



## CONSULTANT SERVICES AGREEMENT

This **AGREEMENT** is entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (this “Agreement”) by and between the **COUNTY OF ORANGE**, a municipal corporation, and a County of the State of New York, with principal offices at 255-275 Main Street, Goshen, New York 10924 (“**COUNTY**”), and \_\_\_\_\_ (“**CONSULTANT**”).

### ARTICLE 1. SCOPE OF WORK

CONSULTANT agrees to perform the services identified in **Schedule A** (the “Services”) which is attached to and is part of this Agreement. It is specifically agreed to by CONSULTANT that the COUNTY will not compensate CONSULTANT for any services not within the scope of Services as specifically identified in **Schedule A** without prior authorization, evidenced only by a written change order or amendment to this Agreement executed by the County Executive of the COUNTY after consultation with the COUNTY Department Head responsible for the oversight of this Agreement (“Department Head”).

### ARTICLE 2. TERM OF AGREEMENT

CONSULTANT agrees to perform the Services beginning \_\_\_\_\_, 20\_\_ and ending \_\_\_\_\_, 20\_\_.

If owing to the actions or neglect of the COUNTY, CONSULTANT is prevented from completing the Services within the term as aforesaid, CONSULTANT’s sole and exclusive remedy is to request that a change order or amendment to this Agreement be issued by the COUNTY permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based on written notice only, delivered to the Department Head promptly, but in no event later than thirty (30) days after the initial occurrence of the event giving rise to such claim and stating the specific nature of the claim. An extension of time to perform the Services may only be granted at the COUNTY’s discretion by a written change order or amendment to this Agreement signed by the County Executive. In no event shall the COUNTY be liable to CONSULTANT, or its officers, partners,

employees, agents, contractors, assignees, other representatives, or any other person or entity for damages arising out of or resulting from any such delays.

### ARTICLE 3. COMPENSATION

For satisfactory performance of the Services or as such Services may be modified by mutual written agreement, the COUNTY agrees to compensate CONSULTANT in accordance with the fees and expenses as stated in **Schedule B**, which is attached to, and is part of this Agreement. CONSULTANT shall submit to the COUNTY a monthly-itemized invoice for Services rendered during the prior month, or as otherwise set forth in **Schedule B**, and prepared in such form and supported by such documents as the COUNTY may reasonably require. The COUNTY will pay the proper amounts due CONSULTANT within sixty (60) days after receipt of the invoice and other documentation and will notify CONSULTANT in writing of the COUNTY’s reasons for objecting to all or any portion of the invoice submitted by CONSULTANT.

### ARTICLE 4. FEE GUARANTEE

The fees and the necessary and proper expenses if applicable, as stated in **Schedule B** of this Agreement shall apply to all Services rendered by CONSULTANT pursuant to this Agreement. Said compensation constitutes the total compensation (subject to authorized adjustment) payable to CONSULTANT for performing the Services. All duties, responsibilities and obligations assigned to or undertaken by CONSULTANT shall be at CONSULTANT’s expense without change in the said compensation. A not-to-exceed cost of \$\_\_\_\_\_ has been established for the scope of

Services rendered by CONSULTANT. Costs in excess of such not-to-exceed costs, if any, may not be incurred without prior written authorization of the County Executive of the COUNTY, evidenced only by a written change order or amendment to this Agreement after consultation with the Department Head. It is specifically agreed to by CONSULTANT that the COUNTY will not be responsible for any additional costs, or costs in excess of the above-noted not-to-exceed cost if the COUNTY's authorization by the County Executive is not given in writing prior to the performance of the Services giving rise to such excess or additional costs.

#### **ARTICLE 5. EXECUTORY CLAUSE**

The COUNTY shall have no liability under this Agreement to CONSULTANT or to anyone else beyond funds appropriated and available for this Agreement.

#### **ARTICLE 6. PERFORMANCE**

In performing the Services, CONSULTANT shall assign qualified personnel (including any approved subcontractors) and perform such Services in accordance with the standards, skills, diligence, and quality control/quality assurance measures expected of the profession when performing services of this nature. CONSULTANT is hereby given notice that the COUNTY will be relying upon the accuracy, competence, and completeness of CONSULTANT's Services in using the results of these Services. CONSULTANT shall at all times comply with all applicable laws, ordinances, statutes, rules, and regulations.

#### **ARTICLE 7. CONSULTANT'S REPRESENTATIONS**

CONSULTANT represents that it is fully licensed (to the extent required by law), experienced and properly qualified to perform the Services as provided under this Agreement and that it is properly permitted, equipped, organized, and financed to perform such Services.

CONSULTANT understands that it may become necessary for the COUNTY to submit to governmental agencies or to a court of law part or all of the data, analyses and/or conclusions developed as a result of the performance of these

Services. CONSULTANT is aware that there are significant penalties for submitting false information to governmental agencies, including the possibility of fines and imprisonment. CONSULTANT is responsible for such penalties if a result of false information submitted to the COUNTY by CONSULTANT.

#### **ARTICLE 8. PROCUREMENT OF AGREEMENT**

CONSULTANT represents and warrants that no person or selling agent has been employed or retained by CONSULTANT to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee, or any other compensation. CONSULTANT further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. CONSULTANT makes such representations and warranties to induce the COUNTY to enter into this Agreement and the COUNTY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this Agreement without liability, entitling the COUNTY to recover all monies paid hereunder and CONSULTANT shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY's right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 9. CONFLICT OF INTEREST**

CONSULTANT represents and warrants that neither it nor any of its officers, partners, employees, agents, contractors, assignees, or other representatives, have any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the Services. CONSULTANT further represents and warrants that in the performance of this Agreement no

person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the COUNTY, nor any person whose salary is payable, in whole or in part, by the COUNTY, or any corporation, partnership or association in which such official, officer or employee shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person (i) if required by the Orange County Ethics Law as amended from time to time, to submit a "Disclosure Form" to the Orange County Board of Ethics, amends such Disclosure Form to include their interest in this Agreement, or (ii) if not required to complete and submit such a Disclosure Form said person must either voluntarily complete and submit said Disclosure Form disclosing their interest in this Agreement or seek a formal opinion from the Orange County Ethics Board as to whether or not a conflict of interest exists.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this Agreement without liability entitling the COUNTY to recover all monies paid hereunder and CONSULTANT shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY's right to claim damages or otherwise refuse payment to or to take any other action provided for by law or pursuant to this Agreement.

#### **ARTICLE 10. FAIR PRACTICES**

CONSULTANT and each person signing on behalf of the CONSULTANT represents, warrants, and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by CONSULTANT without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;

B. Unless otherwise required by law, the prices which were quoted in the proposal or quote submitted by CONSULTANT have not been knowingly disclosed by CONSULTANT prior to the proposal or quote opening or due date, directly

or indirectly, to any other offeror or to any competitor; and

C. No attempt was made by CONSULTANT to induce any other person, partnership, or corporation to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that CONSULTANT (i) has published price lists, rates, or tariffs covering items being procured (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quote, does not constitute, without more, a disclosure within the meaning of this Article 10.

#### **ARTICLE 11. INDEPENDENT CONTRACTOR**

In performing the Services and incurring expenses under this Agreement CONSULTANT shall operate as, and have the status of, an independent contractor and shall not act as agent of, or be an agent for, the COUNTY. As an independent contractor, CONSULTANT shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for CONSULTANT's personnel engaged in the performance of the same.

In accordance with such status as independent contractor, CONSULTANT covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the COUNTY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the COUNTY including, but not limited to, workers' compensation coverage, health coverage, unemployment insurance benefits, Social Security coverage or employee retirement membership or credit.

#### **ARTICLE 12. ASSIGNMENT**

CONSULTANT shall not assign any of its rights, interests, or obligations under this Agreement without the prior express written consent of the County Executive. Any such assignment, transfer, conveyance, or other disposition without such prior

consent shall be void and any Services provided thereunder will not be compensated. Any assignment properly consented to by the COUNTY shall be subject to all of the terms and conditions of this Agreement.

Failure of CONSULTANT to obtain any required consent to any assignment shall be grounds for termination for cause, at the option of the COUNTY and if so terminated, the COUNTY shall thereupon be relieved and discharged from any further liability and obligation to CONSULTANT, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the COUNTY except so much thereof as may be necessary to pay CONSULTANT's employees for past Services.

The provisions of this clause shall not hinder, prevent, or affect any assignment by CONSULTANT for the benefit of its creditors made pursuant to the Laws of the State of New York.

This Agreement may be assigned by the COUNTY to any corporation, agency, municipality, or instrumentality having authority to accept such assignment.

### **ARTICLE 13. SUBCONTRACTING**

CONSULTANT agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part under this Agreement without the prior written approval of the COUNTY. Two (2) copies of each such proposed subcontract shall be submitted to the COUNTY with the CONSULTANT's written request for approval. The subcontractor approval is required in all cases other than individual employer-employee contracts. All such subcontracts shall contain provisions specifying:

- A. That the work performed by the subcontractor must be in accordance with the terms of this Agreement;
- B. That nothing contained in the subcontractor agreement shall impair the rights of the COUNTY;
- C. That nothing contained in the subcontractor agreement or under this Agreement shall create any contractual relation in law or equity, between the subcontractor and the COUNTY; and

- D. That the subcontractor specifically agrees to be bound by the confidentiality provision as set forth in Article 14 of this Agreement.

CONSULTANT agrees that it is fully responsible to the COUNTY for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, to the same extent as it is for the acts and omissions of persons employed by CONSULTANT.

CONSULTANT shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

### **ARTICLE 14. CONFIDENTIALITY**

For purposes of this Article 14, the term "CONSULTANT" includes all officers, partners, employees, agents, contractors, assignees, and other representatives of CONSULTANT.

With the exception of mandated reporting requirements, the CONSULTANT shall observe the pertinent provisions of all applicable Federal and New York State laws and regulations relating to confidentiality of records and data gathered, obtained, reviewed, or developed in the performance of Services under this Agreement (collectively, "Confidential Data").

CONSULTANT shall keep all Confidential Data in a secure location within CONSULTANT's offices. The COUNTY shall have the right, but not the obligation, to enter CONSULTANT's offices in order to inspect the arrangements of CONSULTANT for keeping Confidential Data secure. No inspection or failure to inspect by the COUNTY shall relieve CONSULTANT of the responsibility for the performance of its obligations under this Agreement.

CONSULTANT shall hold all Confidential Data in trust and confidence, shall not disclose Confidential Data, or any portion thereof, to anyone other than the COUNTY without the prior written consent of the COUNTY, and shall not use Confidential Data, or any portion thereof, for any purpose whatsoever except in connection with the performance of the Services under this Agreement.

CONSULTANT shall notify the COUNTY immediately upon receipt by CONSULTANT of

any request by anyone other than the COUNTY for, or any inquiry related to, Confidential Data. CONSULTANT is not prohibited from disclosing portions of Confidential Data if disclosure of such portions is required by subpoena, warrant, or court order; PROVIDED, however, that in the event anyone other than the COUNTY requests all or a portion of Confidential Data, CONSULTANT shall oppose such request and cooperate with the COUNTY in obtaining a protective order or other appropriate remedy unless and until the COUNTY in writing waives compliance with the provisions of this Article 14 or determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the COUNTY waives compliance with this Article 14 or determines disclosure is legally required, CONSULTANT shall disclose only such portions of Confidential Data that, in the opinion of the COUNTY, CONSULTANT is legally required to disclose. CONSULTANT shall use its best effort to obtain from the party to whom Confidential Data is disclosed, written assurance that confidential treatment will be given to any Confidential Data disclosed to the fullest extent required by applicable law.

The CONSULTANT agrees to include a confidentiality provision substantively identical to this Article 14 in any subcontractor agreement CONSULTANT enters into for performance of Services required under this Agreement.

Notwithstanding any other provision herein to the contrary, all Confidential Data, including all copies thereof, is the exclusive property of the COUNTY regardless of whether it is delivered to the COUNTY. CONSULTANT shall deliver Confidential Data and all copies thereof to the COUNTY upon request and immediately upon the termination or expiration of this Agreement.

#### **ARTICLE 15. PUBLICITY**

The prior written approval of the COUNTY is required before CONSULTANT, or any of its officers, partners, employees, agents, contractors, assignees, or other representatives, may, at any time, either during or after completion or termination of this Agreement, make any statement to the media or issue any material for publication bearing on the Services performed or data collected in connection with this Agreement.

If CONSULTANT, or any of its officers, partners, employees, agents, contractors, assignees or other representatives, desires to publish a work dealing with any aspect of this Agreement, or of the results or accomplishments attained in such performance, they must first obtain the prior written permission of the County Executive which, unless otherwise agreed to by the COUNTY in written permission, will entitle the COUNTY to have a royalty fee, and a non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use such publication.

#### **ARTICLE 16. BOOKS AND RECORDS**

CONSULTANT agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

#### **ARTICLE 17. RETENTION OF RECORDS**

CONSULTANT agrees to retain all books, records, and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. COUNTY, or any State and/or Federal auditors, and any other persons duly authorized by the COUNTY, shall have full access and the right to examine any of said materials during the retention period.

#### **ARTICLE 18. AUDIT BY THE COUNTY AND OTHERS**

All vouchers or invoices presented for payment to be made hereunder, and the books, records, and accounts upon which said vouchers or invoices are based are subject to audit by the COUNTY. CONSULTANT shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the COUNTY so that it may evaluate the reasonableness of the charges, and CONSULTANT shall make its records available to the COUNTY upon request. All books, vouchers, records, reports, cancelled checks, and any and all similar material may be subject to periodic inspection, review and audit by the COUNTY, the State of New York, the Federal Government, and/or other persons duly authorized by the COUNTY.

Such audits may include examination and review of the source and application of all funds whether from the COUNTY and State, the Federal Government, private sources or otherwise. CONSULTANT shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

**ARTICLE 19. INSURANCE**

For all of the Services set forth herein and as may hereafter be amended, CONSULTANT shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, a workers’ compensation insurance, disability insurance, liability insurance covering personal injury and property damage, and other insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the COUNTY who have been fully informed as to the nature of the Services to be performed. Except for workers’ compensation and professional liability, the COUNTY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of CONSULTANT and not those of the COUNTY. Notwithstanding anything to the contrary in this Agreement, CONSULTANT irrevocably waives all claims against the COUNTY for all losses, damages, claims or expenses resulting from risks commercially insurable. The provisions of insurance by CONSULTANT shall not in any way limit CONSULTANT’s liability under this Agreement.

<u>Type of Coverage</u>	<u>Limits of coverage</u>
Workers' Compensation	Statutory
Disability	Statutory
Employer’s Liability	Statutory
Automobile Liability (incl. bodily injury & property damage)	\$1,000,000 per occurrence \$1,000,000 aggregate
Commercial General Liability (incl. bodily injury &	\$1,000,000 per occurrence \$2,000,000 aggregate

property damage)

Professional Liability \$1,000,000 per claim

CONSULTANT shall provide to COUNTY, as a condition to execution of this Agreement by COUNTY, certificates of insurance evidencing CONSULTANT’s compliance with these requirements and, if applicable, current New York State forms evidencing exemption from workers' compensation and/or disability. CONSULTANT shall provide COUNTY with updated certificates as policies expire or are modified over the term of this Agreement.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the COUNTY with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for nonpayment of premium, or materially amended, without fifteen (15) days prior written notice to the COUNTY, directed to the COUNTY’s Risk Management Division and the Department Head and the COUNTY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to CONSULTANT.

To the extent it is commercially available, each policy of insurance shall be provided on an “occurrence” basis. If any insurance is not so commercially available on an “occurrence” basis it shall be provided on a “claims made” basis, and all such “claims made” policies shall provide that:

- A. Policy retroactive dates coincide with or precede CONSULTANT’s start of the performance of the Services (including subsequent policies purchased as renewals or replacements);
- B. To ensure prior acts coverage, if the insurance is terminated for any reason and/or for at least six (6) years following final acceptance of the Services, CONSULTANT will maintain an extended reporting provision and/or similar insurance with extended reporting, covering the performance of this Agreement; and
- C. Immediate notice shall be given to the COUNTY through the Department Head and the COUNTY’s Risk Management Division, of circumstances or incidents that might give rise to

future claims with respect to the Services performed under this Agreement.

## **ARTICLE 20. INDEMNIFICATION**

To the fullest extent permitted by law, CONSULTANT agrees to defend, indemnify and hold harmless the COUNTY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), arising out of any negligence, fault, act or omission of CONSULTANT, its officers, partners, employees, agents, contractors, assignees or other representatives in performance of the Services pursuant to this Agreement.

In the event that any claim is made or any action is brought against the COUNTY arising out of the negligence, fault, act or omission of any officer, employee, subcontractor, assignee, agent or other representative of CONSULTANT; either within or without the duties of officers or scope of employment, subcontract, assignment, agency, or other representation; then the COUNTY shall have the right to withhold payments for the purpose of set-off in sufficient sums to cover the claim or action. These rights and remedies of the COUNTY shall not be exclusive and are in addition to any other rights and remedies provided by law, equity, or this Agreement.

## **ARTICLE 21. RESPONSIBILITY TO CORRECT DEFICIENCIES**

It shall be CONSULTANT's responsibility to correct, in a timely fashion and at CONSULTANT's sole expense any deficiencies in its Services resulting from CONSULTANT's failure to act in accordance with the standards set forth in Article 6 (Performance), provided such deficiencies are reported to CONSULTANT within one hundred and twenty (120) days after completion of the Services. If CONSULTANT fails to correct such deficiencies in a timely and proper manner, the COUNTY may elect to have others perform such corrections and the COUNTY may charge any related cost of such corrections to CONSULTANT and/or set-off such amount against any sums otherwise due CONSULTANT. This remedy, if effected, shall not constitute the sole or exclusive remedy afforded the COUNTY for such deficiencies, nor shall it constitute a waiver of the COUNTY's right to claim

damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

## **ARTICLE 22. PROTECTION OF COUNTY PROPERTY**

CONSULTANT assumes the risk of and shall defend, indemnify, and hold the COUNTY harmless from any loss or damage to COUNTY property, including property and equipment leased by the COUNTY, used in the performance of this Agreement, and caused, either directly or indirectly, by the acts, conduct, omissions, or lack of good faith of CONSULTANT, its officers, partners, employees, agents, contractors, assignees, or other representatives.

In the event that any COUNTY property is lost or damaged, except for normal wear and tear, then the COUNTY shall have the right to withhold further payments for the purposes of set-off in sufficient sums to cover such loss or damage.

These rights and remedies of the COUNTY shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

## **ARTICLE 23. FORCE MAJEURE**

Neither party hereto shall be considered in default in the performance of its obligations to the extent that performance of any such obligation is prevented and/or delayed by any cause, existing or future, which is beyond the control of such party, and which by that party's exercise of due diligence and foresight, could not reasonably have been avoided.

Upon removal of such cause, the party affected shall resume its performance as soon as reasonably possible. CONSULTANT's financial inability to perform shall not be deemed to be an event of Force Majeure regardless of the source causing such financial inability.

If CONSULTANT is delayed by force majeure in the timely performance of the Services, CONSULTANT's sole and exclusive remedy is to request that a change order or amendment permitting an extension of time to perform the Services in an amount equal to the time lost due to such delay. Such request shall be based on written notice only, delivered to the Department Head

promptly, but in no event later than thirty (30) days after the initial occurrence of the event giving rise to such claim and stating the specific nature of the claim. An extension of time to perform the Services may only be granted by a written change order or amendment to this Agreement signed by the County Executive. In no event shall the COUNTY be liable to CONSULTANT or its subcontractors, agents, or assignees, or any other person or entity, for damages arising out of or resulting from any such delays.

## **ARTICLE 24. TERMINATION**

The COUNTY may, by written notice to CONSULTANT effective upon mailing, terminate this Agreement in whole or in part at any time (i) for the COUNTY's convenience, (ii) upon the failure of CONSULTANT to comply with any of the terms or conditions of this Agreement, or (iii) upon the CONSULTANT becoming insolvent or bankrupt.

Upon termination of this Agreement, the CONSULTANT shall comply with any and all COUNTY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the COUNTY within thirty (30) days, any unexpended funds which have been paid to CONSULTANT pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the COUNTY of all equipment, appurtenances and property purchased by CONSULTANT through or provided under this Agreement and carrying out any COUNTY directive concerning the disposition thereof.

In the event the COUNTY terminates this Agreement, in whole or in part, as provided in this Article 24, the COUNTY may procure upon such terms and in such manner as deemed appropriate, services similar to those so terminated, and the CONSULTANT shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the COUNTY, any services procured by the COUNTY to complete the Services herein will be charged to CONSULTANT and/or set off against any sums due CONSULTANT.

Notwithstanding any other provisions of this Agreement, CONSULTANT shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of CONSULTANT's breach of this Agreement or failure to perform in accordance with applicable standards, and the COUNTY may withhold payments to CONSULTANT for the purposes of set-off until such time as the exact amount of damages due to the COUNTY from CONSULTANT is determined.

The rights and remedies of the COUNTY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

## **ARTICLE 25. SURVIVING OBLIGATIONS**

CONSULTANT's obligations, and those of CONSULTANT's employees, agents, subcontractors, successors and assignees, assumed pursuant to Article "6" (Performance), Article "7" (Consultant's Representations), Article "12" (Assignment), Article "14" (Confidentiality), Article "15" (Publicity), Article "16" (Books and Records), Article "17" (Retention of Records), Article "18" (Audit by the County and Others), Article "19" (Insurance), Article "20" (Indemnification), Article "21" (Responsibility to Correct Deficiencies), Article "22" (Protection of County Property), Article "26" (Waiver and Severability), Article "27" (General Release), Article "28" (No Claim Against Officers, Agents or Employees), Article "29" (Set-Off Rights), Article "30" (No Arbitration), Article "31" (Governing Law), Article "32" (Service of Process), and Article "36" (Sexual Harassment Certification) shall survive completion of Services, or the expiration or termination of this Agreement.

## **ARTICLE 26. WAIVER AND SEVERABILITY**

The failure of either party to enforce, at any time, any provision of this Agreement does not constitute a waiver of such provision or waive the right of either party at any time to avail itself to such remedies as it may have for any breach or breaches of such provision. None of the conditions of this Agreement shall be considered waived by the COUNTY unless such waiver is explicitly given in writing by the County Executive of the COUNTY. No such waiver shall be a waiver of any past or



future default, breach, or modification of any of the terms or conditions of this Agreement unless expressly stipulated in such waiver as executed by the County Executive.

The invalidity or invalid application of one provision of this Agreement shall not affect the validity of any other provision, or any other application of any provision of this Agreement.

#### **ARTICLE 27. GENERAL RELEASE**

The acceptance by CONSULTANT or its assignees of the final payment under this Agreement, whether by voucher, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the COUNTY from any and all claims of CONSULTANT arising out of the performance of this Agreement.

#### **ARTICLE 28. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

No claim whatsoever shall be made by CONSULTANT against any officer, agent, or employee of the COUNTY for or on account of, anything done or omitted in connection with this Agreement.

#### **ARTICLE 29. SET-OFF RIGHTS**

The COUNTY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the COUNTY's right to withhold for the purposes of set-off any monies otherwise due to CONSULTANT (i) under this Agreement, (ii) under any other agreement or contract with the COUNTY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, or (iii) from the COUNTY by operation of law. The COUNTY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the COUNTY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

#### **ARTICLE 30. NO ARBITRATION**

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically

agreed to in writing by the County Executive of the COUNTY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

#### **ARTICLE 31. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York. CONSULTANT shall render all Services under this Agreement in accordance with applicable provisions of all federal, state, and local laws, rules and regulations as are in effect at the time such Services are rendered.

#### **ARTICLE 32. SERVICE OF PROCESS**

CONSULTANT should be properly registered to do business in the State of New York, if required under New York law, and furnish applicable certificates of authority / incorporation / partnership / dba, etc. to the COUNTY. Regardless of the propriety or legality of registration status, as a condition of contract, the CONSULTANT agrees to service of process as follows: In addition to the methods of service allowed by New York's Civil Practice Law and Rules, CONSULTANT consents to service of process upon it by registered or certified mail, return receipt requested, to the address indicated in this Agreement. Service shall be complete upon CONSULTANT's actual receipt of process, or upon the COUNTY's receipt of the return by the United States Postal Service as refused or undeliverable. CONSULTANT shall immediately notify the COUNTY, in writing, via registered or certified mail, return receipt requested, of each change of address to which service of process can be made. Service by the COUNTY to the last known address shall be sufficient.

#### **ARTICLE 33. ENTIRE AGREEMENT**

The rights and obligation of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including **Schedules A and B**, which supersede any other understandings or writings between or among the parties.

#### **ARTICLE 34. MODIFICATION**

No changes, amendments, or modifications of any

of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of Services in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such services, the County Executive, after consultation with the Department Head, executes a change order or amendment to this Agreement, which change order or amendment shall specifically set forth the scope of such extra or additional Services and the amount of compensation and the extension of the time for performance, if any, for any such Services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with all force and effect to the terms and conditions contained in such change order or amendment.

**ARTICLE 35. PAY-TO-PLAY**

Pursuant to Section 10 of the County of Orange "Pay-to-Play Local Law," the regulatory and penalty provisions of this law are incorporated by reference. A copy of the law may be requested from the COUNTY's Department of General Services.

**ARTICLE 36. SEXUAL HARASSMENT CERTIFICATION**

Pursuant to State of New York State Finance Law §139-1, by execution of this Agreement, the

CONSULTANT and the individual signing this Agreement on behalf of the CONSULTANT certifies, under penalty of perjury, that the CONSULTANT has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the State of New York Labor Law. A model policy and training has been created by the New York State Department of Labor and can be found on its website at: <https://www.ny.gov/programs/combating-sexualharassment-workplace>.

The COUNTY's policy against sexual harassment and other unlawful discrimination and harassment in the workplace can be found on the COUNTY's website at: <https://www.orangecountygov.com/1137/HumanResources>.

**ARTICLE 37. SIGNATURES AND E-DELIVERY**

A manually signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal force and effect as delivery of an original signed copy of this Agreement.

**IN WITNESS THEREOF**, the parties hereto have executed this Agreement to be effective as of the date first set forth above.

**COUNTY OF ORANGE**

BY: \_\_\_\_\_  
Stefan ("Steven") M. Neuhaus  
County Executive

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**SCHEDULE A**  
**SCOPE OF SERVICES**

**SCHEDULE B**  
**FEEES AND EXPENSES**