

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT ("Agreement"), dated as of July 23, 2019, (the "Effective Date"), is between Berkshire County District Attorney ("Client") and Kivvit, LLC ("Kivvit") (each a "Party" or "Parties").

WHEREAS, Client desires to retain the services of Kivvit in connection with certain public affairs and communications trainings and matters as described herein, and, Kivvit has agreed to provide, and Client has agreed to pay for, the scope of services described below upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **SERVICES.** Kivvit agrees to perform the following consulting services for Client (the "Deliverables"), subject to the terms and conditions of this Agreement:

Project: Strategic Communications Training and Support
Project Term: July 23, 2019 through October 31, 2019
Budget: \$13,000 US Dollars

Phase One; July 23- Aug 15 (\$5,000)

- Get Smart Session with Leadership Team
 - Onboarding call
 - Outline current structure and management process
 - Identify office priorities and communications needs/services
- Intense Communications Support
 - Standard weekly calls with leadership team
 - Social media audit
 - Communications & Community Planning and Calendar
 - Juvenile Justice Initiative Rollout Plan

Phase Two: August 15 – Sept 30 (\$5,000)

- Ongoing Communications Support
 - Standard weekly calls with leadership team
 - Standing up communications structure and process
 - Rollout Juvenile Justice Initiative
 - Communications office structure
 - Media list development
 - Media monitoring process
 - Message Development
 - Draft Communications Calendar

Phase Three: Sep – Oct (\$3,000)

- Transitioning Communications office

- Onboarding new staff
 - Standard weekly check-in meeting (*Kivvit & The Management Center*)
 - Roles and responsibilities (*Kivvit & The Management Center*)
 - 6-12 months goals (*Kivvit & The Management Center*)
 - MOCHAs (*Kivvit & The Management Center*)
- Moderate Comms Support
 - Communications office set-up and process with metrics
 - Social media strategy/ best practices
- Managing up webinar (*The Management Center*)

2. **KIVVIT'S COMPENSATION.**

(a) In consideration of the Services to be provided hereunder, Client shall pay Kivvit the following fee(s):

- i. A total project fee of \$13,000 US Dollars, which will be billed upon completion of each phase.
 - i. Phase 1: \$5,000
 - ii. Phase 2: \$5,000
 - iii. Phase 3: \$3,000

(b) Reasonable and necessary out-of-pocket costs (such as travel, printing, or domain name purchases) will be billed at-cost. Expenses exceeding \$200 will require prior Client approval.

Invoices will be submitted to:

Berkshire County District Attorney

Attn: *Shelley Crippa*

Email: *shelley.b.crippa@mass.gov*

Phone: *413-443-5951*

Address: *7 North St
Pittsfield, MA 01201*

(c) The fees set forth herein do not include any foreign, federal, state or local sales, use or other similar taxes, tariffs or duties, however designated, levied against the sale, licensing, delivery or use of the Deliverables provided under this Agreement. Client shall pay, or reimburse Kivvit for all such taxes; provided, however, that Client shall not be liable for any taxes based on Kivvit's net income.

3. **WARRANTIES.** Each Party represents and warrants to the other that (i) it has the right and power to enter into and fully perform the obligations it has undertaken in this Agreement; (ii) it is not under any obligations, contractual or otherwise, to any other entity that might conflict, interfere, or be inconsistent with any of the provisions of this Agreement; and (iii) it shall comply in all material respects with all applicable laws, rules and regulations necessary for it to perform its obligations under this Agreement.

4. **TERMINATION**. This Agreement shall be subject to termination by either Party upon giving of thirty (30) days' written notice to the other Party. If the Agreement is terminated, Client shall pay Kivvit for work completed through the effective date of termination, on a daily prorated basis, plus out of pocket expenses and costs incurred on or before the date on which Kivvit has received the notice of termination.

5. **INDEMNIFICATION**.

(a) Client shall indemnify and hold harmless Kivvit, its affiliates, and all their officers, directors, employees, members, managers, legal representatives, agents, successors and assigns ("Kivvit Indemnified Parties"), from and against any damages, liabilities, losses, judgments, costs and expenses (including reasonable attorneys' and professionals' fees and court costs) which arise out of or relate to (i) Client's breach of or inaccuracy in any covenant, representation or warranty binding upon or applicable to the Client under this Agreement, (ii) Kivvit's dissemination or use of Client's information or materials, (iii) Client's use of the Deliverables as approved by Client, and/or (iv) any act or omission of Client, its directors, officers, employees and/or agents. With respect to any such claim as to which Kivvit is entitled to indemnification, Kivvit shall use commercially reasonable efforts to promptly provide Client with written notice thereof and reasonable cooperation, information, and assistance in connection therewith. Client shall have sole control and authority with respect to the defense, settlement, or compromise thereof, provided that Kivvit Indemnified Parties receive a complete release and no injunctive, extraordinary, equitable or other relief of any kind is imposed on any Kivvit Indemnified Parties.

(b) **Kivvit's Indemnification of Client**. Kivvit shall indemnify and hold harmless Client, its officers, directors, employees, shareholders, legal representatives, agents, successors and assigns ("Client Indemnified Parties"), from and against any damages, liabilities, costs and expenses (including reasonable attorneys' and professionals' fees and court costs) to the extent they arise out of any third party claim against any of the Client Indemnified Parties which relate to a breach by Kivvit of this Agreement or actions taken by Kivvit without Client's approval or consent; provided however, in all cases (i) Client shall have promptly provided Kivvit with written notice thereof and reasonable cooperation, information, and assistance in connection therewith; and (ii) Kivvit shall have sole control and authority with respect to the defense, settlement, or compromise thereof, provided that Client Indemnified Parties receive a complete release and no injunctive, extraordinary, equitable or other relief of any kind is imposed on any Client Indemnified Parties.

(c) **LIMITATIONS OF LIABILITY. WITH THE EXCEPTION OF THE INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, THE LIABILITY OF KIVVIT UNDER THIS AGREEMENT, IF ANY, AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER WITH RESPECT TO THE SERVICES, DELIVERABLES AND INFORMATION PROVIDED PURSUANT TO THIS AGREEMENT, AND REGARDLESS OF THE LEGAL THEORY OR THE PERFORMANCE OR NON-**

PERFORMANCE OF THE SERVICES OR DELIVERY OR NON-DELIVERY OF THE DELIVERABLES, SHALL NOT BE GREATER THAN THE FEES ACTUALLY PAID BY CLIENT TO KIVVIT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH SUCH CLAIM ACCRUED. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND.

6. **CONFIDENTIAL INFORMATION.**

- (a) Each Party agrees (i) not to use or disclose to any third party the Confidential Information disclosed to it by the other Party (“Disclosing Party”) for any purpose other than as contemplated by this Agreement, and (ii) to protect the Disclosing Party’s Confidential Information with at least the same degree of care it uses to protect its own Confidential Information, but at a minimum to use commercially reasonable efforts.
- (b) The confidentiality obligations of this Agreement shall not apply to Confidential Information to the extent that the Party receiving such Confidential Information (“Receiving Party”) can prove such confidential information (i) was lawfully received by the Receiving Party from a third party free of any obligation to keep it confidential; (ii) is or becomes publicly available, by other than unauthorized disclosure; (iii) is independently developed without any reference to the Confidential Information, as evidenced by contemporaneous written records of Receiving Party; or (iv) is required to be disclosed by law, regulation or court order; provided that, with respect to any of the foregoing exceptions, the Receiving Party will give the Disclosing Party prompt notice prior to such disclosure.
- (c) The Parties expressly agree that the Parties shall not provide to one another hereunder any personally identifying information of individuals or consumers. For purposes of this Agreement, “Confidential Information” means financial data, product descriptions, potential product development ideas, customer information, business workflow, and other business information, which are confidential, nonpublic, competitively sensitive, private, and/or proprietary.

7. **PRESS RELEASES AND CLIENT LIST REFERENCE.** Neither Party shall issue any press release concerning this Agreement without the other’s consent. Kivvit may identify Client as a client of Kivvit (using Client’s name and logo) and generally describe the nature of the Services in Kivvit’s promotional materials, presentations, and proposals to current and prospective clients.


8. **INDEPENDENT CONTRACTORS.** Client and Kivvit are independent contractors, and nothing in this Agreement shall be deemed to create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the Parties. Neither Party is an agent or representative of the other nor is either Party authorized to make any warranties or representations or assume or create any other obligations on behalf of the other.

9. **COMPLETE AGREEMENT.** This Agreement represents the entire agreement of the Parties and supersede(s) all communications, negotiations, arrangements, representations, promises and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement.
10. **GOVERNING LAW.** This Agreement shall be governed by the laws of the District of Columbia without reference to its conflict of law principles.
11. **WAIVER OF JURY TRIAL.** NO PARTY TO THIS AGREEMENT OR ANY ASSIGNEE, SUCCESSOR, HEIR OR PERSONAL REPRESENTATIVE OF A PARTY SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE ANCILLARY AGREEMENTS OR THE DEALINGS OR THE RELATIONSHIP BETWEEN THE PARTIES. NO PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH A JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HERETO HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY HERETO THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.
12. **NO AUTOMATIC WAIVERS.** No term or condition contained in this Agreement shall be deemed waived, and no breach or omission excused, unless in writing and signed by the Party against whom enforcement of such waiver or consent is sought. A waiver of any term or condition of this Agreement in any regard shall not constitute a waiver or consent to any different or subsequent breach or omission, and either Party may invoke any remedy available at law or in equity despite any such waiver or consent.
13. **NO THIRD PARTY BENEFICIARIES.** Except as specifically provided in this Agreement, this Agreement shall not be construed to confer any rights or benefits upon any person other than the Parties to this Agreement, nor shall this Agreement provide any rights to any other parties to enforce any provisions of this Agreement.
14. **BINDING EFFECT.** This Agreement shall be binding upon, and inures to the benefit of the Parties hereto and their respective heirs, successors and permitted assigns.


-- SIGNATURE PAGE FOLLOWS --

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**BERKSHIRE COUNTY DISTRICT
ATTORNEY**


Signature
Andrea Harrington
Please Print Name
DA
Please Print Title
July 29, 2019
Date

KIVVIT


Signature
Tracy Schmalzer
Please Print Name
Managing Director
Please Print Title
8/14/19
Date