

**THIS AGREEMENT** is made the    day of                    , 20    by and between  
**THE COUNTY OF ONTARIO**, a municipal corporation of the State of New York,  
having an office and place of business at 20 Ontario Street, Canandaigua, New York 14424  
(hereinafter referred to as the "County")

and

**1.Name of Consultant in Caps**, having an office at **2.Consultant Address** (hereinafter referred to as the "Consultant"). The County and Consultant are sometimes referenced to in this Agreement individually as a "Party" or collectively as the "Parties."

**WHEREAS**, the County desires to obtain services in connection with **3.Description of Services**; and

**WHEREAS**, the Consultant desires to provide such services for the compensation and on the terms herein provided.

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the Parties agree as follows:

**FIRST:** The Consultant shall furnish services as provided and described in Schedule "A" which is attached hereto and made a part hereof. Notwithstanding anything to the contrary, if any of the terms and provisions of this Agreement conflict with or differ from any of the terms and provisions of Schedule "A," the terms and provisions of this Agreement shall control.

**SECOND:** For the services rendered pursuant to the "FIRST" Paragraph, the Consultant shall be paid a fee not to exceed **4.Fee Amount-Rate-not to exceed amount**. If grant funds will be used to pay for the services, and labor is involved, the Consultant shall sign and notarize the Certification to Training and Rate which is attached hereto and made a part hereof.

Any and all requests for payment to be made, including any request for partial payment made in proportion to the work completed, shall be submitted by the Consultant on properly executed claim forms of the County and paid only after approval by the County. In the event that the next succeeding paragraph has been marked to indicate that retainage is required, all payments shall be subject to a 5% retainage which shall be held by the County until released upon completion of each project phase as provided herein. In no event shall final payment or release of retainage be made to the Consultant prior to completion of all services, the submission of all reports and the approval of same by the County.

Retainage required:                Yes  
       No

Except as otherwise expressly stated in this Agreement, no payment shall be made by the County to the Consultant for out of pocket expenses or disbursements made in connection with the services rendered or the work to be performed hereunder.

Prior to the making of any payments hereunder, the County may, at its option, audit such books and records of the Consultant as are reasonably pertinent to this Agreement to substantiate the basis for payment and compliance with the terms of this Agreement. The County will not withhold payment pursuant to this paragraph for more than thirty (30) days after payment would otherwise be due pursuant to the provisions of the "SECOND" paragraph, but the County shall not be restricted from withholding payment for cause found in the course of such audit or because of failure of the Consultant to cooperate with such audit. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Agreement.

THIRD: This Agreement shall commence on **5.Commencement Date** and shall terminate on **6.Completion Date** except as extended by the County in writing and if required, duly approved by the County's Board of Supervisors.

FOURTH: The Consultant shall issue progress reports to the County as the County may direct and shall immediately inform the County in writing of any cause for delay in the performance of the Consultant's obligations under this Agreement.

FIFTH: The County, upon thirty (30) days' notice to the Consultant, may terminate this Agreement in whole or in part when the County deems it to be in its best interest, whether with or without cause. In such event, the Consultant shall be compensated and the County shall be liable only for payment for services rendered under this Agreement up to the effective date of termination.

In the event of a dispute as to the value of the services rendered by the Consultant prior to the effective date of termination, it is understood and agreed that the County shall determine the value of such services rendered by the Consultant. Such reasonable and good faith determination shall be accepted by the Consultant as final.

In the event the County determines that there has been a material breach by the Consultant of any of the terms of this Agreement and such breach remains uncured for five (5) days after service on the Consultant of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this agreement and the County shall have the right, power and authority to complete the services provided for in this Agreement, or contract for their completion, and any additional expense or cost of such completion shall be charged to and paid by the Consultant. Service of notice hereunder shall be effective on the date of mailing.

SIXTH: All original records compiled by the Consultant in completing the work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, computer printouts, graphs, charts, plans, specifications and all similar recorded data, shall become and remain the property of the County. The Consultant may retain copies of such records for its own use.

SEVENTH: Any purported delegation of duties or assignment of rights under this Agreement, or any other agreement to fulfill this Agreement, is void without the prior express written consent of the County. Every subcontract shall provide that the subcontractor(s) are subject to all terms and conditions set forth in this Agreement. All work performed by a subcontractor shall be deemed to be work performed by the Consultant and the Consultant shall be fully liable directly to the County for any losses, damages, claims, attorneys' fees and costs arising from the activities of its subcontractor(s).

EIGHTH: The Consultant agrees that it has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services and duties hereunder. The Consultant further agrees that, in the performance of this Agreement, no person having any such interest shall be employed by it. Conflict of interest shall include, but not be limited to, when an individual is employed with the County.

The Consultant represents and warrants that it has not employed or retained any person, other than a bona fide full time salaried employee working solely for the Consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than payments of fixed salary to a bona fide full time salaried employee working solely for the Consultant) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or

making of this Agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled or any civil or criminal penalty to which any violator may be liable, the County shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct the contract price, or otherwise to recover, the full amount of such fee, commission percentage, gift or consideration.

NINTH: The Consultant expressly understands and agrees that the Consultant is and shall in all respects be considered an independent Consultant. The Consultant, its employees, partners, associates, subcontractors, subconsultants and any others employed or retained by the Consultant to render services hereunder, are not and shall not hold themselves out nor claim to be an officer or employee of the County, nor make claim to any rights accruing thereto, including but not limited to Workers Compensation, Unemployment Benefits, Social Security or retirement plan membership or credit. Further, Consultant, by virtue of his/her independent contractor status, shall under no circumstance constitute an employee of the County for purposes of the Affordable Care Act, shall not be entitled to any subsidy or credit in connection with this Agreement, and agrees if the County were to be assessed a penalty related to this Agreement that Consultant will defend and indemnify the County for any said penalty or related penalty.

TENTH: The Consultant shall comply, at its own expense, with the provisions of all federal, state and local laws, rules and regulations applicable to the Consultant as an employer of labor or otherwise. The Consultant shall comply with all rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subcontractors and other employed by the Consultant to render the services hereunder.

Furthermore, in performing under this Agreement, the Consultant shall comply with all

Federal, State, local laws and regulations and any terms and conditions of a grant associated with this Agreement. Consultant agrees that, to the extent it is a covered entity or business associate under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), it will comply with all applicable requirements of HIPAA. Consultant shall comply with the rules and regulations of the County. The County’s Compliance Plan regarding Federal and State fraud and abuse laws is available on the County’s website at <http://www.co.ontario.ny.us/DocumentCenter/Home/View/236>. The Consultant shall abide by the terms of this Plan when delivering services under this Agreement and shall ensure that each individual that provides such services under this Agreement is provided with a copy of the Plan or given access to the Plan.

Furthermore, the Consultant represents and warrants that it, its officers, employees, or agents have not been excluded or terminated from participation in any federal health care programs or New York Medicaid. Should such exclusion or termination occur during the term of this Agreement, Consultant shall promptly notify the County, and such exclusion or termination shall be considered a material breach of this Agreement.

ELEVENTH: The Consultant expressly agrees that:

(a) in the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Consultant, any subcontractor, nor any person acting on their behalf, shall discriminate against any person on the basis of any characteristic or classification protected under New York State or federal anti-discrimination laws, who is otherwise qualified and available to perform the work to which the employment relates; and

(b) neither the Consultant, any subcontractor, nor any person acting on behalf of such

Consultant or subcontractor shall, in any manner, harass, discriminate against or retaliate against any employee hired for the performance of work under this Agreement on account of any characteristic or classification protected under New York State or federal anti-discrimination laws; and

(c) in the course of performance of work under this Agreement, neither the Consultant, any subcontractor, nor any person acting on their behalf shall, in any manner, harass, discriminate against, or retaliate against any person on account of any characteristic or classification protected under New York State or federal anti-discrimination laws; and

(d) that there may be deducted from the amount payable to the Consultant by the County under this Agreement a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Agreement; and

(e) that this Agreement may be cancelled or terminated by the County, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of this section of the Agreement.

TWELFTH: Failure to secure and maintain the required insurances contained in Schedule “B,” which is attached hereto and made a part hereof, is a material breach of this Agreement. Consultant shall reimburse County for any funds expended by County that would have been paid by Consultant’s insurance carrier under any required insurance. Should Consultant’s required insurance be cancelled or lapse in any way, Consultant shall submit the insurer’s notice of cancellation or lapse to County within two business days of receipt.

In addition to, and not in limitation of the insurance requirements contained in Schedule

“B,” the Consultant agrees to the fullest extent of the law:

**PROFESSIONAL LIABILITY CLAIMS:** For professional liability claims, except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Consultant agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the County, its officers, and employees and agents from and against any and all liability, damage, penalties, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the negligent performance or failure to perform hereunder by the Consultant, or third parties under the direction or control of the Consultant. This duty to defend shall be triggered immediately upon notice to the Consultant by the County of the County's receipt of a Notice of Claim, service of process or other demand or claim, if covered by Consultant's insurance. If not covered by Consultant's insurance, Consultant shall reimburse the County for its defense costs for claims arising out of Consultant's negligence, or third parties under their direction or control, based on the percentage of liability attributed to Consultant, or third parties under their direction or control, whether by court ruling or otherwise.

**GENERAL LIABILITY CLAIMS:** For all matters other than professional liability claims, that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Consultant shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, penalties, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Consultant or third Parties under the direction or control of the Consultant; and to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the performance or failure



to herein and to bear all other costs and expenses related thereto. This duty to defend shall be triggered immediately upon notice to the Consultant by the County of the County's receipt of a Notice of Claim, service of process or other demand or claim.

THIRTEENTH: All notices of any nature referred to in this Agreement shall be in writing and sent by registered or certified mail postage pre-paid, to the respective addresses set forth below or to such other addresses as the respective Parties hereto may designate in writing:

To the County:

- 7.Name of Department
- 8.Street Address
- 9.City,State,Zip

To the Consultant:

- 10.Name of Consultant
- 11.Street Address
- 12.City,State,Zip

FOURTEENTH: This Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the Parties.

FIFTEENTH: If any provision of this Agreement is determined to be invalid or unenforceable, that shall not affect the validity or enforceability of the remaining portions of this Agreement. Any such invalid or unenforceable provision shall be modified so as to give effect to the original intent of the Parties to the maximum extent possible.

SIXTEENTH: The defense and indemnification obligations provided herein shall survive

the expiration or termination of this Agreement, whether occasioned by this Agreement's expiration or earlier termination.

SEVENTEENTH: The Parties hereto understand and agree that each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein, and if through mistake or inadvertence such provision is not inserted, said clause shall be deemed to have been inserted and shall have the full force and effect of law.

EIGHTEENTH: Notwithstanding, in accordance with Section 362 of the County Law, the County shall have no liability under this Agreement to Consultant or to anyone else beyond funds appropriated for this Agreement.

NINETEENTH: This Agreement shall not be enforceable until signed by all Parties and approved by the County of Ontario.

TWENTIETH: This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

**IN WITNESS WHEREOF**, The County and the Consultant have executed this Agreement in triplicate.

COUNTY OF ONTARIO

By \_\_\_\_\_  
Mary A. Krause, County Administrator

CONSULTANT

By \_\_\_\_\_  
(Name and Title)

Authorized by the Board of Supervisors of the County of Ontario  
on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, pursuant  
to Resolution No. \_\_\_\_\_-\_\_\_\_\_.

Approved as to form and manner of execution:

\_\_\_\_\_  
The County of Ontario

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