

Professional Services Contract

THIS CONTRACT (the "Contract") is made this 1st day of March, 2014 (the "Effective Date"), by and between **County of Cuyahoga, Ohio** (the "County"), on behalf of the Cuyahoga County Division of Children and Family Services ("DCFS") and MCS Consulting Service, LLC, with the principle place of business at 28800 Jackson Road, Chagrin Falls, Ohio 4022 ("the Consultant"), through its duly authorized agent.

RECITALS

WHEREAS, the County has previously issued Request for Proposals #26901, dated 8/13/2013 (the "RFP") for an assessment of the division's clerical and support staff; and

WHEREAS, Consultant responded to the RFP by its proposal dated September 23, 2013 (the "Proposal"), and was found by DCFS to be qualified to perform the Project; and

WHEREAS, the County finds the Proposal acceptable and desires to hire Consultant to furnish such services under the terms, conditions and provisions contained in this Contract.

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE 1.

TERM and PERFORMANCE

- 1.1 Term.** The term of this Contract (the "Term") shall commence on the Effective Date and shall continue for a term not to exceed 150 days (the "Completion Date"); the Completion Date may be extended as set forth herein ("Term" includes any extension of the Completion Date under this Contract). 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 Director of DCFS ("Director"), in his/her sole discretion.

End of Article 1

ARTICLE 2.

SCOPE of WORK

- 2.1 Generally.** Consultant acknowledges that the project shall consist of an analysis of the current allocation of staff in supportive clerical positions throughout the

DCFS and a determination regarding whether the number and deployment of the staff in these positions meets the needs of the agency (the "Project"), as further described in the Proposal, attached hereto as Exhibit A and incorporated by reference.

2.1.1 Upon commencement of the Project, the Director shall designate a project manager to serve as the primary point of contact between the Consultant and DCFS (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 this Contract and the RFP, this Contract shall control.

2.2 Scope of Work. Consultant shall:

2.2.1 make recommendations regarding the possible re-allocation of certain staff and a clerical/support staff structure and distribution that includes specific job responsibilities for each position and updates to job descriptions as needed;

2.2.2 make recommendations regarding how the current DCFS clerical/support staff can be better utilized to support the work that is done at DCFS on a daily basis and increasing or decreasing clerical/support staffing levels to meet better the needs of DCFS;

2.2.3 determine the most important tasks that those in the current clerical/support staff positions are responsible for, as well as the most time-consuming aspects of those positions, and recommend which, if any, of the current clerical/support staff daily tasks can be eliminated or absorbed by others;

2.2.4 determine if the daily routines of the current clerical/support staff align with the mission of DCFS;

2.2.5 create processes to: a) prevent duplication across functional areas, b) eliminate gaps in functional expectations and performance, and c) ensure optimal operation within DCFS;

2.2.6 determine training needs of current clerical/support staff, as well as new hires, to ensure that they have the skills necessary to meet the expectations outlined in their job descriptions.

2.3 Deliverables. In addition to the Scope of Work set forth above, Consultant shall (without limitation):

- 2.3.1 implement a set of structured activities designed to collect all necessary data to support a thorough assessment;
- 2.3.2 present a comprehensive written gap analysis comparing existing clerical/support with DCFS's clerical/support needs, including:
- (a) a summary of clerical tasks necessary to support organizational functioning,
 - (b) a summary of any identified inefficiencies,
 - (c) an evaluation of alignment between current clerical functions and expected functions according to current clerical position descriptions, and
 - (d) an assessment of clerical staff skills in comparison to organizational needs;
- 2.3.3 present a comprehensive written set of recommendations to align clerical supports with organizational priorities including, as appropriate:
- (a) redeployment of existing and/or hiring of additional clerical staff,
 - (b) staff training,
 - (c) strategies to eliminate inefficiencies and/or implement improvements in other areas.
- 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 **Work Space.** The Project Manager shall provide work space within DCFS's offices as deemed reasonably necessary by the Consultant and Project Manager.
- 2.7 **Subconsultants.** The Consultant shall use the following Subconsultants to perform the Scope of Work under this Contract:

1. Elsie Day

2. Margaret Latch

3. Tracey's Transcription Service

4. James Prunty

Consultant agrees that subcontracting shall not relieve Consultant of any of its obligations under this Contract.

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 \$59,706.46, including expenses as set forth on the Pricing Schedule (the "Compensation").
- 3.2 **Invoicing.** Consultant shall invoice the County on a monthly basis 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.
- 3.3 **Payment.** The County shall endeavor to pay any approved Invoice within 30 days of its approval.
- 3.4 **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 Consultant. 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, 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 Information or proprietary information belonging to a third party, without first obtaining the written consent from such third party and the Project Manager. For purposes of this Contract, "Confidential Information" means information belonging to or in the possession or control of a party which is of a confidential,

proprietary or trade secret nature that is furnished or disclosed to the other party under this Contract or during the scope of performance thereunder: (i) in tangible form and marked or designated in writing in a manner to indicate its confidential, proprietary or trade secret nature, or (ii) in intangible form and subsequently identified as confidential, proprietary or trade secret in a writing provided to the receiving party within thirty (30) business days after disclosure. Confidential Information also includes information which is considered privileged under Ohio or Federal law.

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.

4.6.1 Mandatory Requirements. Consultant shall procure, maintain and pay premiums for the insurance coverage and limits of liability outlined below with respect to products, services, work and/or operations performed in connection with this Contract:

- a. **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation

(BWC).

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

- b. **Commercial General Liability Insurance** with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

- c. **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

Alternatively, the Consultant /Subconsultant may provide Personal Automobile Liability Insurance when the Consultant /Subconsultant meets all the following criteria: (1) is a small business owner or consultant; (2) does not have employees; and (3) does not have commercial vehicles. Such insurance shall provide a limit of not less than \$250,000 per person and \$500,000 combined single limit (bodily injury & property damage) each accident.

Where the services under said contract require the Consultant /Subconsultant to use a vehicle, and the Consultant /Subconsultant submits proof of a Personal Automobile Policy, said policy: (1) shall NOT exclude or limit coverage for bodily injury and property damage arising out of business use; (2) shall specifically state that coverage is applicable for said business use; and (3) a copy of said policy shall be provided for verification.

- d. **Errors & Omissions Liability Insurance** providing coverage for claims arising out of the provision of design, architectural, engineering and/or other professional services with a limit of liability not less than:

\$1,000,000 per claim;
\$1,000,000 aggregate.

Such insurance may be written on either an occurrence or claims-made basis. However, if written on a claims-made basis, the claims-made retroactive date on the policy shall be prior to the commencement of any design, architectural, engineering or other professional activity related to this Contract.

4.6.2 Insurance Coverage Terms and Conditions

- a. The insurance policies of the Consultant required under Section 4.6.1 with the exception of the Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio" as an Additional Insured and shall contain the following provisions:
 - i. Thirty (30) days prior notice of cancellation or material change;
 - ii. A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.

In the event the insurance carrier cannot provide the required notice of cancellation, the Consultant shall provide to the County written notice of cancellation within five (5) days after the receipt of notice from the insurance provider.

- b. The insurance required in Section 4.6.1 shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.
- c. These insurance provisions shall not affect or limit the liability of the Consultant stated elsewhere in this Contract or as provided by law.
- d.
- e. The Consultant shall furnish a Worker's Compensation Certificate, as required by the State of Ohio, and a Certificate of Insurance evidencing the insurance coverages required herein are in full force and effect. Acceptance of a non-conforming certificate of insurance by the County shall not constitute a waiver of any rights of the parties under this Contract.

4.6.3 Insurance requirements for Subconsultants.

- a. The Consultant shall require the following Subconsultants to procure, maintain, and pay premiums for the insurance coverages and limits of liability referenced above in Sections 4.6.1 (a), (b), and (c) with respect to the services, work and/or operations performed in connection with this Contract: 1) Elsie Day; and 2) Margaret Latch.

- b. The following Subconsultants are exempt from all insurance requirements under this Contract: 1) Tracey's Transcription Service; and 2) James Prunty (together "Exempt Subconsultants"). Consultant shall be and remain solely responsible to the County for the negligent or intentional acts or faults of the Exempt Subconsultants and of such subconsultant's officers, agents and employees, each of whom shall for this purpose, be deemed to be an agent or employee of Consultant to the extent of its subcontract.

- 4.7 Indemnification. Consultant hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions of Consultant, including all of its officers, owners, principals, subconsultants, employees, and agents, or (b) breach or default by Consultant under any terms or provisions of this Contract.

Consultant acknowledges that, as an political subdivision of the State of Ohio, the County does not indemnify any person or entity. Consultant agrees that no provision of this Contract or any other contract or agreement between Consultant and the County may be interpreted to obligate the County to indemnify or defend Consultant or any other party.

End of Article 4

ARTICLE 5.

TERMINATION

- 5.1 Termination for Cause. If Consultant breaches its duty under this Contract, the Director, in his/her 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. Consultant 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 Director 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 or 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 Division of
Children and Family Services
3955 Euclid Avenue
Cleveland, Ohio 44115
Attn: _____

With a copy to: Administrative Services Deputy Director

To Consultant: MCS Consulting Service, LLC
28800 Jackson Rd.
Chagrin Falls, Ohio 44022
Attn: Marlene Stoiber Burroughs

With a copy to: Marlene Stoiber Burroughs

- 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 Consultant when the Contract is signed.
- 6.11. **Social Security Act.** Consultant 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 Consultant 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 Consultant also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

- 6.12. **Labor and Material.** Consultant 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 Consultant 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.** Consultant 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 Consultant's assets, without approval of the County; provided, however, that Consultant may subcontract any work or obligations to be performed by it pursuant to this Contract as provided for herein.
- 6.14. **Required Contract Documents.** Consultant 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.** Consultant 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.
- 6.15. **Certification of Personal Property Tax.** By execution hereof, Consultant 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 Consultant contracting with political subdivisions of the state of Ohio.
- 6.16. **Background Check/Drug Testing.** The County may require Consultant to undergo a criminal background check, including fingerprinting, and drug testing.
- 6.17. **Amendments.** This Contract may not be amended or supplemented except by a writing executed by the County and the Consultant.
- 6.18. **Laws Governing Contract/Forum.**
- 6.18.1 This Contract shall be governed by and construed in accordance with the laws of the State of Ohio.
- 6.18.2 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"). Consultant 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/>.

- 6.18.3 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.
- 6.19 **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.
- 6.20 **Expense Reimbursement.** Consultant shall be reimbursed for only those expenses set forth on the Pricing Schedule.
- 6.21 **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.
- 6.22 **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

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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

Edward Fitzgerald, County Executive

Ed Fitzgerald
2014-03-19 14:27:34
Edward Fitzgerald, County Executive

Date: _____

MCS Consulting Service

Date: 1-27-2014

By: Marlene O. Stoebe
Title: President

Approved as to legal form and correctness
Majeed G. Makhlouf, Director
Cuyahoga County Department of Law

SARAH D CAMMOCK, ASSISTANT LAW DIRECTOR

By: Sarah D Cammock
2014-03-18 15:48:10
Assistant Director of Law

Date: _____