



454 South Anderson Road
Rock Hill, South Carolina 29730
Phone: 803-366-2400 Fax: 803-366-1082
archer@comporium.net

Fax

To: Ms. Rebecca Kopcienaki

**From: Earnest R. Archer, President
The Archer Company, LLC**

Date: June 18, 2012

Subject: Professional Services Contract for



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Number of pages: (including fax cover): 11

Please let us know if you need additional information.

Phone: 803-366-2400
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email: archere@comporium.net

Professional Services Contract

THIS CONTRACT (the "Contract") is made this ~~18th~~ ^{16th} day of ~~DOE~~ ^{July} 2012 (the "Effective Date"), by and between the CUYAHOGA COUNTY HUMAN RESOURCE COMMISSION (the "Commission") and THE ARCHER COMPANY (the "Consultant").

RECITALS

WHEREAS, the Commission requires the services of a human resources consultant to conduct a salary survey of the Cuyahoga County Prosecuting Attorney's (the "Prosecutor") legal staff, and to make recommendations regarding the pay structure and classification structure of the legal and non-legal staff of the Prosecutor's office and the classification structure of the non-legal staff of the Cuyahoga County Public Defender's Office (the "Project"); and

WHEREAS, Consultant submitted a proposal to perform the Project to the Commission, a copy of which is attached hereto as Exhibit A (the "Proposal"); and

WHEREAS, Consultant was found by the Commission to be qualified to perform the Project and the Proposal has been accepted by the Commission.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Commission and Consultant hereby agree as follows

ARTICLE 1.**AGREEMENT, TERM, PERFORMANCE**

1.1. Agreement. By execution of this Contract, the Commission agrees to purchase from Consultant and Consultant agrees to provide to the Commission those services described in the Proposal, in accordance with the terms of this Contract. In the event of a conflict between any provision of this Contract and any provision in the Proposal, the terms and conditions of this Contract shall control.

Term. The term of this Contract (the "Term") shall commence on the Effective Date and end on December 31, 2012 (the "Completion Date"), although the Consultant will submit a draft report and recommendations of the salary survey for Attorneys in the Prosecutor's office and the non-legal classification plan for the Prosecuting Attorney's Office no later than October 15, 2012, and the Expiration Date may be extended as set forth herein ("Term" includes any extension of the Expiration 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 Commission or the Commission's designee (the "Project Manager"). The Term is subject to prior termination in accordance with Section 1.2 and Article 5, below.

1.1. 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 Commission, in its sole discretion.

End of Article 1ARTICLE 2.SCOPE of WORK

2.1 Generally. ~~Consultant acknowledges that the Project is intended to~~ conduct a salary survey of the Prosecutor's legal staff, and to make recommendations regarding an update of the pay structure and classification structure of the Prosecutor's legal and non-legal staff, and recommendations regarding the classification structure of the non-legal staff of the Cuyahoga County Public Defender's Office.

2.2 Scope of Work. Consultant shall perform the Project in accordance with Section II of the Proposal, Study Methodology.

2.3 Deliverables. Upon completion of the Project, and on or before the Completion Date, Consultant shall provide the following:

2.3.1 a salary survey report of the legal staff of the Prosecutor's office;

2.3.2 a recommended salary schedule for the legal staff of the Prosecutor's office;

2.3.3 a recommended classification plan for the non-legal staff of the Prosecutor's office;

2.3.4 recommendations for classification specifications for the non-legal staffs of the Prosecutor's office and the Cuyahoga County Public Defender's Office; and

2.3.5 unique job descriptions for the non-legal positions of the Prosecutor's office and the Cuyahoga County Public Defender's Office.

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 Project Manager.

2.7 Work Space. At the commencement of this Contract, Consultant shall have the option to utilize furnished work and office space at a location designated by the Commission. Consultant shall also be permitted to work from his home office.

End of Article 2

ARTICLE 3.

COMPENSATION & RETAINAGE

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 in an amount not to exceed \$21,000.00 (the "Compensation"). The Compensation is inclusive of all services described in the Proposal, including travel and out-of-pocket expenses.

3.2 Rate of Compensation. During the Term, the Commission shall pay Consultant based on actual time devoted to the Project at the rate of \$125.00/hour; provided that 20% of the Compensation shall be withheld by the Commission until such time as the deliverables described in Section 2.3 have been accepted by the Commission, in its sole discretion.

3.3 Invoicing. Consultant shall invoice the County every 30 days on the form attached hereto as Exhibit B (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 Fiscal Officer or 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 30 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 REPRESENTATION 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 Prior Agreements. Consultant represents that he has disclosed to the Project Manager any employment agreements and/or any other agreements which impose any restrictions on Consultant in performance of the Project. Consultant represents that he is under no obligation which in any manner may prohibit and/or restrict his authority to sign this Contract and/or to perform the Project.

4.3 Confidential Information.

4.3.1 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.

4.3.2 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 the third party and the Project Manager.

4.4 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.

4.4.1 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 Program Manager.

4.4.2 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. 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 Program Manager.

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

4.5 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 Commission, in its 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.

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 Option to Terminate if Consultant Permanently Disabled. If Consultant becomes temporarily or permanently disabled such that, in the Commission's

reasonable discretion, Consultant will be unable to complete the Project by the Completion Date, the Commission may terminate this Contract by giving written notice of termination to Consultant.

5.4 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 Commission or, if so designated by the Commission, the Project Manager is the official spokesperson for the Commission before the public and news media. Therefore, any invitations to comment publicly regarding any matter which pertains to the Project or other business of the Commission 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 the Commission: Cuyahoga County Human Resource Commission
323 Lakeside Avenue, Suite 400
Cleveland, Ohio 44113

Copy to: Cuyahoga County Prosecutor's Office
1200 Ontario Street
Justice Center, 8th Floor
Cleveland, Ohio 44113
Attn: Chief, Civil Division

To Consultant: The Archer Company, LLC
7652 Sawmill Road, Suite 295
Dublin, Ohio 43016
Attn: Jim Battigaglia, Regional Director

6.3 Background Check/Drug Testing. The County may require Consultant to undergo a criminal background check, including fingerprinting, and drug testing.

6.4 Amendments. This Contract may not be amended or supplemented except by a writing executed by the County and the Consultant.

6.5 Laws Governing Contract/Forum.

6.5.1 This Contract shall be governed by and construed in accordance with the laws of the State of Ohio.

6.5.2 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/>.

6.5.3 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.

6.6 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.

6.7 Expense Reimbursement. There are no expenses for which Consultant will be reimbursed.

6.8 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.

6.9 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 this 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.

Edward FitzGerald, County Executive

CUYAHOGA COUNTY

2012-07-20 09:17:12

Date: _____

By: Edward FitzGerald, County Executive

CUYAHOGA COUNTY HUMAN RESOURCE COMMISSION

Robert M. Wolff

Date: 6-6-12

By: Robert M. Wolff, Chairman

THE ARCHER COMPANY, LLC.

Jim Battigaglia

By: Jim Battigaglia, Regional Director

EARNEST R. ARCHER
PRESIDENT

Date: 6-18-2012

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

By: *Sara DeCaro*

Sara DeCaro, Esq.

Assistant Prosecuting Attorney

Date: 6-8-12

Exhibit A

Proposal
