

# Law & Major Contracts Meeting Agenda



Committee Chair: Damon Maher

800 Michaelian Office Bldg.  
148 Martine Avenue, 8th Floor  
White Plains, NY 10601  
www.westchesterlegislators.com

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**Monday, July 11, 2022**

**10:00 AM**

**Committee Room**

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## CALL TO ORDER

Joint with Budget & Appropriations committee

## MINUTES APPROVAL

Monday, June 6, 2022 at 10:00 a.m.

## I. ITEMS FOR DISCUSSION

1. [2022-359](#) ACT - Enter into Agreement - Board of Ethics

AN ACT authorizing the County to enter into an agreement with Steven G. Leventhal to serve as both independent consultant and special counsel to the Westchester County Board of Ethics for a three (3) year term commencing on August 1, 2022 and continuing through July 31, 2025 for an amount not-to-exceed NINETY THOUSAND (\$90,000) DOLLARS.

**COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS**

2. [2022-367](#) ACT - Civil Litigation to Void Lease

AN ACT authorizing the County of Westchester to settle the pending action County of Westchester v. Proteus On-Demand Facilities, LLC.

**COMMITTEE REFERRAL: COMMITTEES ON BUDGET & APPROPRIATIONS AND LAW & MAJOR CONTRACTS**

## II. OTHER BUSINESS

## III. RECEIVE & FILE

## ADJOURNMENT

George Latimer  
County Executive

Department of Law

John M. Nonna  
County Attorney

June 23, 2022

Westchester County Board of Legislators  
800 Michaelian Office Building  
White Plains, New York 10601

Dear Honorable Members of the Board of Legislators:

Transmitted herewith is an Act which, if adopted by your Honorable Board, would authorize the County of Westchester (the "County") to enter into an agreement with Steven G. Leventhal ("Mr. Leventhal"), pursuant to which Mr. Leventhal will serve as both independent consultant and special counsel to the Westchester County Board of Ethics (the "BOE"), in an "of Counsel" capacity to the County Attorney, for a term commencing on August 1, 2022 and continuing through July 31, 2025, at a cost not-to-exceed \$90,000.00 (the "Agreement").

By way of background, in 2010 the Office of the New York State Comptroller (the "Comptroller") recommended that the County undertake certain actions to improve the administration of its Code of Ethics (the "Code"), such as verifying that all reporting individuals file completed financial disclosure statements and reviewing such financial disclosure statements to detect and prevent conflicts of interest.

In an effort to effectuate the Comptroller's recommendations, on September 6, 2011 your Honorable Board adopted Local Law 10-2011, which was codified in Chapters 192 and 883 of the Laws of Westchester County. Chapter 883, § 883.91, required, *inter alia*, that the BOE hire an "independent consultant" to (1) review all annual financial disclosure statements to consider whether County officers and employees are in compliance with the Code, or have any financial involvement or outside employment in a business or organization that may impair their ability to fairly and impartially perform their duties as County officers or employees; (2) create a draft intra-agency report for the BOE regarding any potential non-compliance or conflicts of interest; and (3) create a draft master list of County vendors, contractors, and consultants (the "Services"). It should be noted that by Local Law No. 15-2021, adopted on March 22, 2021, your Honorable Board repealed the former Chapters 192 and 883 and enacted a new Chapter 883, which sets forth a clear and comprehensive code of ethics in order to ensure both the reality and appearance of integrity in County government.

Thereafter, on April 11, 2014, the BOE issued a Request for Quotes and Qualifications ("RFQ") inviting qualified candidates to submit their qualifications and a price proposal to provide the Services of the independent consultant as required by the former § 883.91. By letter

dated May 8, 2014, Mr. Leventhal submitted his qualifications and a price proposal to the BOE to perform the Services (the "Proposal Letter"). Following a review of the Proposal Letter by the BOE, Mr. Leventhal was selected to perform the Services under a "short form" contract for the period from August 1, 2014 through July 31, 2015 for an amount not-to-exceed \$20,000.

Thereafter, a second "short form" contract was entered into between the County and Mr. Leventhal for the provision of Services for the period from August 1, 2015 through July 31, 2016, followed by two (2) additional "short form" contracts for the periods August 1, 2016 through July 31, 2017 and August 1, 2017 through July 31, 2018, respectively. It should be noted that an exemption from procurement pursuant Section 3(a) xxi of the County Procurement Policy was granted by the Board of Acquisition & Contract for each successive short form contract, as the exemption was deemed to be in the best interest of the County.

Thereafter, on October 1, 2018 by Act No. 2018-163, your Honorable Board authorized the County to enter into an agreement with Mr. Leventhal to serve as both independent consultant and special counsel to the BOE for a term commencing retroactive to August 1, 2018 and continuing through July 31, 2019 for an amount not-to-exceed \$60,000 payable at the rate of \$275 per hour plus expenses.

Most recently, on May 20, 2019 by Act No. 2019-98, your Honorable Board authorized the County to enter into an agreement with Mr. Leventhal to serve as both independent consultant and special counsel to the BOE for a term commencing on August 1, 2019 and continuing through July 31, 2022 for an amount not-to-exceed \$150,000 payable at the rate of \$275 per hour plus expenses.

In anticipation of the expiration of the current Agreement with Mr. Leventhal on July 31, 2022, the BOE now seeks the authority of your Honorable Board to enter into a new three (3) year agreement with Mr. Leventhal to serve as both independent consultant and special counsel to the BOE for a term commencing on August 1, 2022 and continuing through July 31, 2025.

In his capacity as independent consultant to the BOE, Mr. Leventhal will continue to perform the Services that were required by the former § 883.91 and are now required under Section 883.304(j). In his capacity as special counsel to the BOE, Mr. Leventhal will continue to perform the following additional services: assist the BOE in exploring the feasibility of electronic filing of Annual Statements of Financial Disclosure; prepare a *Plain Language Guide to the County Code of Ethics* to be printed and available for use in the annual ethics training session and for distribution to all employees and posted on the County website; conduct ethics training sessions as required by Chapter 883; coordinate the development of a link to a BOE page on the County website, and assist the BOE's Secretary in posting information and materials to the webpage; attend meetings of the BOE and provide ethics advice and guidance to the BOE and to County officers and employees, as requested; draft advisory opinions for the BOE and the Office of the County Attorney; develop due process procedures for investigations conducted by the BOE; assist the BOE in conducting investigations and administrative hearings; assist the Chair of the BOE at the conclusion of investigations conducted by the BOE, with drafting findings of fact and conclusions of law for consideration and adoption by the BOE; advise on records access for the BOE and serve as records access officer for the BOE (the "Additional Services").

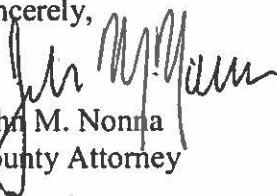
In consideration for performing both the Services and the Additional Services under the Agreement, Mr. Leventhal shall be paid at the hourly rate of \$295.00, plus reasonable and necessary out-of-pocket expenses (including but not limited to mailing costs, copying and tolls, but excluding mileage, lodging and meals), not-to-exceed the aggregate sum of \$90,000.00, payable monthly upon receipt of an invoice.

It should be noted that in light of Mr. Leventhal's expertise and experience in the field of government ethics, including numerous lectures, training sessions and publications on the topic, as well 8 years of experience working with the BOE, the County Attorney's Office will again seek a "best interest" exemption pursuant Section 3(a) xxi of the County Procurement Policy, from the County Board of Acquisition & Contract in connection with the proposed Agreement.

The Planning Department has advised that based on its review, the proposed agreement does not meet the definition of an "action" under the State Environmental Quality Review Act, 6 NYCRR part 617. As such, no environmental review is required. Please refer to the memorandum from the Department of Planning dated January 14, 2022, which is on file with the Clerk of the Board of Legislators.

Accordingly, I most respectfully recommend your Honorable Board's approval of the attached Act.

Sincerely,



John M. Nonna  
County Attorney

JMN/JPG/jpg

**HONORABLE BOARD OF LEGISLATORS  
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a communication from the County Attorney recommending the enactment of an Act which, if adopted by this Honorable Board, would authorize the County of Westchester (the “County”) to enter into an agreement with Steven G. Leventhal (“Mr. Leventhal”), pursuant to which the Mr. Leventhal will serve as both independent consultant and special counsel to the Westchester County Board of Ethics (the “BOE”), in an “of Counsel” capacity to the County Attorney, for a term commencing on August 1, 2022 and continuing through July 31, 2025 at a cost not-to-exceed \$90,000.00 (the “Agreement”).

Your Committee is advised that in 2010, the Office of the New York State Comptroller (the “Comptroller”) recommended that the County undertake certain actions to improve the administration of its Code of Ethics (the “Code”), such as verifying that all reporting individuals file completed financial disclosure statements and reviewing such financial disclosure statements to detect and prevent conflicts of interest.

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provide the Services of the independent consultant as required by the former § 883.91. By letter dated May 8, 2014, Mr. Leventhal submitted his qualifications and a price proposal to the BOE to perform the Services (the "Proposal Letter"). Following a review of the Proposal Letter by the BOE, Mr. Leventhal was selected to perform the Services under a "short form" contract for the period from August 1, 2014 through July 31, 2015 for an amount not-to-exceed \$20,000.

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Your Committee is advised that in his capacity as independent consultant to the BOE, Mr. Leventhal will continue to perform the Services that were required by former § 883.91 and are now required under Section 883.304(j). In his capacity as special counsel to the BOE, Mr. Leventhal will continue to perform the following additional services: assist the BOE in

exploring the feasibility of electronic filing of Annual Statements of Financial Disclosure; prepare a *Plain Language Guide to the County Code of Ethics* to be printed and available for use in the annual ethics training session and for distribution to all employees and posted on the County website; conduct ethics training sessions as required by Chapter 883; coordinate the development of a link to a BOE page on the County website, and assist the BOE's Secretary in posting information and materials to the webpage; attend meetings of the BOE and provide ethics advice and guidance to the BOE and to County officers and employees, as requested; draft advisory opinions for the BOE and the Office of the County Attorney; develop due process procedures for investigations conducted by the BOE; assist the BOE in conducting investigations and administrative hearings; assist the Chair of the BOE at the conclusion of investigations conducted by the BOE, with drafting findings of fact and conclusions of law for consideration and adoption by the BOE; advise on records access for the BOE and serve as records access officer for the BOE (the "Additional Services").

In consideration for performing the Services and the Additional Services under the Agreement, Mr. Leventhal shall be paid at the hourly rate of \$295.00, plus reasonable and necessary out-of-pocket expenses (including but not limited to, mailing costs, copying and tolls, but excluding mileage, lodging and meals), not-to-exceed the aggregate sum of \$90,000.00, payable monthly upon receipt of a bill.

Your Committee is advised that in light of Mr. Leventhal's expertise and experience in the field of government ethics, including numerous lectures, training sessions and publications on the topic, as well as 8 years of experience working with the BOE, the County Attorney's Office will again seek a "best interest" exemption pursuant Section 3(a) xxi of the County Procurement Policy, from the County Board of Acquisition & Contract in connection with the proposed Agreement.

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An affirmative vote of a majority of the voting strength of the Board is required for approval of the attached Act.

Accordingly, your Committee concurs with the County Attorney's recommendation and requests approval of the attached Act.

Dated: \_\_\_\_\_, 2022  
White Plains, New York

COMMITTEE ON

c:jng



# FISCAL IMPACT STATEMENT

SUBJECT: Board of Ethics -Steven G. Leventhal  NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

### SECTION A - FUND

GENERAL FUND  AIRPORT FUND  SPECIAL DISTRICTS FUND

### SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 12,500

Total Current Year Revenue \$ -

Source of Funds (check one):  Current Appropriations  Transfer of Existing Appropriations

Additional Appropriations  Other (explain)

Identify Accounts: 101\_18\_1000\_4923

Potential Related Operating Budget Expenses: Annual Amount \$30,000

Describe: An act authorizing the County to enter into an agreement with Steven G. Leventhal to serve as both independent consultant and special counsel to the Westchester County Board of Ethics for a three year term, commencing on 8/1/22 through 7/31/25 for a NTE amount of \$90,000.00.

Potential Related Operating Budget Revenues: Annual Amount N/A

Describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: N/A

Next Four Years: N/A

Prepared by: Patricia Haggerty

Title: Sr. Budget Analyst

Department: Budget

Date: June 10, 2022

Reviewed By:   
PH Budget Director

Date: 6/13/22

AN ACT authorizing the County to enter into an agreement with Steven G. Leventhal to serve as both independent consultant and special counsel to the Westchester County Board of Ethics, for a three (3) year term commencing on August 1, 2022 and continuing through July 31, 2025 for an amount not-to-exceed \$90,000.00.

**BE IT ENACTED** by the Board of Legislators of the County of Westchester, as follows:

**Section 1.** The County of Westchester (the “County”) is hereby authorized to enter into an agreement with Steven G. Leventhal (“Mr. Leventhal”) pursuant to which Mr. Leventhal will serve as both independent consultant and special counsel to the Westchester County Board of Ethics (“BOE”), in an “of Counsel” capacity to the County Attorney, for a three (3) year term commencing on August 1, 2022 and continuing through July 31, 2025 (the “Agreement”).

§2. In his capacity as independent consultant, Mr. Leventhal shall (1) review all annual financial disclosure statements to consider whether County officers and employees are in compliance with the Westchester County Code of Ethics, or have any financial involvement or outside employment in a business or organization that may impair their ability to fairly and impartially perform their duties as County officers or employees; (2) create a draft intra-agency report for the BOE regarding any potential non-compliance or conflicts of interest; and (3) create a draft master list of County vendors, contractors, and consultants.

§3. In his capacity as special counsel, Mr. Leventhal will perform the following additional services: assist the BOE in exploring the feasibility of electronic filing of Annual Statements of Financial Disclosure; prepare a *Plain Language Guide to the County Code of Ethics* to be printed and available for use in the annual ethics training session and for distribution to all employees and posted on the County website; conduct ethics training

sessions as required by Chapter 883; coordinate the development of a link to a BOE page on the County website, and assist the BOE's Secretary in posting information and materials to the webpage; attend meetings of the BOE and provide ethics advice and guidance to the BOE and to County officers and employees, as requested; draft advisory opinions for the BOE and the Office of the County Attorney; develop due process procedures for investigations conducted by the BOE; assist the BOE in conducting investigations and administrative hearings; assist the Chair of the BOE at the conclusion of investigations conducted by the BOE, with drafting findings of fact and conclusions of law for consideration and adoption by the BOE; advise on records access for the BOE and serve as records access officer for the BOE

§4. In consideration for the aforesaid services to be rendered by Mr. Leventhal to the County under the Agreement, the County shall be authorized to pay Mr. Leventhal at the hourly rate of \$295.00, plus reasonable and necessary out-of-pocket expenses (including but not limited to mailing costs, copying and tolls, but excluding mileage, lodging and meals), not-to-exceed the aggregate sum of \$90,000.00, payable monthly upon receipt of a bill.

§5. The County Executive or his authorized designee, be and hereby is authorized to execute all instruments and to take all actions reasonably necessary to carry out the purposes of this Act.

§6. This Act shall take effect immediately.

**THIS AGREEMENT** made the \_\_\_ day of \_\_\_\_\_ 2022 by and between

**THE COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601

(hereafter the "County")

and

**STEVEN G. LEVENTHAL**, having an office and principal place of business at 15 Remsen Avenue, Roslyn, New York 11576

(hereafter the "Consultant")

**WITNESSETH:**

**FIRST:** The Consultant shall serve as independent consultant and special counsel (Ethics) to the Westchester County Board of Ethics ("Board"), in an "of Counsel" capacity to the County Attorney, as more fully described in Schedule "A", attached hereto and made a part hereof (hereinafter the "Work").

**SECOND:** The term of this Agreement shall be for a period of three (3) years commencing on August 1, 2022 and continuing through July 31, 2025, unless terminated earlier pursuant to the provisions of this Agreement.

The Consultant shall report to the County on its progress toward completing the Work, as the Chair of the Board (the "Chair") or the Westchester County Attorney (the "County Attorney") may request, and shall immediately inform the Chair and/or the County Attorney in writing of any cause for delay in the performance of its obligations under this Agreement.

The Consultant shall properly maintain a detailed daily log relative to the services rendered for which compensation is to be paid by the County pursuant to the terms of this Agreement, which shall be submitted on a monthly basis. This log shall include, but not be limited to, the following:

1. Date.
2. Nature of service rendered.
3. Required time expended.

**THIRD:** In consideration for the Work to be performed pursuant to Paragraph "FIRST," the Consultant shall be paid at the rate of Two Hundred Ninety-Five (\$295.00) Dollars per hour, plus reasonable and necessary out-of-pocket expenses (including but not limited to mailing costs, copying and tolls, but excluding mileage, lodging and meals), not to exceed the aggregate sum of NINETY THOUSAND (\$90,000.00) Dollars, payable monthly upon receipt of an invoice.

Any and all requests for payment shall be submitted by the Consultant on properly executed payment vouchers of the County and paid only after approval by the Chair. All payment vouchers must contain the Contract Number LAW, be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize consecutive numbering and be non-repeating. In no event shall *final* payment be made to the Consultant prior to completion of all Work and the approval of same by the Chair.

The Consultant shall, at no additional charge, furnish all labor, services, materials, tools, equipment and other appliances necessary to complete the Work, unless specific additional charges are expressly permitted under this Agreement. It is recognized and understood that even if specific additional charges are expressly permitted under this Agreement, in no event shall total payment to the Consultant exceed the not-to-exceed amount set forth above.

**FOURTH: PERFORMANCE MEASUREMENT.** The Consultant acknowledges and agrees that it shall participate in the measurement of its performance under this Agreement, as follows:

(a) The Consultant shall provide the County with detailed written annual reports outlining the Consultant's progress in achieving the Targets/Outcomes set forth in the Scope of Work in order to enable the County to assess the level and type of services provided, as well as the dedication and/or expenditure of the funding provided by the County for those purposes to date; and

(b) In addition to any general audit rights to which the County may be entitled hereunder, the County also reserves the right to audit the Consultant's performance under this Agreement. Such audit may include requests for documentation or other information which the Chair may, in his/her discretion, deem necessary and appropriate to verify the information provided by the Consultant as required by subsection (a), above. The County may also make site visits to the location/s where the services to be provided under this Agreement are performed in order to review Consultant's records,

observe the performance of services and/or to conduct interviews of staff and patrons, where appropriate and not otherwise prohibited by law.

**FIFTH:** 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. 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 this Agreement, unless the County shall find cause to withhold payment in the course of such audit or the Consultant fails 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.

It is recognized and understood by the Consultant that as part of the County's right to audit the Consultant to substantiate the basis for payment, the County has the right to audit the performance of the terms of this contract by the Consultant. Towards this end, the County may request documentation from the Consultant to verify performance of the terms of this Agreement, which the Consultant shall provide. The County may also make site visits to the location(s) where the work is being performed to both review the Consultants' records and observe the performance of the contract.

**SIXTH:** The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of the monies appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by its Board of Legislators during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the

amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Consultant, then the Consultant shall have the right to terminate this Agreement upon reasonable prior written notice.

**SEVENTH:** VENDOR DIRECT PAYMENT: All payments made by the County to the Consultant will be made by electronic funds transfer ("EFT") pursuant to the County's Vendor Direct program. Consultants doing business with Westchester County, who are not already enrolled in the Vendor Direct Program, will be required to fill out and submit an EFT Authorization Form prior to receiving an award or purchase order. The EFT Authorization Form, Instructions and related information are annexed hereto as Schedule "B". Payments will be automatically credited to the Consultant's designated bank account at the Consultant's financial institution. Payments are anticipated to be deposited two business days after the voucher/invoice is processed for payment. Saturdays, Sundays, and legal holidays are not considered business days. Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on County check stubs and will contain the date that the funds will be credited to your account. All information received will be treated and handled as strictly confidential. The completed Authorization Form must be returned by the Consultant to the Department of Finance prior to award of the contract. In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, please contact the Finance Department. Any Consultant that fails to return the completed authorization form(s) prior to award of the contract may be considered non-responsive and the proposal may be rejected.

**EIGHTH:** (a) The County, upon ten (10) 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. In such event, the Consultant shall be compensated and the County shall be liable only for payment for services already rendered and reasonable and necessary expenses incurred under this Agreement prior to the effective date of termination at the rate specified in paragraph "THIRD" above. Upon receipt of notice that the County is terminating this Agreement in its best interests, the Consultant shall stop work immediately and incur no further costs or expenses in furtherance of this Agreement without the express approval of the Chair, and the Consultant shall direct any approved subconsultants to do the same.

In the event of a dispute as to the value of the Work rendered by the Consultant prior to the date of termination, it is understood and agreed that the Chair shall determine the value of such Work rendered by the Consultant. The Consultant shall accept such reasonable and good faith determination as final.

(b) In the event the County determines that there has been a material breach by the Consultant of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours 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 Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be charged to and paid by the Consultant. Without limiting the foregoing, upon written notice to the Consultant, repeated breaches by the Consultant of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

**NINTH:** The Consultant agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "C", entitled "Standard Insurance Provisions", which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "C", the Consultant agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Consultant shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage,



claims, demands, costs, judgments, fees, attorney's 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

(b) 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 this Agreement and to bear all other costs and expenses related thereto; and

(c) in the event the Consultant does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Consultant shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

**TENTH:** (a) The Consultant represents that, as a material element of this agreement, and prior to the rendering of any services to the County, it has filed with the Westchester County Clerk an instrument in the form attached hereto as Schedule "D". In addition, the Consultant hereby represents that, if operating under an assumed name, it has filed the necessary certificate pursuant to New York State General Business Law Section 130.

(b) 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 from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.

**ELEVENTH:** The Consultant expressly agrees that neither it nor any Consultant, subconsultant, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age,

national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Consultant acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

**TWELFTH:** The Consultant shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations, including, but not limited to, those applicable to the Consultant as an employer of labor. The Consultant shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subconsultants and others employed to render the Work hereunder.

**THIRTEENTH:** Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as Schedule "E" is a questionnaire entitled "Business Enterprises Owned and Controlled by Persons of Color or Women" which the Consultant agrees to complete.

**FOURTEENTH:** All records or recorded data of any kind compiled by the Consultant in completing the Work described in this Agreement, including but not limited to written reports, studies, drawings, blueprints, computer printouts, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of the County. The Consultant may retain copies of such records for its own use and shall not disclose any such information without the express written consent of the Chair. The County shall have the right to reproduce and publish such records, if it so desires, at no additional cost to the County.

Notwithstanding the foregoing, all deliverables created under this Agreement by the Consultant are to be considered "works made for hire." If any of the deliverables do not qualify as "works made for hire," the Consultant hereby assigns to the County all right, title and interest (including ownership of copyright) in such deliverables and such assignment allows the County to obtain in its name copyrights, registrations and similar protections which may be available. The

Consultant agrees to assist the County, if required, in perfecting these rights. The Consultant shall provide the County with at least one copy of each deliverable.

The Consultant agrees to defend, indemnify and hold harmless the County for all damages, liabilities, losses and expenses arising out of any claim that a deliverable infringes upon an intellectual property right of a third party. If such a claim is made, or appears likely to be made, the Consultant agrees to enable the County's continued use of the deliverable, or to modify or replace it. If the County determines that none of these alternatives is reasonably available, the deliverable may be returned.

**FIFTEENTH:** The Consultant shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Consultant shall not subcontract any part of the Work without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subconsultants are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Consultant that for the purposes of this Agreement, all Work performed by a County-approved subconsultant shall be deemed Work performed by the Consultant and the Consultant shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement. All subcontracts for the Work shall expressly reference the subconsultant's duty to comply with the material terms and conditions of this Agreement and shall attach a copy of the County's contract with the Consultant. The Consultant shall obtain a written acknowledgement from the owner and/or chief executive of subconsultant or his/her duly authorized representative that the subconsultant has received a copy of the County's contract, read it and is familiar with the material terms and conditions thereof. The Consultant shall include provisions in its subcontracts designed to ensure that the Consultant and/or its auditor has the right to examine all relevant books, records, documents or electronic data of the subconsultant necessary to review the subconsultant's compliance with the material terms and conditions of this Agreement. For each and every year for which this Agreement continues, the Consultant shall submit to the Chair a letter signed by the owner and/or chief executive officer of the Consultant or his/her duly authorized representative certifying that each and every approved subconsultant is in compliance with the material terms and conditions of the Agreement.

**SIXTEENTH:** The Consultant agrees to complete the Criminal Background Disclosure as required by Executive Order No. 1-2008 and attached hereto as Schedule "F".

**SEVENTEENTH:** Pursuant to Act No. 56-1999, no County procuring officer may award or recommend for award any contract not subject to competitive bidding to a party that does not execute a certification in substantially the form attached hereto and forming a part hereof as Schedule "G". Therefore, the Consultant agrees, as part of this Agreement, to complete the form attached hereto as Schedule "G".

**EIGHTEENTH:** The Consultant and the County agree that the Consultant and its officers, employees, agents, and/or subconsultants are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Consultant covenants and agrees that neither the Consultant nor any of its officers, employees, agents, contractors, subconsultants and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

**NINETEENTH:** Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

**TWENTIETH:** All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail, postage pre-paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:

Kitley S. Covill, Chair  
Westchester County Board of Ethics  
148 Martine Avenue  
White Plains, New York 10601

with a copy to:

County Attorney  
Michaelian Office Building, Room 600  
148 Martine Avenue  
White Plains, New York 10601

To the Consultant:

Steven G. Leventhal  
c/o Leventhal, Mullaney & Blinkoff, LLP  
15 Remsen Avenue  
Roslyn, New York 11576

**TWENTY-FIRST:** 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.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

**TWENTY-SECOND:** Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

**TWENTY-THIRD:** The Consultant recognizes that this Agreement does not grant the Consultant the exclusive right to perform the Work for the County and that the County may enter into similar agreements with other Consultants on an "as needed" basis.

**TWENTY-FOURTH:** This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such

term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

**TWENTY-FIFTH:** Attached hereto and forming a part hereof as Schedule “H” is a questionnaire entitled “Required Disclosure of Relationships to County.” The Consultant agrees to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the term of this Agreement, Consultant agrees to notify County in writing within ten (10) business days of such event. The Consultant shall also have each approved subconsultant complete this questionnaire and shall advise the subconsultant of the duty to report any changes to the information contained therein to the Consultant within ten (10) business days of such event and such information shall be forwarded by the Consultant to the County.

**TWENTY-SIXTH:** The Consultant shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The Consultant shall also use all reasonable means to avoid any appearance of impropriety.

**TWENTY-SEVENTH:** This Agreement shall not be enforceable until signed by both parties and approved by the Office of the County Attorney.

**IN WITNESS WHEREOF,** The County of Westchester and the Consultant have caused this Agreement to be executed.

**THE COUNTY OF WESTCHESTER**

By: \_\_\_\_\_  
John M. Nonna  
County Attorney

**STEVEN G. LEVENTHAL**

By: \_\_\_\_\_

Approved by the Westchester County Board of Legislators on \_\_\_\_\_, 2022 by Act No. 2022 - \_\_\_\_

Approved by the Westchester County Board of Acquisition & Contract at a meeting duly held on the  
\_\_\_\_ day of \_\_\_\_\_, 2022

Approved as to form  
and manner of execution

\_\_\_\_\_  
Sr. Assistant County Attorney  
County of Westchester  
k/g/eth/Leventhal Contract 06-07-22

DRAFT

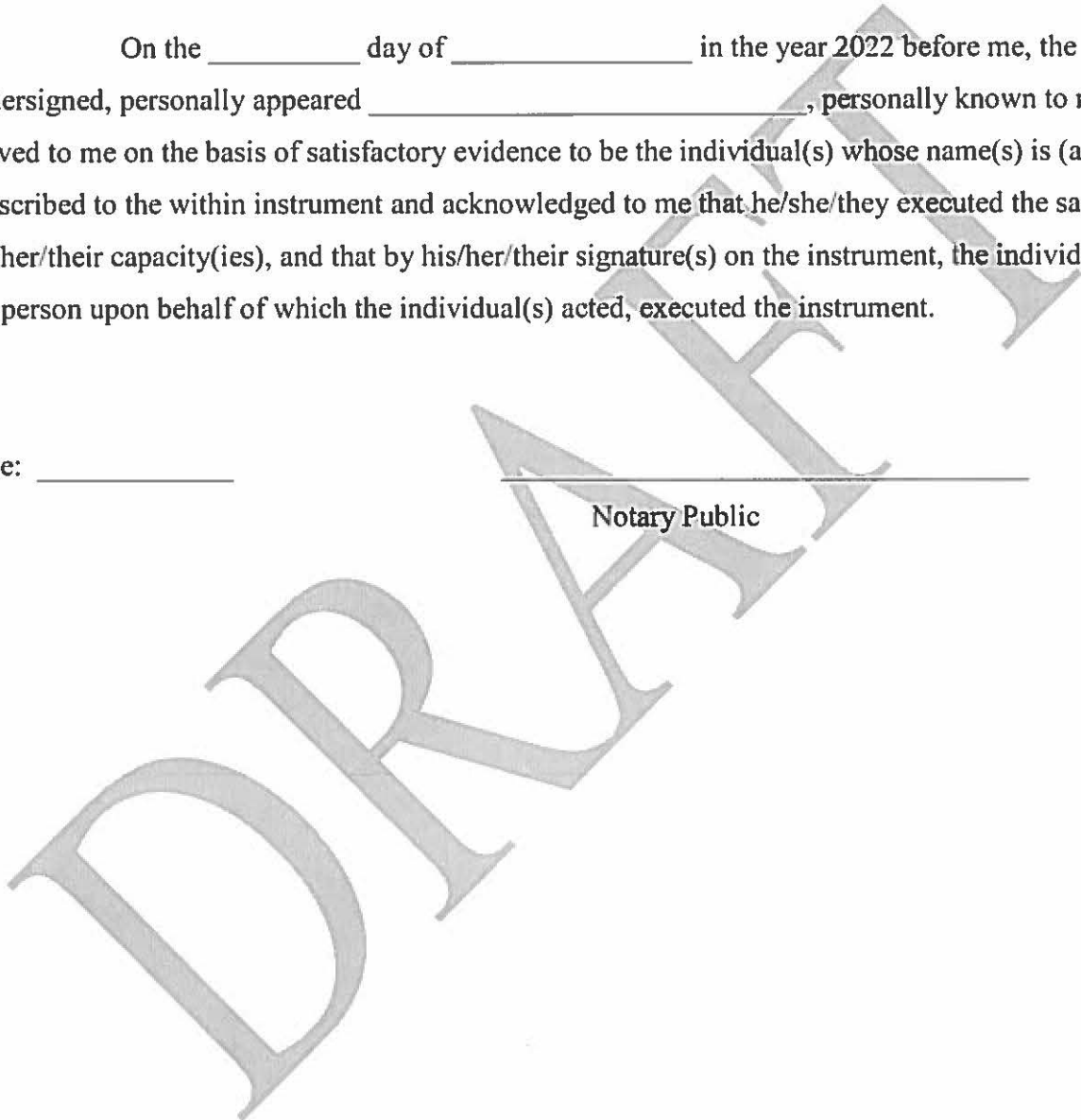
**ACKNOWLEDGMENT**

STATE OF NEW YORK        )  
  ) ss.:  
COUNTY OF                    )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2022 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



RPL § 309-a; NY CPLR § 4538



## SCHEDULE "A"

### SCOPE OF WORK

Steven Leventhal, in his capacity as the independent consultant to the Westchester County Ethics Board, shall:

- (1) review annual financial disclosure forms submitted pursuant to §883.304 of the Laws of Westchester County; and
- (2) create a draft intra-agency report for the Board of Ethics regarding any potential non-compliance or conflicts of interest; and
- (3) assist in the creation of a draft master list of County vendors, contractors, and consultants.

Steven Leventhal, in his capacity as Special Counsel to the Westchester County Ethics Board, shall:

- Assist the BOE in exploring the feasibility of electronic filing of Annual Statements of Financial Disclosure;
- prepare a *Plain Language Guide to the County Code of Ethics* to be printed and available for use in the annual ethics training session and for distribution to all employees and posted on the County website;
- conduct ethics training sessions in accordance with the Code of Ethics;
- coordinate the development of a link to a BOE page on the County website, and assist the BOE's Secretary in posting information and materials to the webpage;
- attend meetings of the BOE and provide ethics advice and guidance to the BOE and to County officers and employees, as requested;
- draft advisory opinions for the BOE and the Office of the County Attorney;
- develop due process procedures for investigations conducted by the BOE;
- assist the BOE in conducting investigations and administrative hearings;
- assist the Chair of the BOE at the conclusion of investigations conducted by the BOE, with drafting findings of fact and conclusions of law for consideration and adoption by the BOE; and
- advise on records access for the BOE and serve as records access officer for the BOE.

## SCHEDULE "B"

### Westchester County Vendor Direct Program Frequently Asked Questions

**1. WHAT ARE THE BENEFITS OF THE ELECTRONIC FUNDS TRANSFER (EFT) ASSOCIATED WITH THE VENDOR DIRECT PROGRAM?**

There are several advantages to having your payments automatically deposited into your designated bank account via EFT:

Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your bank account is more secure.

You save time – Money deposited into your bank account is automatic. You save the time of preparing and delivering the deposit to the bank. Additionally, the funds are immediately available to you.

**2. ARE MY PAYMENTS GOING TO BE PROCESSED ON THE SAME SCHEDULE AS THEY WERE BEFORE VENDOR DIRECT?**

Yes.

**3. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?**

Payments are deposited two business days after the voucher/invoice is processed. Saturdays, Sundays, and legal holidays are not considered business days.

**4. HOW WILL I KNOW WHEN THE PAYMENT IS IN MY BANK ACCOUNT AND WHAT IT IS FOR?**

Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on your check stub, and will contain the date that the funds will be credited to your account.

**5. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT RECEIVED?**

Please contact your Westchester County representative as you would have in the past if there were a discrepancy on a check received.

**6. WHAT IF I DO NOT RECEIVE THE MONEY IN MY DESIGNATED BANK ACCOUNT ON THE DATE INDICATED IN THE E-MAIL?**

In the unlikely event that this occurs, please contact the Westchester County Accounts Payable Department at 914-995-4708.

**7. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?**

Whenever you change any information or close your account a new Vendor Direct Payment Authorization Form must be submitted. Please contact the Westchester County Accounts Payable Department at 914-995-4708 and we will e-mail you a new form.

**8. WHEN COMPLETING THE PAYMENT AUTHORIZATION FORM, WHY MUST I HAVE IT SIGNED BY A BANK OFFICIAL IF I DON'T INCLUDE A VOIDED CHECK?**

This is to ensure the authenticity of the account being set up to receive your payments.



Westchester County • Department of Finance • Treasury Division

### Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

Authorization is:  
(check one)

- New
- Change

**INSTRUCTIONS:** Please complete both sections of this Authorization Form and attach a voided check. See the reverse side for more information and instructions.

**Mail to:** Westchester County, Department of Finance, Treasury Division, 148 Martine Avenue, White Plains, NY 10601  
**Attention:** Vendor Direct

#### Section I - Vendor Information

1. Vendor Name:		
2. Taxpayer ID Number or Social Security Number:		
3. Vendor Primary Address		
4. Contact Person Name:		Contact Person Telephone Number:
5. Vendor E-Mail Addresses for Remittance Notification:		
6. Vendor Certification: <i>I have read and understand the Vendor Direct Payment Program and hereby authorize payments to be received by electronic funds transfer into the bank that I designate in Section II. I further understand that in the event that an erroneous electronic payment is sent, Westchester County reserves the right to reverse the electronic payment, in the event that a reversal cannot be implemented, Westchester County will utilize any other lawful means to retrieve payments to which the payee was not entitled.</i>		
Authorized Signature	Print Name/Title	Date

#### Section II- Financial Institution Information

7. Bank Name:		
8. Bank Address:		
9. Routing Transit Number:		10. Account Type: (check one) <input type="checkbox"/> Checking <input type="checkbox"/> Savings
11. Bank Account Number:		12. Bank Account Title:
13. Bank Contact Person Name:		Telephone Number:
14. FINANCIAL INSTITUTION CERTIFICATION (required ONLY if directing funds into a Savings Account OR if a voided check is not attached to this form): <i>I certify that the account number and type of account is maintained in the name of the vendor named above. As a representative of the named financial institution, I certify that this financial institution is ACH capable and agrees to receive and deposit payments to the account shown.</i>		
Authorized Signature	Print Name / Title	Date

(Leave Blank - to be completed by Westchester County) - Vendor number assigned

| | | | |

## Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

### GENERAL INSTRUCTIONS

Please complete both sections of the Vendor Direct Payment Authorization Form and forward the completed form (along with a voided check for the account to which you want your payments credited) to: Westchester County Department of Finance, 148 Martine Ave, Room 720, White Plains, NY 10601, Attention: Vendor Direct. Please see item 14 below regarding attachment of a voided check.

### Section I - VENDOR INFORMATION

1. Provide the name of the vendor as it appears on the W-9 form.
2. Enter the vendor's Taxpayer ID number or Social Security Number as it appears on the W-9 form.
3. Enter the vendor's complete primary address (not a P.O. Box).
4. Provide the name and telephone number of the vendor's contact person.
5. Enter the business e-mail address for the remittance notification. **THIS IS VERY IMPORTANT.** This is the e-mail address that we will use to send you notification and remittance information two days prior to the payment being credited to your bank account. We suggest that you provide a group mailbox (if applicable) for your e-mail address. You may also designate multiple e-mail addresses.
6. Please have an authorized Payee/Company official sign and date the form and include his/her title.

### Section II - FINANCIAL INSTITUTION INFORMATION

7. Provide bank's name.
8. Provide the complete address of your bank.
9. Enter your bank's 9 digit routing transit number.
10. Indicate the type of account (check one box only).
11. Enter the vendor's bank account number.
12. Enter the title of the vendor's account.
13. Provide the name and telephone number of your bank contact person.
14. If you are directing your payments to a Savings Account OR you can not attach a voided check for your checking account, this line needs to be completed and signed by an authorized bank official. IF YOU DO ATTACH A VOIDED CHECK FOR A CHECKING ACCOUNT, YOU MAY LEAVE THIS LINE BLANK.

## SCHEDULE "C"

### STANDARD INSURANCE PROVISIONS (Consultant)

1. Prior to commencing work, and throughout the term of the Agreement, the Consultant shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Consultant shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Consultant and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Consultant shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Consultant to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Consultant to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Consultant from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Consultant concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Consultant's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Consultant until such time as the Consultant shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Consultant maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

2 The Consultant shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Agreement):

- a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

- b) a) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages::

- i. Premises - Operations.
- ii. Broad Form Contractual.
- iii. Independent Contractor and Sub-Contractor.
- iv. Products and Completed Operations.

- c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County for both on-going and completed operations.

- d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

- e) Consultant's Professional Liability. The Consultant shall provide proof of such insurance. (Limits of \$1,000,000 per occurrence/\$3,000,000 aggregate).

3. All policies of the Consultant shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Consultant.

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**SCHEDULE "D"**

Index No.

STATE OF \_\_\_\_\_ )  
 COUNTY OF \_\_\_\_\_ ) ss.:

\_\_\_\_\_, being duly  
 (Name)  
 sworn, deposes and says under penalty of perjury that the following statements are true:

1. I am the \_\_\_\_\_  
 (Title, Officer, Partner, Owner, etc.)  
 of \_\_\_\_\_ (the "Consultant") which  
 (Name of Consultant)  
 has been retained by the County of Westchester to provide consultant services in connection with  
 \_\_\_\_\_  
 \_\_\_\_\_

2. 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 services to be rendered to Westchester County.

3. The Consultant, further agrees that, in the rendering of services to the County, no person having any such interest shall be employed by it.

4. I make this Affidavit on behalf of the Consultant with its full knowledge and consent, pursuant to the requirements of Local Law No. 3-1988 of the Westchester County Board of Legislators and with the intent that the County of Westchester will rely on the statements contained herein.

\_\_\_\_\_  
 Consultant

Sworn to before me this \_\_\_\_\_  
 day of \_\_\_\_\_, 2022

\_\_\_\_\_  
 NOTARY PUBLIC

**[Note to Consultants: Please file this Affidavit directly with the Office of the Westchester County Clerk, Legal Division. The filing fee is \$5.00.]**



## SCHEDULE "E"

### QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

- 1.) meets the following requirements:
  - a. is at least 51% owned by one or more persons of color or women;
  - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
  - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
  - d. is an enterprise authorized to do business in this state which is independently owned and operated.
- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

\_\_\_\_\_ No

\_\_\_\_\_ Yes

**Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.**

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

\_\_\_\_\_ Women

\_\_\_\_\_ Persons of Color (*please check off below all that apply*)

\_\_\_\_\_ Black persons having origins in any of the Black African racial groups

\_\_\_\_\_ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

\_\_\_\_\_ Native American or Alaskan native persons having origins in any of the original peoples of North America

\_\_\_\_\_ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of person completing questionnaire: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date

## SCHEDULE "F"

### CRIMINAL BACKGROUND DISCLOSURE INSTRUCTIONS

Pursuant to Executive Order 1-2008, the County is required to maintain a record of criminal background disclosure from all persons providing work or services in connection with any County contract, including leases of County-owned real property and licenses:

- a.) If any of the persons providing work or services to the County in relation to a County contract are not subject to constant monitoring by County staff while performing tasks and/or while such persons are present on County property pursuant to the County contract; and
- b.) If any of the persons providing work or services to the County in relation to a County contract may, in the course of providing those services, have access to sensitive data (for example SSNs and other personal/secure data); facilities (secure facilities and/or communication equipment); and/or vulnerable populations (for example, children, seniors, and the infirm).

In those situations, the persons who must provide a criminal background disclosure ("Persons Subject to Disclosure") include the following:

- a.) Consultants, Contractors, Licensees, Lessees of County-owned real property, their principals, agents, employees, volunteers or any other person acting on behalf of said Contractor, Consultant, Licensee, or Lessee who is at least sixteen (16) years old, including but not limited to Subconsultants, subcontractors, Sublessess, or Sublicensees who are providing services to the County, and
- b.) Any family member or other person, who is at least sixteen (16) years old, residing in the household of a County employee who lives in housing provided by the County located on County property.

Under Executive Order 1-2008, it is the duty of every County Consultant, Contractor, Licensee, or Lessee to inquire of each and every Person Subject to Disclosure and disclose whether they have been convicted of a crime or whether they are subject to pending criminal charges, and to submit this form with that information.<sup>1</sup> Accordingly, you are required to complete the attached Criminal Background Disclosure Form and Certification.

Please note that under no circumstances shall the existence of a language barrier serve as a basis for the waiver of or an exception from the disclosure requirements of Executive Order 1-2008. If translation services are required by the Consultant, Contractor, Licensee, or Lessee to fulfill this obligation, it shall be at the sole cost and expense of the Consultant, Contractor, Licensee, or Lessee.

Please also note that the conviction of a crime(s) and/or being subject to a pending criminal

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<sup>1</sup> For these disclosures, a "crime" or "pending criminal charge" includes all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State.

charge(s) will not automatically result in a denial of a person's right to work on a County contract, right to be on County property, or license, but may, if the County determines that the prior conviction(s) or pending criminal charge(s) create an unacceptable risk. However, if a person fails to list or falsifies any part of his/her conviction history or any pending criminal charge(s) for any reason, he/she may be prohibited from working or being on County property without any risk assessment. If it is later determined that a Person Subject to Disclosure failed to disclose a criminal conviction or pending criminal charge for any reason, his/her right to work on a County contract, be on County property, or license may be terminated at any time.

Please further note that, pursuant to Executive Order 1-2008, and subject to the applicable provisions of New York Correction Law §§ 752 and 753, the County has the right to bar a Person Subject to Disclosure from providing work or services to the County or from being on County property if any such person has:

- a.) A conviction of a crime(s);
- b.) A pending criminal proceeding for a crime(s); or
- c.) Refused to answer questions concerning his/her criminal background

Please finally note that any failure by a County Consultant, Contractor, Licensee, or Lessee to comply with the disclosure requirements of Executive Order 1-2008 may be considered by the County to be a material breach and shall be grounds for immediate termination by the County of the related County contract.

### Exemptions

Executive Order 1-2008 exempts from the aforementioned disclosure requirements Persons Subject to Disclosure:

- a.) for whom the County has already conducted a background check and issued a security clearance that is in full force and effect; and
- b.) for whom another state or federal agency having appropriate jurisdiction has conducted a security and/or background clearance or has implemented other protocols or criteria for this purpose that apply to the subject matter of a County contract that is in full force and effect.

If you are claiming an exemption for one or more Persons Subject to Disclosure, you must notify the Procuring Officer<sup>2</sup>. The Procuring Officer will then determine whether the Person(s) Subject to Disclosure are actually exempt, and provide written notification of his/her determination. If the Procuring Officer determines that a Person Subject to Disclosure is not exempt, the Procuring Officer will notify you of that determination, and you will have to include disclosures for that person on your Criminal Background Disclosure Form and Certification.

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<sup>2</sup> Procuring Officer" shall mean the head of the department or the individual or individuals authorized by the head(s) of the department(s) undertaking the procurement and with respect to those matters delegated to the Bureau of Purchase and Supply pursuant to Section 161.11(a) of the Laws of Westchester County, the Purchasing Agent.

**Subconsultants, Subcontractors, Sublessees, or Sublicensees**

Under Executive Order 1-2008, it is your duty to ensure that any and all approved subconsultants, subcontractors, sublessees, or sublicensees complete and submit the attached Criminal Background Disclosure Form and Certification for all of their respective Persons Subject to Disclosure. This must be done before such a subconsultant, subcontractor, sublessees, or sublicensees can be approved to perform work on a contract.

**New Persons Subject to Disclosure**

Under Executive Order 1-2008, you have a **CONTINUING OBLIGATION** to maintain the accuracy of the Criminal Background Disclosure Form and Certification (and any accompanying documentation) for the duration of this contract, including any amendments or extensions thereto. Accordingly, it is your duty to complete and submit an updated Criminal Background Disclosure Form and Certification whenever there is a new Person Subject to Disclosure for this contract. **NO NEW PERSON SUBJECT TO DISCLOSURE SHALL PERFORM WORK OR SERVICES OR ENTER ONTO COUNTY PREMISES UNTIL THE UPDATED CRIMINAL BACKGROUND DISCLOSURE FORM AND CERTIFICATION IS FILED WITH THE PROCURING OFFICER.** You shall also provide the County with any other updates that may be necessary to comply with the disclosures required by Executive Order 1-2008.

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*PLEASE CONTINUE TO THE  
Criminal Background Disclosure Form and Certification  
BEGINNING ON THE NEXT PAGE*

Contract #: \_\_\_\_\_  
Name of Consultant, Contractor, Lessee, or Licensee: \_\_\_\_\_

**CRIMINAL BACKGROUND DISCLOSURE**  
**FORM AND CERTIFICATION**

If this form is being completed by a subconsultant, subcontractor, sublessee, or sublicensee, please consider all references in this form to "consultant, contractor, lessee, or licensee" to mean "subconsultant, subcontractor, sublessee, or sublicensee" and check here: \_\_\_\_\_

I, \_\_\_\_\_, certify that I am a principal or a  
(Name of Person Signing Below)

representative of the Consultant, Contractor, Lessee, or Licensee and I am authorized to complete and execute this Criminal Background Disclosure Form and Certification. I certify that I have asked each Person Subject to Disclosure the following questions:

- **Have you or your company ever been convicted of a crime (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State) including, but not limited to, conviction for commission of fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property?**
  
- **Are you or your company subject to any pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State)?**

I certify that the names and titles of Persons Subject to Disclosure who refused to answer either of the questions above are:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

(If more space is needed, please attach separate pages labeled "REFUSED to Answer - Continued.")

I certify that the names and titles of Persons Subject to Disclosure who answered "Yes" to either of the questions above are:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

(If more space is needed, please attach separate pages labeled "YES Answers - Continued.")

Each Person Subject to Disclosure listed above who has either **been convicted of a crime(s)** and/or is **subject to a pending criminal charge(s)** must answer additional questions. Those questions are below.

A Person Subject to Disclosure who has been convicted of a crime(s) must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to vulnerable populations.
- 2.) Please list all criminal convictions along with a brief description of the crime(s) (including all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please provide the date and place of each conviction.
- 4.) Please provide your age at the time of each crime for which you were convicted.
- 5.) Please provide the legal disposition of each case.
- 6.) Please provide any information either produced by yourself or someone on your behalf in regards to your rehabilitation and good conduct.

A Person Subject to Disclosure who is subject to a pending criminal charge(s) must respond to the following (please attach separate pages with responses for each person, with their name and title):

- 1.) Describe the reason for being on County property and if applicable, identify the specific duties and responsibilities on this project which you intend to perform for the County, including but not limited to, access to sensitive data and facilities and access to

vulnerable populations.

- 2.) Please identify all pending criminal charges (all felonies and misdemeanors as defined under the New York State Penal Law or the equivalent under Federal law or the laws of any other State).
- 3.) Please briefly describe the nature of the pending charges and the date upon which it is alleged that a crime was committed.

I hereby certify that all of the information provided herein (and in any and all attachments) is true and accurate and that all disclosures required by Executive Order 1-2008 and this Criminal Background Disclosure Form and Certification have been completed. By my signature below, I hereby affirm that all of the facts, statements and answers contained herein (and in any and all attachments) are true and correct. I understand that providing false or incomplete information or withholding by omission or intention pertinent information will be cause for refusing further consideration of my being utilized under this contract.

**It is understood and agreed that no Person Subject to Disclosure shall perform work or services or enter onto County property until this required Criminal Background Disclosure Form and Certification is filed with the Procuring Officer.**

**It is understood and agreed that to the extent that new Persons Subject to Disclosure are proposed to perform work or provide services under this contract after filing of this Criminal Background Disclosure Form and Certification with the Procuring Officer, such new Persons Subject to Disclosure shall not perform work or provide services or enter into County property until an updated Criminal Background Disclosure Form and Certification has been filed with the Procuring Officer.**

**It is further understood and agreed that the consultant, contractor, lessee, or licensee has a continuing obligation to maintain the accuracy of the Criminal Background Disclosure Form and Certification for the duration of this contract, including any amendments or extensions thereto, and shall provide any updates to the information to the County as necessary to comply with the requirements of Executive Order 1-2008.**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date



## SCHEDULE "G"

### CERTIFICATION REGARDING BUSINESS DEALINGS WITH NORTHERN IRELAND

A. The Consultant and any individual or legal entity in which the Consultant holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Consultant (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles.

B. For purposes of this Certification, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland to:

- (1) increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) ban provocative religious or political emblems from the workplace;
- (4) publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) abolish all job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion;
- (7) develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

C. For purposes of this Certification, "Northern Ireland" shall be understood to be the six counties partitioned from the Irish Province of Ulster, and administered from London and/or from Stormont.

D. The Consultant agrees that the warranties and representation in paragraph "A" are material conditions of this Agreement. If the County receives information that the Consultant is

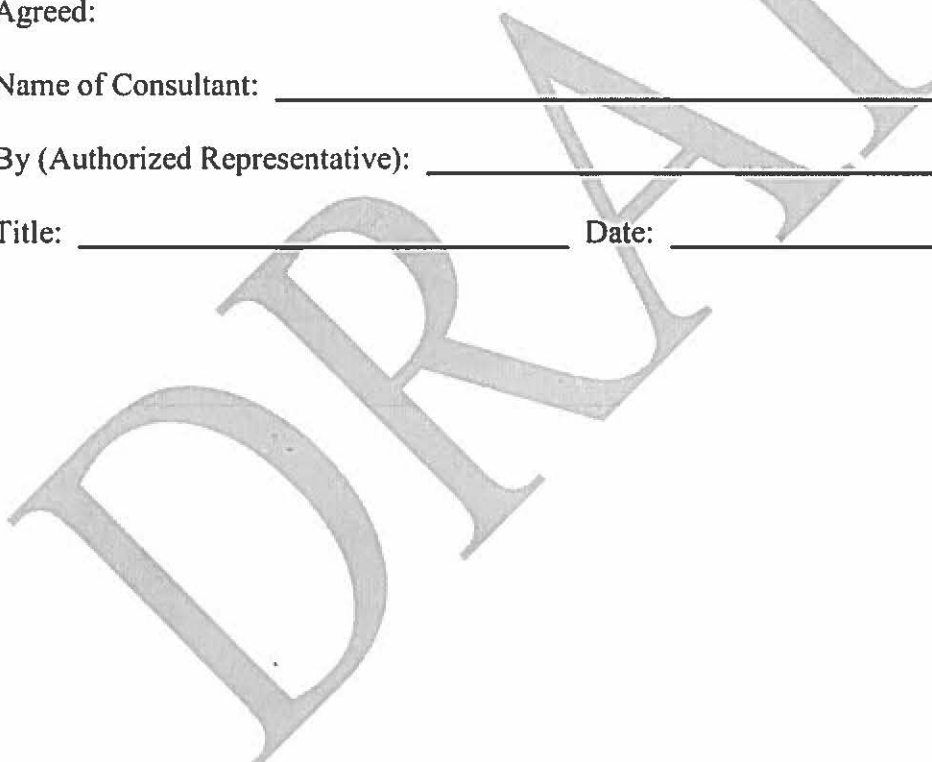
in violation of paragraph "A", the County shall review such information and give the Consultant opportunity to respond. If the County finds that such a violation has occurred, the County may declare the Consultant in default, and/or terminate this Agreement. In the event of any such termination, the County may procure the supplies, services or work from another source in accordance with applicable law. The Consultant shall pay to the County the difference between the contract price for the uncompleted portion of this Agreement and the cost to the County of completing performance of this Agreement either by itself or by engaging another Consultant. If this is a contract other than a construction contract, the Consultant shall be liable for the difference in price if the cost of procurement from another source is greater than what the County would have paid the Consultant plus any reasonable costs the County incurs in any new procurement and if this is a construction contract, the County shall also have the right to hold the Consultant in partial or total default in accordance with the default provisions of this Agreement. In addition, the Consultant may be declared not to be a responsible bidder or proposer for up to three (3) years, following written notice to the Consultant, giving the Consultant the opportunity for a hearing at which the Consultant may be represented by counsel. The rights and remedies of the County hereunder shall be in addition to, and not in lieu of, any rights and remedies the County has pursuant to this Agreement or by operation of law or in equity.

Agreed:

Name of Consultant: \_\_\_\_\_

By (Authorized Representative): \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_



**SCHEDULE "H"**

**REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY**

*A potential County consultant must complete this form as part of the proposed County contract.*

- 1.) Are any of the employees that the Consultant will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide details (attach extra pages, if necessary): \_\_\_\_\_  
\_\_\_\_\_

- 2.) Are any of the owners of the Consultant or their spouses a County officer or employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide details (attach extra pages, if necessary): \_\_\_\_\_  
\_\_\_\_\_

- 3.) Do any County officers or employees have an **interest**<sup>1</sup> in the Consultant or in any approved subcontractor that will be used for this contract?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide details (attach extra pages, if necessary): \_\_\_\_\_  
\_\_\_\_\_

By signing below, I hereby certify that I am authorized to complete this form for the Consultant.

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

<sup>1</sup> "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:


- 1.) His/her spouse, children and dependents, except a contract of employment with the County;
- 2.) A firm, partnership or association of which such officer or employee is a member or employee;
- 3.) A corporation of which such officer or employee is an officer, director or employee; and
- 4.) A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

DRAFT

**PRIVILEGED & CONFIDENTIAL**

Date: June 24, 2022

To: Sunday Vanderberg  
Clerk of the Board of Legislators

From: John M. Nonna   
County Attorney

Re: Legislation authorizing settlement of the pending NYS Supreme Court action  
*County of Westchester v. Proteus On-Demand Facilities, LLC*,  
Index No. 56257/2022 (Sup Ct, Westchester County)

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Pursuant to Rule Thirteen of the Rules of the County Board of Legislators, I am requesting immediate consideration of the attached legislation and that the same be placed upon the calendar for the next regular meeting on March 8, 2021.

If you have any questions, please contact me. Thank you for your attention to this matter.

George Latimer  
County Executive

Department of Law

John M. Nonna  
County Attorney

June 23, 2022

Westchester County Board of Legislators  
800 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601

Re: An Act authorizing the County of Westchester to settle the pending NYS Supreme Court action *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County)

Dear Honorable Members of the Board:

Attached for your review is proposed legislation that, if enacted, would authorize the County of Westchester to enter a settlement and general release agreement fully resolving the NYS Supreme Court plenary action titled *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County) (the "Action").

### **The Authorizing Act**

On February 7, 2022, the Westchester County Board of Legislators duly adopted Act No. 8-2022, which authorized the County Attorney to commence an action against Proteus On-Demand Facilities, LLC ("Proteus") relating to a lease agreement for temporary structures. A copy of the Act No. 8-2022 is annexed hereto, and familiarity with the issues outlined therein is assumed. Briefly—the structures were leased for the purpose of lodging sixteen- and seventeen-year olds facing criminal charges as juveniles as a result of NYS's Raise the Age Law.

### **The Instant Action**

The County commenced the Action on February 8, 2022, asserting two causes of action against Proteus: (i) rescission of the lease into which the parties entered into on August 6, 2018, as subsequently amended (the "Lease") based upon the directive from the NYS Office of Children and Family Services and the State Commission of Correction that the structures could no longer be used to detain juveniles; and (ii) declaratory judgment that the County was not liable for certain alleged change orders related to the lease. Proteus was served as of March 11, 2022. Proteus has yet to answer, as the County has repeatedly adjourned its time to answer to accommodate ongoing settlement discussions.

Michaelian Office Building  
148 Martine Avenue, 6<sup>th</sup> Floor  
White Plains, New York 10601

Telephone: 914-995-3630

Fax: 914-995-3132\*

\*Please be advised that service by facsimile  
is not accepted.



### **Proposed Settlement**

On June 9, 2022, the parties agreed in principal to settle the Action, the Lease, and all tangential claims. Under the terms of the proposed settlement, Proteus will accept in full satisfaction of its claims against the County payment of one million six hundred thousand and 00/100 dollars (\$1,600,000.00). Upon payment of same, among other things:

- **Lease Terminated:** The Lease is terminated;
- **Purchase of Goods:** The County purchases two temporary structures and, as applicable, flooring, carpeting, lighting, electrical, HVAC, items of interior design and related equipment and other tangible items (collectively, the "Goods"), with all rights, title(s), and any other interest in said Good being transferred to the County;
- **General Release:** Proteus releases and forever discharges the County, its administrative subdivisions, officers, directors, etc., from any and all claims, liabilities, etc.; and
- **Discontinuance of the Action:** After the required papers are filed to NYSCEF, the Action is discontinued with prejudice and without costs.


*[Remainder of Page Intentionally Left Blank]*

*[Page Intentionally Left Blank]*



I respectfully request authority from this Board pursuant to Section 158.11 of the Westchester County Charter to enter into the proposed Settlement and General Release Agreement and settle the above-referenced matter. I therefore recommend passage of the accompanying Act.

Very truly yours,



John M. Nonna  
County Attorney

JMN/stc

BOARD OF LEGISLATORS  
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act which, if enacted by your Board, would authorize the County of Westchester to enter a settlement and general release agreement fully resolving the plenary action titled *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County) (the “Action”).

On February 8, 2022, the Westchester County Attorney’s Office—as authorized by the Westchester County Board of Legislators and the Westchester County Executive pursuant to the duly adopted Act. No. 8-2022—commenced the Action against Proteus On-Demand Facilities, LLC (“Proteus”). The subject of the Action was a lease agreement between the County and Proteus (the “Lease”), which was for the use of temporary structures intended to lodge sixteen- and seventeen-year olds facing criminal charges as juveniles as a result of New York State’s Raise the Age Law (the “Temporary Structures”).

As a result of negotiations with Proteus’s counsel, the terms of a proposed settlement were negotiated. Under the terms of the proposed settlement, the County would pay Proteus one million six hundred thousand and 00/100 dollars (\$1,600,000.00); the Lease would be terminated; and the County would purchase the Temporary Structures.

Your Committee recognizes that entering into the proposed settlement will allow the County to settle this matter without further litigation or trial. Moreover, despite reasonably strong defenses, the County was facing potential liability in excess of the settlement amount.

Your Committee has carefully considered the matter and recommends approval of the annexed Act. The Act, which would authorize the County to enter into the proposed settlement to effectuate the resolution of the lawsuit, is in the best interests of the County.

Your Committee therefore recommends this Honorable Board approve the annexed Act authorizing the County to enter into the proposed settlement of the above-referenced lawsuit. An affirmative vote by a majority of the Board is required to pass this Act.

Dated: White Plains, New York  
July \_\_, 2022

ACT NO. 2022

An Act authorizing the County of Westchester to settle the pending action *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County)

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

1. The County of Westchester is hereby authorized to settle the plenary proceeding pending in the Supreme Court of the State of New York, County of Westchester, titled *County of Westchester v. Proteus On-Demand Facilities, LLC*, Index No. 56257/2022 (Sup Ct, Westchester County), including all claims by and between the County and defendant Proteus On-Demand Facilities, LLC, that exist as of the date of this Act, by disbursing to Defendant an amount not to exceed one million six hundred thousand and 00/100 dollars (\$1,600,000.00).
2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purpose hereof.
3. This Act shall take effect immediately.

# FISCAL IMPACT STATEMENT

SUBJECT: Civil Litigation to Void Lease (Proteus)

NO FISCAL IMPACT PROJECTED

## OPERATING BUDGET IMPACT

(To be completed by operating department and reviewed by Budget Department)

A)  GENERAL FUND       AIRPORT       SPECIAL REVENUE FUND (Districts)

### B) EXPENSES AND REVENUES

Total Current Year Cost      \$ 1600000

Total Current Year Revenue \$ \_\_\_\_\_

Source of Funds (check one):       Current Appropriations

Transfer of Existing Appropriations       Additional Appropriations       Other (explain)

Identify Accounts: 101-39 2000:2200-4380

Potential Related Operating Budget Expenses:      Annual Amount \$ \_\_\_\_\_

Describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Potential Related Revenues:      Annual Amount \$ \_\_\_\_\_

Describe: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Next Four years: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Prepared by: Sean T. Carey

Title: Senior Assistant County Attorney

Department: Law

Reviewed By



Budget Department

6-24-22

If you need more space, please attach additional sheets.