

## **AGREEMENT**

THIS AGREEMENT, bearing the date set forth on the signature page, by and between the COUNTY OF DUTCHESS, a municipal corporation with offices at 22 Market Street, Poughkeepsie, New York 12601 (hereinafter referred to as the "COUNTY") and \_\_\_\_\_, a not for profit corporation/corporation, whose address is \_\_\_\_\_, \_\_\_\_\_, New York 12601 (hereinafter referred to as the "CONTRACTOR").

### **WITNESSETH:**

WHEREAS, the County has implemented an Agency Partnership Grant (APG) Program through the Department of Planning and Development, and

WHEREAS, the Contractor has submitted an application(s) with the APG Program which has/have been approved by the County, and

WHEREAS, the application(s) concern \_\_\_\_ (description of services to be provided), and

WHEREAS, the funds necessary to pay for such services are appropriated in the Adopted County Budget, now, therefore, it is mutually agreed by and between the parties hereto as follows:

1. **SCOPE OF SERVICES.** The Contractor shall perform, using standards of care acceptable to the County and in strict compliance with all applicable federal, state and local laws, regulations and procedures, the services set forth in Exhibit "A" annexed hereto and made a part of this Agreement.

If any term of the Scope of Services contradicts or creates an ambiguity with any term of this Agreement, this Agreement shall govern.

2. **TERM OF AGREEMENT.** This Agreement shall be effective \_\_\_\_, 20\_\_, and shall terminate on \_\_\_\_, 20\_\_, with the option to renew for one (1) additional year period if mutually agreed, unless otherwise terminated as set forth herein.

3. **PAYMENT.** As full and complete consideration for the services so rendered, the County shall pay a total sum not to exceed \_\_\_\_ and 00/100 (\$\_\_\_\_,000.00) DOLLARS. Contractor shall be required to receive payments electronically by submitting an authorization form to the Dutchess County Comptroller's Office unless an exception has been found where electronic payments are not feasible.

Payment of the above consideration shall be made to the Contractor upon submission of statements in a form satisfactory to the County. No payment shall be made prior to audit and approval by the County. The County may withhold some or all of each quarterly payment from the Contractor in the event it determines that the Contractor has not met its program outcomes. Payment(s) will be released once the Contractor submits the necessary documentation to the County that establishes that it has met its program outcomes.

4. BUDGET. The Contractor agrees to provide services under this Agreement in strict compliance with the budget which is annexed to and made a part of this Agreement as Exhibit "B" and which details all personnel or other costs of services to be rendered by the Contractor under this Agreement. Any change or modification of the budget must be in accordance with the terms as set forth in the attached Policies and Procedures. Notwithstanding any other provision of this Agreement, the Contractor agrees that, in the event that the expenditures are less than his total budget and at the termination of this Agreement County funds remain unexpended, said funds shall remain with the County.

5. FUNDING. The Contractor agrees to notify the County, in writing, if there are any changes to the other funding sources as set forth in Exhibit "B" annexed hereto and made a part of this Agreement.

6. ATTRIBUTION. The Contractor, through whatever medium it uses to communicate its mission, program or services, shall identify Dutchess County as a funding source. It shall do so by placing on its stationery, brochures, newsletters and other printed materials the following statement: "Paid for in part by Dutchess County." Whenever appropriate the Dutchess County Seal should be displayed along with the statement. Attribution in other media where the above statement would be cumbersome shall appropriately convey the role of Dutchess County as a funding source.

7. INDEPENDENT CONTRACTOR STATUS. The Contractor agrees that he is an independent contractor and that he shall not hold himself out to be an employee or officer of the County, and that therefore, neither federal, state nor local income tax nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Contractor or his employees; that the Contractor shall not be eligible for, and shall not be entitled to participate in, any employee pension, health, retirement or other fringe benefit plan of the County; that the Contractor shall have no workers' compensation or disability coverage through the County for the Contractor or his employees, and that the Contractor shall not be entitled to make any claim against the County for these or any other rights or privileges of an officer or employee of the County.

8. DEFENSE AND INDEMNIFICATION.

**PROFESSIONAL SERVICES:** For all matters arising out of the Contractor's professional services, the Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, and employees against damages, liabilities and costs, including reasonable attorney's fees, to the extent caused by the negligent performance of the Contractor, or third parties under the direction or control of the Contractor, in the performance of professional services under this Agreement.

**GENERAL LIABILITY:** For all matters other than those arising out of the Contractor's professional services (such other matters commonly referred to as "General Liability Claims"), the Contractor agrees to the fullest extent permitted by law to defend, indemnify and hold the County and its employees harmless from any and all such losses, claims, liens, demands and causes for action, including but not limited to, judgments, penalties, interest, court costs, and legal fees

incurred by the County on behalf of any party, in connection with or arising directly or indirectly from this Agreement. The Contractor shall investigate, handle, respond to and defend any such claims, demands or suits at his sole expense, and shall bear all other related costs and expenses even if such claims, demands or suits are groundless, false or fraudulent. This indemnification section shall survive the expiration or termination of this Agreement.

In any matter in which indemnification hereunder for either professional or non-professional services would violate Section 5-322.1 of the New York General Obligations Law or any other applicable legal prohibition, the foregoing provisions shall not be construed to indemnify the County for damage arising out of bodily injury to persons or to property caused by or resulting from the sole negligence of Dutchess County employees. The term “employee” shall include all officers, advisory board members and/or volunteers serving the County.

9. INSURANCE REQUIREMENTS. At all times during the term of this Agreement, the Contractor and his sub-contractors, if any, shall maintain at his own cost the following insurance and shall provide proof thereof to the County, in the form of a Certificate of Insurance, prior to commencing work under this Agreement:

**Worker’s Compensation Employer’s Liability** (statutory limits). In compliance with the Workers’ Compensation Law of the State of New York, each contractor shall provide:

- a. a certificate of insurance on an Acord form indicating proof of coverage for Worker’s Compensation, Employer’s Liability, **OR**
- b. a New York State Workers Compensation Notice of Compliance (Form C-105, Form U-26.3, Form SI-12 or Form SI-105.2P).
- c. In the event that the Contractor is exempt from providing coverage, he must provide a properly executed copy of the Certificate of Attestation of Exemption from NYS Workers’ Compensation Board, Form CE-200.
- d. A certificate of participation in a self-insurance program. The department responsible for the implementation of the Agreement will obtain verification from the Director of Risk Management for those municipalities participating in the Dutchess County Self-Insured Plan.

**Commercial General Liability** Insurance coverage including blanket contractual coverage for the operation of the program under this Agreement with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. This insurance shall be written on an occurrence coverage form and include bodily injury and property damage liability, sexual abuse and molestation and medical coverage for the participants in the program. The County must be listed as additional insured. The additional insured endorsement for the Commercial General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations.

**Automobile Liability** Insurance coverage for all owned, scheduled, hired, and non-owned vehicles with a combined single limit of liability of not less than \$1,000,000. This insurance shall include coverage for bodily injury and property damage. The County must be listed as additional insured.

**Cyber/Network Security and Data Privacy Liability Insurance** (“Cyber Policy”) of \$2,000,000 per claim and annual aggregate with a Retroactive Date as defined above that covers losses arising from actual or alleged acts, errors or omissions and intentional, fraudulent or criminal acts. Further, the policy will expressly provide, but not be limited to, coverage for losses arising from the following: (a) unauthorized use/access of computer systems (including mobile devices), servers, client’s data or software; (b) defense of any regulatory action involving a breach of privacy; (c) failure to protect the confidential or proprietary information (personal and commercial information) and intellectual property from unauthorized disclosure or unauthorized access; (d) failure to adequately protect physical security of servers and systems including from cyber terrorism; (e) the costs for: notification, whether or not required by statute, credit file or identity monitoring, identity restoration, public relations or legal experts; (f) third party liability; (g) cyber extortion and cyber terrorism; and (h) no exclusion for actual or alleged breaches of professional services agreements associated with the above.

**Professional Liability, if required**, with limits not less than \$1,000,000 per occurrence; \$3,000,000 in the aggregate. In the event of expiration or termination of this Agreement, each party hereto shall either maintain the abovementioned insurance coverage for a period of not less than three (3) years, or shall provide an equivalent extended reporting endorsement (commonly known as a ‘tail policy’).

**Excess/Umbrella Liability, if required**, with limits not less than \$5,000,000 per occurrence with a \$5,000,000 aggregate. The County must be included as additional insured.

The Acord form certificate of insurance must contain the following provisions:

- (A) The County of Dutchess must be listed as certificate holder and additional insured on the commercial general, umbrella/excess, and automobile liability policies. In addition, the commercial general liability policy must include the additional insured endorsement forms cg 2037 July 2004 edition and the cg 2010 April 2013 edition or their equivalent.
- (B) The commercial general and automobile policies are primary and noncontributory.
- (C) The commercial general liability, auto liability and workers compensation policies must contain a waiver of subrogation in favor of the County of Dutchess.
- (D) The umbrella/excess policy is primary and noncontributory and must contain a waiver of subrogation in favor of the County of Dutchess.
- (E) If the workers compensation Notice of Compliance is used instead of the Acord certificate of insurance, the Notice of Compliance must indicate that a waiver of subrogation in favor of the County of Dutchess is provided.

All policies of insurance referred to above shall be underwritten by companies authorized to do business in the State of New York with an A.M. Best financial strength rating of A- or better. In the alternative, the policies of insurance referred to above may be underwritten by Non-Admitted companies with an A.M. Best financial strength rating of A+ or higher. In addition, every policy required above shall be primary and noncontributory. Any insurance carried by the County, its officers, or its employees shall be excess and noncontributory insurance to that provided by the Contractor. The Contractor and his sub-contractor(s), if any, shall be solely responsible for any deductible losses under each of the policies required above.

Payment(s) to the Contractor may be suspended in the event the Contractor and his sub-contractor(s), if any, fails to provide the required insurance documentation in a timely manner.

Prior to cancellation or material change in any policy, a thirty (30) day notice shall be given to the County Attorney at the address listed below:

Dutchess County Attorney  
County Office Building  
22 Market Street  
Poughkeepsie, New York 12601

On receipt of such notice, the County shall have the option to cancel this Agreement without further expense or liability to the County, or to require the Contractor to replace the cancelled insurance policy, or rectify any material change in the policy, so that the insurance coverage required by this paragraph is maintained continuously throughout the term of this Agreement in form and substance acceptable to the County. Failure of the Contractor to take out or to maintain, or the taking out or the maintenance of any required insurance, shall not relieve the Contractor from any liability under this Agreement nor shall the insurance requirements be construed to conflict with or to limit the obligations of the Contractor concerning indemnification.

All losses of County property shall be adjusted with and made payable directly to the County.

10. QUALIFICATIONS OF CONTRACTOR. The Contractor specifically represents that he and his members, officers, employees, agents, servants, consultants and subcontractors have the experience, knowledge and character necessary to perform their particular duties under this Agreement.

11. DECLARATION BY CONTRACTOR. Contractor declares that he has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the work to be performed under this Agreement.

12. NON-DISCRIMINATION. No services to be rendered pursuant to, or in connection with, this Agreement may be refused to any person because of age, race, color, creed, sex, sexual orientation, national origin, disability or marital status.

Contractor shall take all affirmative steps necessary to ensure equal employment opportunities without discrimination because of age, race, creed, color, sex, sexual orientation, national origin, disability or marital status and to comply with all federal, state and local civil rights laws including, but not limited to, the Americans with Disabilities Act.

13. RETENTION OF RECORDS. The Contractor agrees to maintain and have available for audit such records as may be required by the County, New York State or United States governmental agencies. These records shall be available for inspection by properly identified personnel of the above governmental agencies upon reasonable notice, and shall be maintained for a period of ten (10) years after termination of this Agreement.

14. NON-ASSIGNMENT. This Agreement may not be assigned by the Contractor without prior written consent of the County, and the County shall be relieved of all liability and obligations consistent with the New York State General Municipal Law Section 109 in the event of such unauthorized assignment.

15. TERMINATION. (a) *Without cause.* The County may terminate this Agreement upon ten (10) days' prior written notice to the Contractor of its intent to terminate without cause.

(b) *With cause.* The County may terminate this Agreement effective immediately, with subsequent written notice to be given to the Contractor of termination with cause.

In the event of termination with or without cause, the Contractor shall deliver to the County any or all drawings, specifications, reports and other data, records, materials and equipment in his custody or control pertaining to the Agreement and the County shall pay to the Contractor all amounts due to the time of termination in accordance with the terms of this Agreement. Such termination shall not give rise to any cause of action against the County for damages, loss of profits, expenses or other remuneration of any kind. Notwithstanding any other provision of this Agreement, if, in the judgment of the County, termination is made necessary or desirable because of the Contractor's failure to fulfill his obligations under this Agreement, or any other fault of the Contractor, the County may withhold payment of all or any part of moneys which otherwise may be payable to the Contractor under this Agreement and apply such moneys toward any damages or expenses sustained by the County as a result of such failure including, without limitation, any excess costs incurred by the County in completing the services under this Agreement by the use or employment of other contractors or otherwise. Notwithstanding the foregoing, the Contractor shall be liable to the County for all such damages and expenses without limitation to any such moneys being withheld by the County, and the failure of the County to withhold moneys from the Contractor shall not be construed as an acknowledgement by the County that no such damages or expenses exist and shall not prevent the County from thereafter making any claim against the Contractor therefor.

16. EXECUTORY. The Dutchess County fiscal year begins on January 1st and ends on December 31st of any given year. Notwithstanding anything to the contrary contained herein, it is understood and agreed that this Agreement shall be deemed executory only to the extent of the funds, irrespective of their source, available to the County for the performance of the terms hereof. In the event the necessary funds to effect payment during the term of this Agreement

become unavailable for whatever reason, then this Agreement shall cease and terminate at the option of either of the parties.

Notice of the exercise of this option by either party shall be in writing and delivered by certified mail, return receipt requested. Upon receipt of the notice of termination from the County, any advance payment received and not expended, shall immediately be returned to the County.

No liability on account thereof shall be incurred by the County beyond the funds available for the performance of the terms of this Agreement. It is further understood and agreed that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of this Agreement.

17. NOTICE. Except as otherwise provided in this Agreement, notice required to be given pursuant to this Agreement shall be made in writing and addressed to the following or such other person as the parties may designate:

Dutchess County Dept. of Planning & Development  
85 Civic Center Plaza, Suite 107  
Poughkeepsie, NY 12601

Contractor  
Street address  
City/town, NY 12\_\_\_\_

18. NON-WAIVER. Failure of either party to exercise any rights under this Agreement for a breach thereof shall not be deemed a waiver thereof or a waiver of any subsequent breach.

19. SEVERABILITY. If any provision of this Agreement shall be held unenforceable, the rest of the Agreement shall nevertheless remain in full force and effect.

20. CHOICE OF LAW, VENUE. Any dispute arising directly or indirectly out of this Agreement shall be determined pursuant to the laws of the State of New York. The parties hereby choose the New York State Supreme Court, Dutchess County as the forum for any such dispute.

21. NO ARBITRATION. Disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration but must instead be heard in accordance with the Paragraph above entitled "Choice of Law, Venue".

22. SERVICE OF PROCESS. In addition to the methods of service allowed by the New York State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process on it by registered or certified mail, return receipt requested or by facsimile (fax) transmission. Service hereunder shall be complete when deposited in the United States mail, duly addressed and with proper postage or when the fax has connected. Contractor must promptly notify the County, in writing, of each and every change of address to which service of process can be made. Service by the County to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service is complete in which to respond.

23. CAPTIONS. The captions are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms hereof.

24. GENDER. Words of the masculine or feminine gender in this Agreement, unless the meaning of the sentence indicates otherwise, shall be deemed to refer to either male or female persons.

25. BINDING. This Agreement shall be valid and binding once it has been approved by the Dutchess County Attorney's Office, executed by the County Executive and delivered to the Contractor at the address indicated in the introductory paragraph of this Agreement.

26. ENFORCEMENT EXPENSES. Contractor shall pay all costs and expenses, including reasonable attorney's fees (in-house or retained counsel), that the County incurs in enforcing any of the terms of this Agreement including all costs and expenses and reasonable attorney's fees incurred in connection with any appeals, whether the County is an appellant or a respondent.

27. SET-OFF RIGHTS. The County shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold for the purpose of set-off any moneys due to Contractor under this Agreement up to any amounts due and owing to the County with regard to this Agreement, any other agreement with the County or any of its departments or agencies. This right of set-off includes any agreement for a term commencing prior to or subsequent to the term of this Agreement. The right of set-off shall include any amounts due to the County for any reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

28. BULK PRINTING. The County requires that it be the vendor of first choice for all bulk printing and copying associated with this Agreement.

29. AUDIT. Contractor shall maintain an accounting system that enables the County to readily identify assets, liabilities, revenues, expenses and disposition of County funds. Records should include, but not be limited to, those kept by the Contractor, its employees, agents, assigns, and subcontractors.

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which the vouchers or invoices are based are subject to review by the responsible department and audit by the County Comptroller. Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the County.

The audits may include examination and review of the source and application of all funds from the county, state, or federal governments. Contractor shall not be entitled to any interim or final payment under this Agreement, **and any overpayment may be recouped**, if any audit requirements and/or requests have not been satisfactorily met **or if any expenditures or fees**



**by the Contractor are determined to be irregular by the auditor.** This paragraph shall survive the termination of the Agreement.

30. SEVERANCE PAY. The County Shall Not Be Charged for Severance Pay Incentives. The County is aware that from time to time contract agencies engage in programs such as early retirement plans which reward employees with a severance payment as an incentive toward voluntary resignation. The County of Dutchess is prohibited by the New York State Constitution from making a gift of public funds and such severance pay incentives amount to such a gift. Therefore, notice is hereby given that County funds shall not be used for the purpose of a severance pay or any such incentive. If an audit of payments made under this Agreement reveals that such payments have been made, the Contractor shall immediately reimburse the County for the full amount with interest upon receipt of a written demand from the County. In addition, the County may declare this Agreement null and void.

31. CONTRACTORS OBLIGATIONS POST TERMINATION WITH OR WITHOUT CAUSE. Upon termination of this Agreement, Contractor shall: (1) cooperate with the County to develop a transition plan and assist in affecting an orderly transfer of services and obligations to any successor Contractor(s) so as to prevent any disruption in services; (2) provide County with access to and a copy of, all books, records and other non-proprietary documents including, but not limited to digital records, relating to the performance of services under this Agreement that are required or requested, at no charge; and if so directed by the County, (3) continue to perform such services prior to actual termination at the agreed upon contractual rate for up to an additional one hundred twenty (120) days following the notice of termination. The obligations of this paragraph shall survive the termination of this Agreement whether the agreement is terminated for cause or terminated for convenience.

32. CONFIDENTIALITY. The Contractor shall comply with applicable federal and state requirements for confidentiality of records and information, and agrees not to allow examination of records nor disclosures of information, except as required by the County under the terms of this Agreement.

33. POLICIES AND PROCEDURES. All work completed under this Agreement is subject to the Dutchess County Contracted Services Policies and Procedures. A copy of these procedures is attached as Exhibit "C". These guidelines are subject to change. The current version is available here: <http://DutchessNY.gov/ContractedServices>.

34. COUNTERPARTS; SIGNATURES TRANSMITTED BY ELECTRONIC MEANS. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. A facsimile or signature transmitted by electronic means applied hereto or to any other document shall have the same force and effect as a manually signed original. This provision contemplates giving legal force and effect to copies of signatures. This provision does not contemplate the use of "electronic signatures" as regulated by New York State Technology Law Article 3, "Electronic Signatures and Records Act."

35. ENTIRE AGREEMENT. The terms of this Agreement, including its attachments and exhibits, represent the final intent of the parties. Any modification, rescission or waiver of the

terms of this Agreement must be in writing and executed and acknowledged by the parties with the same formalities accorded this basic Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPROVED AS TO FORM:

ACCEPTED: COUNTY OF DUTCHESS

\_\_\_\_\_  
County Attorney's Office

BY: \_\_\_\_\_  
Acting County Executive

APPROVED AS TO CONTENT:

CONTRACTOR

\_\_\_\_\_  
Eoin Wrafter, Commissioner of  
Planning & Development

BY: \_\_\_\_\_  
Name  
Title