

**Contract for Legal Representation of the County of Cuyahoga, Ohio
regarding the Ameritrust Litigation**

This Contract is entered by and between the County of Cuyahoga, Ohio, (the "County"), Giffen & Kaminski, LLC ("Giffen & Kaminski"), and Brennan, Manna & Diamond, LLC ("Brennan, Manna & Diamond"), effective September 12, 2013.

Whereas, Cuyahoga County desires to retain outside legal counsel to protect the County's rights with regard to its purchase of the Ameritrust Building in 2005 and other related contracts and to recover the County's losses resulting from said purchase (hereinafter "Ameritrust Litigation") and related transactions, including the potential institution of litigation (collectively, "Legal Services"); and

Whereas, Giffen & Kaminski and Brennan, Manna & Diamond are 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, Giffen & Kaminski, and Brennan, Manna & Diamond agree as follows:

I. Services and Compensation. Giffen & Kaminski and Brennan, Manna & Diamond shall perform the Legal Services (with Brennan, Manna & Diamond serving as the subcontractor to Giffen & Kaminski for purposes of billing) at the following rates:

A. The firms will be compensated at the blended rate of \$190 per hour (billed in 0.1 increments) for each lawyer's legal services. Giffen & Kaminski shall send the Cuyahoga County Director of Law one consolidated invoice per month for the Legal Services, and the County will pay Giffen & Kaminski for satisfactory services rendered in accordance with the County's practices. The invoices shall contain sufficient detail on the legal services performed, the date on which the services were performed, the individual lawyer who performed the services, and the amount of time spent in 0.1 increments. The consolidated invoice shall reflect the billing from both firms as a single team in a manner that depicts what each lawyer did on each day and not be broken down by firm as two separate invoices. In no event shall any invoice to Cuyahoga County carry any interest or other fees not allowed under this Contract. Giffen & Kaminski shall be responsible for paying Brennan, Manna & Diamond and ensuring that the County is not billed for duplicative services.

B. It is understood that the \$190/hour rate is for actual *legal* services rendered by the lawyers and not for any administrative work that may be performed by the lawyers

in either firm on the matter. The County is not to be billed for administrative time, without regard to whether such administrative work was rendered by lawyers.

C. The \$190 rate shall not apply to independent contractors/lawyers (hereinafter, "Contract Lawyers") who are not employees of either firm. Contract Lawyers shall be billed at \$60 per hour. Please contact the Cuyahoga County Director of Law prior to utilizing any Contract Lawyers (i.e., for a specific discovery/document intensive project, etc.).

2. *Certifications, Representations, and Warranties.* Giffen & Kaminski and Brennan, Manna & Diamond (hereinafter, "The Law Firms") certify, represent, and warrant 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. Donald W. Davis, Jr., the signatory below on behalf of Brennan, Manna & Diamond, is a partner of Brennan, Manna & Diamond, LLC, and has the authority to sign this Contract to bind Brennan, Manna & Diamond to its terms; and,

C. Each of the practitioners assigned by The Law Firms is under this Contract is fully qualified and carries all required and applicable licenses to practice and provide the services required under this Contract; and,

D. The Law Firms represent and warrant that they are not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24.

E. The Law Firms and their employees and agents do not 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,

F. The Law Firms and their employees and agents do not have any criminal background or record that would bar any individual from performing the individual's obligations under this Agreement.

3. *Federal, State, and Local Laws, Rules, and Regulations.* The Law Firms agree 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.

4. *Agreement to Remain in Compliance with Certifications, Representations, and Warranties as Continuing Commitments/Verification:* The Law Firms shall ensure that all of their respective certifications, representations, and warranties under this Contract shall remain true throughout the duration of the Contract as if they are continuing commitments, and they 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, The Law Firms 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.

5. *Term and Maximum Not to Exceed Value.* This Contract shall commence on September 10, 2013, with a maximum *not-to-exceed* dollar value of one hundred and fifty thousand dollars (\$150,000.00). 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.

7. *Liability, Releases, Defense, and Indemnification.* The Law Firms shall have sole liability for, and shall indemnify, defend, and hold harmless the County against all acts and omissions by them or any of their respective 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. The Law Firms, on behalf of themselves, and as applicable, their owners, shareholders, members, directors, officers, employees, agents, representatives, parents, subsidiaries, affiliates, successors, and assigns, including the practitioners assigned by it, hereby release 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.

8. *Insurance.* The Law Firms 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. The Law Firms 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 per practitioner.

9. *Prohibition on Assignment.* The Law Firms 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.

10. *Termination:*

(A) *For Cause:* If either Giffen & Kaminski and/or Brennan, Manna & Diamond or any of the practitioners assigned by either of them 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 and/or Brennan, Manna & Diamond.

(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 and/or Brennan, Manna & Diamond.

11. *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. The Law Firms hereby agree 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.

12. *No Indemnification by County.* The Law Firms acknowledge 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 The Law Firms and the County may be interpreted to obligate the County to indemnify or defend The Law Firms or any other party.

13. *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
310 W. Lakeside Ave.
Cleveland, Ohio 44113

To Giffen & Kaminski:

Attn: Kerin Kaminski, Esq.
Giffen & Kaminski, LLC
1300 East Ninth Street, Suite 1600
Cleveland, OH 44114

To Brennan, Manna & Diamond:

Donald W. Davis, Jr.
Brennan, Manna & Diamond, LLC
75 East Market Street
Akron, OH 44308

14. *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.

15. *No Apparent Authority/Proper Approvals.* The Law Firms recognize and agree 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 laws.

16. *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.

17. *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.

18. *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.

19. *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.

20. *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.

21. *Applicable County Laws.* The Law Firms shall comply with all applicable County laws, including but not limited to, the Cuyahoga County Ethics law and Cuyahoga County Inspector General law. The Law Firms agree that the charter provisions and all laws, resolutions, rules and regulations of the County now or hereafter applicable shall be included in this Contract for all purposes. The Law Firms shall also comply with all state and federal ethics laws.

22. *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 laws 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.

23. *The Law Firms are Independent Contractors.* The Law Firms are and shall remain independent contractors with respect to the services performed under the Contract. The Law Firms accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, retirement benefits, pensions, annuities which are measured by the wages, salaries or other remuneration paid to persons employed by The Law Firms for work performed under the terms of this Contract and further agree to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated and The Law Firms agree to indemnify and hold the County harmless from any such contributions, taxes or liability.

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, LLC:

By: 

Print Name: Kerin Lyn Kaminski, Esq.

Its: Member

Date: 10/10/13

COUNTY OF CUYAHOGA, OHIO

By: 

Print Name: Edward FitzGerald

Its: County Executive

Date: 10/28/13

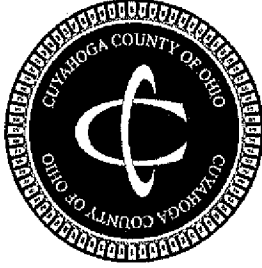
BRENNAN, MANNA & DIAMOND, LLC:

By: 

Print Name: Donald W. Davis, Jr., Esq.

Its: Partner/Member

Date: 10/10/13



ENCUMBRANCE NO.

REQUISITION NO. LA-13-28791

CONTRACT/AGREEMENT

CUYAHOGA COUNTY, OHIO

FOR

Contract with Giffen & Kaminski, LLC (with Brennan, Manna & Diamond, LLC to serve as sub-contractor) in the maximum amount not to exceed \$150,000 (hourly rate of \$190) for provision of special counsel legal services in connection with potential litigation related to the County's purchase of the Ameritrust Complex, for the period beginning 9-10-13.

WITH

CONTRACTOR	Giffen & Kaminski, LLC (with Brennan, Manna & Diamond, LLC to serve as sub-contractor)
FEDERAL ID	20-0308556
REMITTANCE ADDRESS	Giffen & Kaminski, LLC 1300 East Ninth Street, Suite 1600 Cleveland, Ohio 44114
CONTACT PERSON	Kerin Kaminski, Esq.
TELEPHONE NUMBER	216-621-5161
TIME PERIOD	Period Beginning 9-10-13.
CONTRACT/AGREEMENT PRICE	Maximum amount not to exceed \$150,000. (hourly rate of \$190.)

Suffix		Index Code	Object Code	User Code	Grant/Detail	Project/Detail	Amount
		LA000802	0278				\$150,000.

I hereby certify that the money required for the County's proportion of this Contract/Agreement in the sum of \$150,000.00 is in the Treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate, and in process of collection and not appropriated for any other purpose.

Mark Parks
Interim County Fiscal Officer or designee

I hereby approve of the legal form and correctness of the within Contract/Agreement.

Majeed G. Makhoulf
Director of Law

