

Professional Services Contract

THIS CONTRACT (the "Contract") is made this 15th day of October 2012 (the "Effective Date"), by and between **CUYAHOGA COUNTY** (the "County"), on behalf of the Cuyahoga County Prosecutor (the "Prosecutor") and The Justice Management Institute (the "Consultant").

RECITALS

WHEREAS, the County has previously issued Request for Proposals # PR-12-24761 (the "RFP") for an organizational efficiency study of the County Prosecutor's Office (the "CCPO"); and

WHEREAS, Consultant responded to the RFP by its proposal dated August 29, 2012, a copy of which is attached hereto as Exhibit A (the "Proposal"), and was found by the Prosecutor to be qualified to perform the Project.

ARTICLE 1.

TERM and PERFORMANCE

- 1.1 Term.** The term of this Contract (the "Term") shall commence on the Effective Date and end on December 14, 2012 (the "Completion Date"); the Completion Date may be extended as set forth herein ("Term" includes any extension of the Completion Date under this Contract). In the event Consultant is, for any reason, unable to start the work described herein on the Effective Date, then the Consultant shall immediately notify the Project Manager (defined below). The Term is subject to prior termination in accordance with Section 1.2 and Article 5, below.
- 1.2 Satisfactory Performance of Duties.** Notwithstanding any other provision of this Contract, this Contract shall continue only for such time as the services rendered by Consultant are satisfactory to the Prosecutor, in his sole discretion.

End of Article 1

ARTICLE 2.

SCOPE of WORK

- 2.1 Generally.** Consultant acknowledges that the project shall consist of an assessment of the operations of the CCPO and recommendations for improving operational efficiencies within the CCPO (the "Project").
- 2.1.1** Upon commencement of the Project, the Prosecutor shall designate a project manager to serve as the primary point of contact between the Consultant and the CCPO (the "Project Manager").

- 2.1.2 Consultant's staff shall be as identified in the Proposal unless otherwise approved, in writing, by the Project Manager.
- 2.1.3 The Project shall be performed in accordance with this Contract, the RFP, and the Proposal. In the event of a conflict between the RFP and the Proposal, the RFP shall control; in the event of a conflict between the Contract and the RFP, the Contract shall control.

2.2 Scope of Work. Consultant shall:

- 2.2.1 Identify the key indicators and targets for assessing whether work is done efficiently and effectively;
- 2.2.2 Identify the key processes/work flows in the office;
- 2.2.3 Using the key indicators identified, assess the processes/work flows;
- 2.2.4 Make recommendations to improve any processes/work flows;
- 2.2.5 Identify any inconsistencies that may exist between the identified targets and actual work performed;
- 2.2.6 Assess the office's organizational structure, roles, and skills related to achieving identified targets;
- 2.2.7 Make recommendations regarding the alleviation of any inconsistencies and the office's organizational structure related to achieving identified targets.

2.3 Deliverables. Consultant shall:

- 2.3.1 Work with a project manager assigned by the Prosecutor (the "Project Manager") to finalize the consultant's work plan for conducting the Study; any revisions to the work plan must be approved by the Project Manager.
- 2.3.2 Conduct interviews with appropriate CCPO staff, as identified by the Project Manager and the consultant.
- 2.3.3 Meet with the Project Manager bi-weekly to update the Project Manager on the consultant's progress during the previous period.
- 2.3.4 Provide the Project Manager a draft Study not less than 15 days prior to the Project Completion Date; all materials to be incorporated into the final Study shall first be reviewed with an approved by the Project Manager.
- 2.3.5 Provide the Study in final form, both electronic and printed copies, to the CCPO no later than the Project Completion Date, unless such date is extended, in writing, by the Project Manager.

- 2.4 Access to Information.** The Project Manager shall provide Consultant with any and all information Consultant reasonably determines necessary to perform the Project.
- 2.5 Times of Performance.** To the extent that the performance of this Contract requires Consultant to be at the County's designated office, Consultant shall have access to same on any Business Day (as defined below). All other Project services required to be performed may be performed at such times determined to be appropriate by Consultant. Consultant shall devote the required time, ability, and attention to the duties set forth herein in order to complete the Project pursuant to the terms of this Contract. For purposes of the Contract, "Business Day" means between the hours of 8:30 a.m. and 4:30 p.m. on any day the County's offices are not authorized or required to be closed for business; any reference herein to "day" or "days" rather than "Business Day" shall mean a calendar day.
- 2.6 Subcontracting.** No portion of the Project may be subcontracted by Consultant absent the written consent of the Prosecutor.
- 2.7 Work Space.** The Project Manager shall provide work space within the CCPO as deemed reasonably necessary by the Consultant and Project Manager.

End of Article 2

ARTICLE 3.

COMPENSATION and INVOICING

- 3.1 Compensation.** In consideration of Consultant performing the Project as set forth herein, Consultant shall receive compensation under this Contract in accordance with this Article 3 and the pricing schedule attached hereto as Exhibit B (the "Pricing Schedule"); such compensation shall not to exceed \$130,000.00, including expenses as set forth on the Pricing Schedule (the "Compensation").
- 3.2 Rate of Compensation.** During the Term, the County shall pay Consultant the Compensation in the following three installments, as more fully described in the Proposal:
- a. Acceptance of preliminary workflow targets and key indicators: \$41,703.00;
 - b. Acceptance of preliminary recommendations: \$61,906.00;
 - c. Acceptance of final report: \$26,384.00.
- The parties acknowledge, understand, and agree that the Project Manager, acting in his sole, reasonable discretion, shall determine whether each item a. through c., above, is acceptable.
- 3.3 Invoicing.** Consultant shall invoice the County on a form agreed to by the parties (an "Invoice"), for Project services performed during the period shown on such invoice. County agrees to notify Consultant within 10 Business Days of receipt of an Invoice in the event the Project Manager determines additional information is

required to approve an Invoice. Consultant agrees to provide the County such additional information as the County may reasonably request to justify the hours and charges shown on an Invoice for the purposes of approving same. The County reserves the right to reject any Invoice in the event such requested information is not provided.

- 3.4 Payment.** The County shall endeavor to pay any approved Invoice within 20 days of its approval.
- 3.5 Force Majeure.** In the event that the Project cannot be completed by the Completion Date due to a *Force Majeure Event*, as defined below, the Term shall be extended by the parties provided that: (a) Consultant notified the Project Manager of such *Force Majeure Event* within five (5) Business Days of the occurrence of same; and (b) the Fiscal Officer concurs in the validity of such *Force Majeure Event* and the effect thereof on completion of the Project. For purposes of this Contract, "Force Majeure Event" shall mean the occurrence of any of the following: acts of God; the confiscation or seizure by any Government Authority; insurrections; wars or war-like action (whether actual or threatened); national strikes; landslides, lightning, earthquakes, fires, hurricanes, storms, floods or other severe weather; explosions; civil disturbance or disobedience; riot, sabotage, terrorism or threats of sabotage or terrorism; change in law that prohibits or materially interferes with the Project; or other cause that is not within the reasonable control of the Consultant. Notwithstanding the foregoing, "Force Majeure Event" shall not include Consultant's inability to pay debts or other monetary obligations in a timely manner.

End of Article 3

ARTICLE 4.

ADDITIONAL REPRESENTATIONS and COVENANTS of CONSULTANT

- 4.1 Status of Consultant.** The relationship of Consultant to the County shall be that of an independent contractor. No principal-agent or employer-employee relationship is created by this Contract. Consultant will be solely responsible for reporting, withholding and/or paying all employment related taxes, payments and/or withholdings, including, but not limited to federal, state, and local income taxes, social security, Medicare, unemployment or disability insurance and Worker's Compensation Insurance.
- 4.2 Engaging in Other Employment and Contracts.** During the Term, Consultant shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity, engage or participate in any business that is conflicting with the business of the County. During the Term, Consultant shall not, directly or indirectly, solicit for employment or employ any employee of the County for any

reason, whether the employee is employed on the date of this Contract or at any time during the Term.

- 4.3 Prior Agreements.** Consultant represents that it has disclosed to the Project Manager any employment agreements and/or any other agreements, which impose any restrictions on Consultant. Consultant represents that it is under no obligation which in any manner may prohibit and/or restrict its authority to sign this Contract and/or to perform the Project.

4.4 Confidential Information.

4.4.1 County Information. Consultant shall not, during the Term, directly or indirectly, use, disseminate, or disclose to any person, firm, or other business entity for any purpose whatsoever, any information related to the County's process or systems not generally known in the industry which was disclosed to or acquired by Consultant as a consequence of or through the performance of this Contract; including, without limitation, information regarding the County systems, data base, processes, and related matters, and also includes information relating to research, development, procedures and manuals.

4.4.2 Third-Party Information. Consultant represents that he/she has not disclosed and will not disclose any confidential and proprietary information belonging to a third party, without first obtaining the written consent from such third party and the Project Manager.

- 4.5 Ownership of Data.** Consultant shall hold in a fiduciary capacity for the benefit of the County all information obtained by Consultant in performance of the Project which may be directly or indirectly related to the business of the County.

4.5.1 All data collected in conjunction with the Project shall remain the property of the County and no use or copying of such data shall be made except in connection with this Contract without the written permission of the Fiscal Officer.

4.5.2 To protect the interests of the County, Consultant agrees that during or after the termination of this Contract, all documents, records, notebooks, computer files, and similar repositories containing such information, including copies of such items then in Consultant's possession or work area, whether prepared by the County or others, are the property of the County and shall be returned to the County upon acceptance by the County of the final report and payment of the final invoice. All files, records, documents, drawings, specifications, equipment, and similar items relating to the business of the County, whether prepared by Consultant or otherwise coming into his/her possession, shall remain the exclusive property of the County and shall not be removed from the

County office under any circumstances without the prior written consent of the Project Manager.

4.5.3 Consultant shall not at any time use any information, data, computers, computer generated data or any other form of information which it may have access to as a result of this contract for the purpose other than the performance of this Contract.

4.6 **Insurance.** Consultant shall provide evidence of automobile liability insurance with the County named as a co-insured or additional insured at the following levels:

Bodily Injury	\$250,000.00 per person, \$500,000.00 per accident
Property Damage	\$50,000.00 per accident, \$100,000.00 aggregate
Comprehensive	\$250,000.00 per person, \$500,000.00 per accident.

Consultant shall provide proof of such insurance upon execution of this Contract. Consultant shall provide an exact copy of such insurance policy or policies upon request of the Project Manager.

4.7 **Indemnification.** Consultant shall indemnify, defend and hold harmless the County from and against any and all losses, in contract or in tort, arising, directly or indirectly, from, out of or in connection with: (a) any material breach of any representation or any warranty made by Consultant in this Contract or in any other certificate or document delivered by Consultant pursuant to this Contract; (b) the negligence of Consultant or any other person performing services in connection with the Project on behalf of Consultant; and (c) any breach by Consultant of any covenant or obligation of Consultant under this Contract.

End of Article 4

ARTICLE 5.

TERMINATION

5.1 **Termination for Cause.** If Consultant willfully breaches or habitually neglects the duties required to be performed under this Contract, the Prosecutor, in his sole discretion, may immediately terminate this Contract by giving written notice of termination to Consultant without prejudice as to any other remedy to which the County may be entitled either at law, in equity, or under this Contract. Contractor shall be liable to the County for any excess cost and/or expenses incurred by the County due to termination under this Section 5.1.

5.2 **Termination for Convenience.** Either party, by thirty (30) days written notice to the other, may terminate this Contract at any time for any reason.

5.3 **Effect of Termination on Compensation.** In the event this Contract is terminated in accordance with this Article 5, Consultant shall be entitled to compensation earned for completion of any portion of the Project prior to the date

of termination in accordance with Article 3. In such event, Consultant shall be entitled to no further compensation.

End of Article 5

ARTICLE 6.

GENERAL PROVISIONS

6.1 Public Comment. Consultant acknowledges that he/she has been expressly advised and agrees that the Prosecutor or the Project Manager is the official spokesperson for the County before the public and news media, and therefore any invitations to comment publicly regarding any matter which pertains to the Project of other business of the County shall be declined and referred to the Project Manager.

6.2 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, returned 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; either party may designate a different address upon written notice to the other party in accordance with this Section 6.2.

To County: Cuyahoga County Prosecutor
Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113
Attn: Richard Bell

To Consultant: The Justice Management Institute
8120 Sheridan Blvd, Suite C-109
Westminster, Colorado 80003
Attn: M. Elaine Borakove

6.3. Severability. If any section, provision in this Contract or any portion thereof shall be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other section, provision or portion thereof. To the extent an interpretation of a section, provision or a portion thereof can be made which will make it valid or enforceable, the Parties agree that the interpretation making it valid or enforceable should be chosen.

6.4. Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof shall be valid

unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

- 6.5. **Survival of Terms.** Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.
- 6.6. **Counterparts.** This Contract may be signed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.
- 6.7. **Headings and Interpretation.** The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.
- 6.8. **Incorporation by Reference.** All Exhibits or other attachments referenced in this Contract are hereby incorporated into this Contract by such reference and shall be considered a part of this Contract as if fully rewritten or set forth herein.
- 6.9. **Personal Property Taxes.** The County of Cuyahoga shall not assume responsibility for the payment of any personal property taxes for any materials not owned by the County of Cuyahoga, nor shall the County of Cuyahoga pay any insurance premiums for any coverage of any property not owned by the County of Cuyahoga, Ohio. No conditions shall alter this statement.
- 6.10. **Tax Exempt Status.** The County of Cuyahoga is a tax exempt No. 29 political subdivision of the State of Ohio [REDACTED] Necessary tax exemption blanks will be furnished to Contractor when the Contract is signed.
- 6.11. **Social Security Act.** Contractor shall be and remain an independent contractor with respect to all Services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by Contractor for work performed under the terms of this Contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and Contractor also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.
- 6.12. **Labor and Material.** Contractor shall well, truly and promptly pay or satisfy the just and equitable claims of all persons who have performed labor or furnished materials or equipment for Contractor in the execution of this Contract, and all bills, costs or claims of whatever kind which might in law or equity become a lien upon said work.

- 6.13. **Assignment.** Contractor shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract, except to a related entity or successor in interest who acquires all or substantially all of Contractor's assets, without approval of the County; provided, however, that Contractor may subcontract any work or obligations to be performed by it pursuant to this Contract as provided for herein.
- 6.14. **Required Contract Documents.** Contractor shall provide the following documents within five (5) days of the Effective Date, and failure to do so may constitute an event of default for purposes of Article V.
- 6.14.1. **Signature Authorization.** Contractor shall provide a notarized certificate of power of attorney authorizing the individual's signature to bind the corporation or a notarized certificate of corporate resolution authorizing the signature of the document.
- 6.14.2. **Worker's Compensation Certificate.** Upon request by the County, Contractor shall provide a Certificate of Premium Payment for State Worker's Compensation Insurance, or equivalent Worker's Compensation Insurance in lieu thereof, for the state of Ohio. This document shall be current for the period beginning on the Effective Date and continuing through the date of such request.
- 6.15. **Certification of Personal Property Tax.** By execution hereof, Contractor certifies that it is in compliance with the person property tax laws and regulations of the state of Ohio including, without limitation, as same may apply to Contractor contracting with political subdivisions of the state of Ohio.
- 6.16. **Contract Processing.** Contractor shall submit 1 digital and four original Contracts with original signatures, and with the documents specified in Sections 4.2 and 6.19 to the County's notice address as set forth in Section 6.3.
- 6.17. **Background Check/Drug Testing.** The County may require Consultant to undergo a criminal background check, including fingerprinting, and drug testing.
- 6.18. **Amendments.** This Contract may not be amended or supplemented except by a writing executed by the County and the Consultant.
- 6.19. **Laws Governing Contract/Forum.**
- 6.19.1 This Contract shall be governed by and construed in accordance with the laws of the State of Ohio.
- 6.19.2 This Contract is subject to all applicable County ordinances, including, but not limited to: i) the Cuyahoga County Ethics Ordinance, ii) the Cuyahoga County Inspector General Ordinance, and iii) the Cuyahoga County Board of Control, Contracting and Purchasing Ordinance (the "County

Ordinances"). Contractor shall comply with all County Ordinances as an integral part of this Contract. Copies of all County Ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.


- 6.19.3** Any suit, action, or proceeding brought under this Contract shall be in a state or federal court of competent jurisdiction located in Cleveland, Ohio, and the Parties agree to the exclusive jurisdiction and venue of such court to resolve same.
- 6.20 Attorneys' Fees and Costs.** If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, each party shall pay their own attorneys' fees and costs.
- 6.21 Expense Reimbursement.** Consultant shall be reimbursed for only those expenses set forth on the Pricing Schedule.
- 6.22 Entire Agreement.** This Contract supersedes all other oral and written agreements between the parties and this Contract contains all of the covenants and agreements between the parties.
- 6.23 Language.** The language used in this Contract shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party. This Contract has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Contract shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Contract.
- 6.24 Electronic Signature.** The Parties agree to conduct this transaction by electronic means and agree that all documents requiring signatures by the County may be executed by electronic means, and that the electronic signatures affixed by the County to this Contract shall have the same legal effect as if that signature was manually affixed to a paper version of this Contract. The Parties also agree, to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

End of Article 6

{Balance of page intentionally left blank; signature page follows.}

IN WITNESS WHEREOF, the Parties have each caused their duly authorized representatives to execute this Contract as of the date set forth below.

CUYAHOGA COUNTY, OHIO



2012-10-17 09:54:11

Edward FitzGerald, County Executive

Date: _____

Timothy J. McGinty,
Acting County Prosecuting Attorney

Date: _____

THE JUSTICE MANAGEMENT INSTITUTE


By: M. Elaine Borekove, President

Date: 10/2/2012

The legal form and correctness of the
within document is hereby approved.
Bill Mason, Cuyahoga County Prosecuting Attorney

By: 
Gregory G. Muth, Assistant Prosecuting Attorney

Date: 10/3/12

Exhibit A

JMI Proposal

Exhibit B

Pricing Schedule