

APPENDIX C



**AGREEMENT FOR VENDOR SERVICES**

**THIS AGREEMENT** is entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (this “Agreement”), by and between the **COUNTY OF ORANGE**, a municipal corporation, hereinafter referred to as the “**COUNTY**,” a County of the State of New York, with principal offices at 255-275 Main Street, Goshen, New York 10924, by and through its Department of Planning and Development, and \_\_\_\_\_, a \_\_\_\_\_, with offices at \_\_\_\_\_, hereinafter referred to as “**VENDOR**.”

**ARTICLE 1. SCOPE OF WORK**

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (collectively the “SERVICES”) which is attached to and is part of this Agreement. VENDOR agrees to perform the SERVICES in accordance with the terms and conditions of this Agreement. It is specifically agreed that the COUNTY will not compensate VENDOR for any SERVICES provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum 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 (hereinafter “Department Head”).

**ARTICLE 2. TERM OF AGREEMENT**

VENDOR agrees to perform the SERVICES beginning \_\_\_\_\_ and \_\_\_\_\_ ending \_\_\_\_\_.

**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 VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR 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 VENDOR within sixty (60) days after receipt by the

COUNTY of an invoice, and if the invoice is objectionable, will notify VENDOR, in writing, of the COUNTY’S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not to exceed cost of \$ \_\_\_\_\_ has been established for the scope of SERVICES rendered by VENDOR. Costs in excess of such not-to-exceed cost, 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 Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the COUNTY will not be responsible for any additional cost 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 4. EXECUTORY CLAUSE**

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

**ARTICLE 5. PROCUREMENT OF AGREEMENT**

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR 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. VENDOR 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. VENDOR 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 VENDOR shall not make claim 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 6. CONFLICT OF INTEREST**

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, 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 herein provided. VENDOR 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 is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person (1) 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 (2) 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 VENDOR 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 in equity or, pursuant to this Agreement.

## **ARTICLE 7. FAIR PRACTICES**

VENDOR and each person signing on behalf of the VENDOR 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 VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the COUNTY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (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 7.

## **ARTICLE 8. INDEPENDENT CONTRACTOR**

In performing the SERVICES and incurring expenses under this Agreement, VENDOR shall operate as, and

have the status of, an independent contractor and shall not act as agent, or be an agent, of the COUNTY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR 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, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

#### **ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING**

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the County Executive of the COUNTY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the COUNTY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR 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 VENDOR, 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 VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR 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 10. BOOKS AND RECORDS**

VENDOR 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 11. RETENTION OF RECORDS**

VENDOR 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 said period.

#### **ARTICLE 12. AUDIT BY THE COUNTY AND OTHERS**

All invoices presented for payment to be made hereunder, and the books, records and accounts upon which said invoices are based are subject to audit by the COUNTY. VENDOR 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 VENDOR shall make its records available to the COUNTY upon request. All books, forms, 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. VENDOR 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 13. INSURANCE**

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain, in full

force and effect during the term of this Agreement, at its cost and expense, Worker's Compensation insurance (or proof of statutory exemption therefrom), Disability insurance (or proof of statutory exemption therefrom), liability insurance personal injury (including death) 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 Worker's Compensation, Disability and professional liability coverages, the VENDOR shall name the COUNTY as 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 VENDOR and not those of the COUNTY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the COUNTY for all losses, damages, claims, or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

<u>Type of Coverage</u>	<u>Limit of Coverage</u>
Worker's Compensation	Statutory
Disability	Statutory
Employer's Liability	\$500,000 ea. accident \$500,000 disease ea. employee \$500,000 disease policy limit
Automobile Liability (Incl. Bodily Injury & Property Damage)	\$5,000,000 aggregate \$5,000,000 each occurrence

The Automobile Liability limits may be met by providing evidence of \$1,000,000 in primary coverage and an umbrella or excess liability limit of \$4,000,000 or more.

Commercial General Liability (Incl. Contractual Liability, Bodily Injury & Property Damage)	\$5,000,000 aggregate \$5,000,000 each occurrence
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The Commercial General Liability limits may be met by providing evidence of \$1,000,000 in primary coverage

and an umbrella or excess liability limit of \$4,000,000 or more.

Professional Liability \$1,000,000 aggregate  
(If commercially available \$1,000,000 each claim for your profession)

VENDOR will provide COUNTY with certificates of insurance evidencing VENDOR'S compliance with these requirements prior to execution of this Agreement by COUNTY.

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 non-payment 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 VENDOR.

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 VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. If the insurance is terminated for any reason and/or for at least three (3) years following final acceptance of the SERVICES, VENDOR will maintain an extended reporting provision and/or similar insurance for the period of performance plus three (3) years from the date of such termination or final acceptance.

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 14. INDEMNIFICATION

VENDOR 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), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed pursuant to this Agreement which the COUNTY, or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

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 an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the COUNTY shall have the right to withhold further payments hereunder, for the purpose of set-off, in sufficient sums to cover the said claim or action. The rights and remedies of the COUNTY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

## **ARTICLE 15. PROTECTION OF COUNTY PROPERTY**

VENDOR assumes the risk of and shall be responsible for, 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 VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

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

VENDOR agrees to defend, indemnify, and hold the COUNTY harmless from any and all liability or claim for loss, cost, damage, or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or

damage to any such COUNTY property described in this Article 15.

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 16. TERMINATION**

The COUNTY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (1) for the COUNTY'S convenience, (2) upon the failure of VENDOR to comply with any of the terms or conditions of this Agreement, or (3) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR 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 VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the COUNTY of all equipment, appurtenances and property purchased by VENDOR 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 16, the COUNTY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR 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 VENDOR and/or set off against any sums due VENDOR.

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

## **ARTICLE 17. GENERAL RELEASE**

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by 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 VENDOR arising out of the performance of this Agreement.

## **ARTICLE 18. 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 VENDOR (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 19. 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 thereto 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 20. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York. VENDOR 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 21. CURRENT OR FORMER COUNTY EMPLOYEES**

VENDOR represents and warrants that it shall not retain the SERVICES of any COUNTY employee or former COUNTY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the COUNTY without the express written permission of the COUNTY. This limitation period covers the preceding three (3) years or longer if the COUNTY employee or former COUNTY employee has or may have an actual or perceived conflict of interests due to their position with the COUNTY.

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 VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if affected, 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 22. 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 23. 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 of the COUNTY, after consultation with the Department Head, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order 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 full force and effect to the terms and conditions contained in such Addendum or Change Order.

**ARTICLE 24. SERVICE OF PROCESS**

VENDOR shall be properly registered to do business in the State of New York. Regardless of the propriety or legality of registration status, as a condition of contract, the VENDOR shall agree to service of process as follows: In addition to the methods of service allowed by the State of New York Civil Practice Law and Rules, VENDOR 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 VENDOR’S actual receipt of process, or upon the COUNTY’S receipt of the return by the United States Postal Service as refused or undeliverable. VENDOR shall immediately notify the COUNTY, in writing, via registered or certified mail, return receipt requested, of each change or address to which service of process can be made. Service by the COUNTY to the last known address shall be sufficient.

**ARTICLE 25. SEXUAL HARASSMENT CERTIFICATION**

Pursuant to State of New York State Finance Law §139-1, by execution of this Agreement, the VENDOR and the individual signing this Agreement on behalf of the VENDOR certifies, under penalty of perjury, that the VENDOR 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-sexual-harassment-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/Human-Resources>.

**ARTICLE 26. NOTICES**

Except as otherwise provided herein, any notice, demand or communication required or permitted to be given by one party to the other shall be in writing and addressed to the party to whom notice is to be given at the address set forth in the opening paragraph of this Agreement (or at such other address as a party may designate in writing to the other party delivered in accordance with the provisions of this Article 27), and shall be (a) personally served, (b) deposited in the United States mail, duly registered or certified with postage fully prepaid thereon or (c) delivered by an overnight courier service that confirms delivery. Notice shall be effective and deemed delivered and received upon receipt or refusal to receive, in the event of personal service; or on the fifth (5<sup>th</sup>) day following the date of depositing the notice in the United States mail; or on the day following presentment of the notice to an overnight courier service for delivery.

**ARTICLE 27. SIGNATURES**

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 set forth above.

**COUNTY OF ORANGE**

By: \_\_\_\_\_  
Stefan (“Steven”) M. Neuhaus  
County Executive

DATE: \_\_\_\_\_

**VENDOR**

By: \_\_\_\_\_  
NAME:  
TITLE:

DATE: \_\_\_\_\_

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



**SCHEDULE B**  
**FEES AND EXPENSES**

