-state providers as soon as practicable upon execution of this Contract. Information about Cuyahoga County's Vendor Ethics Training is available at the Cuyahoga County Inspector General's web site at <http://inspectorgeneral.cuyahogacounty.us>.

3. *Certifications, Representations, and Warranties.* Giffen & Kaminski certifies, represents, and warrants that:

A. Kerin Lyn Kaminski, the signatory below on behalf of Giffen & Kaminski, is an owner of Giffen & Kaminski, LLC, and has the authority to sign this Contract and to bind Giffen & Kaminski to its terms; and,

B. Each of the practitioners assigned by Giffen & Kaminski under this Contract is fully qualified and carries all required and applicable licenses to practice and provide the services required under this Contract; and,

C. Giffen & Kaminski represents and warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24.

D. Giffen & Kaminski represents and warrants that it has not provided any material assistance, as that term is defined in R.C. § 2909.33(C), to any organization identified by and included on the United States Department of State Terrorist Exclusion list. Giffen & Kaminski further represents and warrants that either (1) it does not meet the monetary threshold under Ohio law to be required to complete and submit a Declaration of Material Assistance ("DMA") form in connection with this Contract; (2) it is not required to submit a DMA form under Ohio law because it is certified with the State of Ohio's Office of Budget and Management and its certification is current and up-

to-date; or (3) it has completed a current DMA form with an answer of "no" to all questions and submitted it to the County in connection with this Contract. It is GIFFEN & KAMINSKI'S RESPONSIBILITY to ensure compliance with the DMA requirements, including monitoring the threshold of its business with the County and filing all required forms with the County as required by law. Information regarding these forms and requirements may be found on the Ohio Homeland Security website at: http://homelandsecurity.ohio.gov/dma/dma_forms.asp.

E. Neither Giffen & Kaminski nor any of its employees or agents are on any state or federal anti-terror or other exclusion lists or involved in any related investigations; and,

F. Neither Giffen & Kaminski nor any of its employees or agents have any interest in this Contract that would constitute a conflict of interest or other violation of Ohio, federal, or local laws and rules; and,

G. Neither Giffen & Kaminski nor any of its employees or agents have any criminal background or record that would bar the individual from performing the individual's obligations under this Agreement.

4. *Federal, State, and Local Laws, Rules, and Regulations.* Giffen & Kaminski agrees to respect and abide by all Federal, State, and Local laws, rules, and regulations--- including, but not limited to, Ohio Supreme Court's Rules of Professional Conduct, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and any other laws, rules, and regulations pertaining to confidentiality and disclosure with regard to all information and records obtained or reviewed in the course of providing services under this Contract.

5. *Agreement to Remain in Compliance with Certifications, Representations, and Warranties as Continuing Commitments/Verification:* Giffen & Kaminski shall ensure that all of its certifications, representations, and warranties under this Contract shall remain true throughout the duration of the Contract as if they are continuing commitments, and it shall immediately notify the Cuyahoga County Law Department in writing in the event that any of the certifications, representations, and warranties ceases to be true. For instance, Giffen & Kaminski shall continuously ensure that all practitioners assigned by it shall maintain all licensing necessary to perform the services under this Contract throughout the duration of this Contract and shall immediately notify the Cuyahoga County Law Department in the event any such license is suspended or terminated.

6. *Fees/Invoicing.* Giffen & Kaminski shall submit a complete monthly invoice to Cuyahoga County for the accrued fees based on the rates established in Section 1 of this Contract on invoice forms approved by Cuyahoga County. Giffen & Kaminski shall only invoice the

County for services actually rendered. The County will pay Giffen & Kaminski for satisfactory services rendered at the rates described and listed in Section 1 of this Contract in accordance with the County's practices. In no event shall any invoice to Cuyahoga County carry any interest or other fees not allowed in Section 1 of this Contract.

7. *Term and Maximum Not to Exceed Value.* This Contract shall commence on March 1, 2012, with a maximum *not-to-exceed* dollar value of one hundred thousand dollars (\$100,000.00). The services under this Contract are on as needed basis, as determined by the Cuyahoga County Law Department, and there is no obligation on the County to procure any minimum amount of services or to expend any minimum dollar amounts.

8. *Liability, Releases, Defense, and Indemnification.* Giffen & Kaminski shall have sole liability for, and shall indemnify, defend, and hold harmless the County against all acts and omissions by it or any of its employees or agents in any way relating to this Contract or arising from the services rendered under this Contract, any workers' compensation claims relating to the practitioners assigned by it, as well as any and all breaches of any of the terms, certifications, representations, warranties, or other covenants under this Contract. Giffen & Kaminski, on behalf of itself, and as applicable, its owners, shareholders, members, directors, officers, employees, agents, representatives, parents, subsidiaries, affiliates, successors, and assigns, including the practitioners assigned by it, hereby releases and shall continue to release and hold Cuyahoga County and its officers and employees harmless from any and all claims, losses, or other liabilities in any way relating to this Contract or arising from the services rendered under this Contract, including, but not limited to, workers' compensation, medical negligence, or malpractice.

9. *Insurance.* Giffen & Kaminski shall provide for insurance of at least one million dollars (\$1,000,000.00) per each occurrence, and no less than two million dollars (\$2,000,000.00) in the aggregate, against all acts and omissions in any way relating to or arising under this Contract. Such insurance shall, at a minimum, include coverage for commercial general liability, automobile liability, workers' compensation and employer liability, and umbrella and excess liability, and Giffen & Kaminski shall name the County as an additional insured on its commercial general liability insurance. Giffen & Kaminski shall also provide for professional liability insurance for the practitioners assigned by it for at least one million dollars (\$1,000,000.00) per occurrence, and no less than three million dollars (\$3,000,000.00) in the aggregate.

10. *Prohibition on Assignment.* Giffen & Kaminski may not assign, directly or indirectly, all or part of its rights or obligations under this Contract without the prior written consent of the County.

11. *Termination:*

(A) *For Cause:* If Giffen & Kaminski or any of the practitioners assigned by it breaches any terms of this Contract or if any of the certifications, representations, and warranties under this Contract turn out not to be true or cease to be true, the County shall have the right to immediately terminate this Contract by giving written notice of termination to Giffen & Kaminski.

(B) *For Convenience:* The County shall have the right to terminate this Contract at any time with thirty (30) days advance written notice to Giffen & Kaminski.

(C) Giffen & Kaminski shall have the right to terminate this Contract at any time with sixty (60) days advance written notice to the County. In the event of such termination, Giffen & Kaminski shall cooperate with the County and take all measures necessary to protect the County's interest in all matters handled by Giffen & Kaminski.

12. *Governing Law and Jurisdiction.* This Contract shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Contract, and each party consents to the exclusive jurisdiction of such courts. Giffen & Kaminski hereby agrees not to challenge any provision in this contract, including this Governing Law and Jurisdiction provision, and not to attempt to remove any legal action outside of Cuyahoga County for any reason.

13. *No Indemnification by County.* Giffen & Kaminski acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of this Contract or any other contract or agreement between Giffen & Kaminski and the County may be interpreted to obligate the County to indemnify or defend Giffen & Kaminski or any other party.

14. *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, return 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:

To the County:	Attn: Cuyahoga County Director of Law Cuyahoga County Department of Law 1219 Ontario Street, 4 th Floor Cleveland, Ohio 44113
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To Giffen & Kaminski:	Attn: Kerin Kaminski, Esq. Giffen & Kaminski, LLC
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1300 East Ninth Street, Suite 1600
Cleveland, OH 44114

15. *Entire Agreement.* This Contract constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Contract shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.

16. *No Apparent Authority/Proper Approvals.* Giffen & Kaminski recognizes and agrees that no public official or employee of Cuyahoga County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures Ordinance.

17. *Parties Bound and Benefited.* This Contract shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.

18. *Non-Waiver.* The County's failure to require performance of any provision of this Contract, or if it requires performance and does not follow through, shall not affect the County's right to require performance at any time thereafter. Additionally, the County's waiver of any breach or default of this Contract shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.

19. *Contract Interpretation and Construction.* In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the provisions of this Contract.

20. *Counterparts and Facsimile/Electronic Execution.* This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission, including email, shall be as effective as delivery of a manually executed original counterpart of each such instrument.

21. *Severability.* If any provision of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such provision and the remainder of this Contract shall be and remain valid and binding as though such provision was not included herein.

22. *Applicable County Ordinances.* All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

23. *Public Records.* All parties hereto acknowledge that County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

IN WITNESS WHEREOF, the parties have hereunto set their hands by their duly authorized respective officer(s), and affixed the seals of said parties:

GIFFEN & KAMINSKI, NA:

COUNTY OF CUYAHOGA, OHIO

By: 

By: 

Print Name: Kerin Lyn Kaminski, Esq.

Print Name: Edward FitzGerald

Its: 

Its: County Executive

Date: June 19, 2012

Date: 6-19-2012