

AGREEMENT

Made and entered into this ____ day of _____, 2021, by and between the **COUNTY OF MONTGOMERY**, with its offices located at Montgomery County Office Building, 64 Broadway, Fonda, New York 12068, hereinafter referred to as the “**COUNTY**” and **ROEMER WALLENS GOLD & MINEAUX LLP**, Labor Relations Attorneys and Consultants, with its principal place of business located at 13 Columbia Circle, Albany, New York 12203, hereinafter referred to as “**ROEMER WALLENS GOLD & MINEAUX**” or “Contractor.”

1. The **COUNTY** hereby retains and employs **ROEMER WALLENS GOLD & MINEAUX** as its Labor Relations Attorneys and Consultants to provide to the **COUNTY** the following professional services for the period of time hereinafter designated.

(a) Comprehensive negotiating services up to and including impasse resolution proceedings and interest arbitration as exemplified in Exhibit “A” which is attached hereto and made a part hereof for each of the following collective bargaining units in which terms and conditions of employment for the **COUNTY** and its employees are negotiated:

- i) The Montgomery **COUNTY** General Unit (CSEA)
- ii) The Montgomery **COUNTY** Deputy Sheriff's Unit
- iii) The Montgomery **COUNTY** Correctional Officers Unit
- iv) The Montgomery **COUNTY** Correctional Supervisors Unit

(b) Consultations and advice regarding the **COUNTY'S** rights and liabilities in connection with:

- i) Civil Service Law
- ii) Taylor law
- iii) Fair Labor Standards Act
- iv) Public Officers Law
- v) Freedom of Information Law
- vi) Unemployment Insurance Law
- vii) Workers' Compensation Law
- viii) Human Rights/Discrimination
- ix) Sexual Harassment Investigations
- x) Disability Benefits
- xi) Contract Administration and Enforcement
- xii) Grievances Filed Against Employer
- xiii) Employee Discipline Matters
- xiv) Work Rules
- xv) Layoff Procedures
- xvi) General Municipal Law
- xvii) Americans With Disabilities Act
- xviii) Family and Medical Leave Act
- xix) Omnibus Transportation Employee Testing Act of 1991 (CDL Drug Testing)
- xx) Pregnancy Discrimination Act
- xxi) Appointment of Non-Unionized Employees and related matters
- xxii) Such other laws, rules and regulations as may apply to the field of labor relations and personnel administration

- (c) Advice and representation in connection with:
- i) Initial steps of contract grievance procedure.
 - ii) Pre-hearing matters before the Public Employment Relations Board (Improper Practice Charges, Managerial/Confidential Petitions, and Union representation challenges), including the preparation of pleadings (other than documents prepared in lieu of a hearing) and attendance at all pre-hearing conferences. Hearing preparation and settlement negotiations which lead to a settlement without a hearing are covered by paragraph 2 below.
 - iii) Attendance at relevant Labor/Management meetings and meetings of the Legislative body and committees thereof.
- (d) Management and supervisory training in connection with employee corrective action, contract administration and other topics agreed upon by the parties in an amount not to exceed 4 days per calendar year.
- (e) Periodic printed reports containing relevant information regarding public sector labor relations as obtained from Public Employment Relations Board decisions, New York State Court decisions, relevant Administrative agency decisions and other similar sources.

2. **ROEMER WALLENS GOLD & MINEAUX** hereby agrees that it will provide the **COUNTY**, as requested by the **COUNTY**, with those services not specifically covered by this Agreement, such as negotiating settlements of disciplinary matters, grievances and other matters upon request, representation at the final step in administrative disciplinary proceedings against employees, representation at the final step in contract grievance proceedings, representation at hearings before the Public Employment Relations Board, including the preparation of documents prepared in lieu of a hearing, hearing preparation and settlement negotiations, as well as representation in labor related litigation in New York and Federal Courts at the following rates:

- Partner and Senior Associate Attorney
In years 2022 and 2023, the hourly rate will be \$260.00.
In year 2024, the hourly rate will be \$270.00.
- Associate Attorney
In years 2022 and 2023, the hourly rate will be \$220.00.
In year 2024, the hourly rate will be \$230.00.
- Paralegal
In years 2022 and 2023, the hourly rate will be \$135.00.
In year 2024, the hourly rate will be \$140.00.

The foregoing includes disbursements such as postage for letters, in-house photocopy costs, local telephone charges, local mileage reimbursements and faxes. The foregoing shall be exclusive of normal disbursements paid by the firm on behalf of the **COUNTY**, such as court filing fees, computer research, consultants, appraisers, arbitration panel selection fees, out-of-office copy charges, express delivery charges and the like.

3. The **COUNTY** and **ROEMER WALLENS GOLD & MINEAUX** agree that those representatives of **ROEMER WALLENS GOLD & MINEAUX** who perform services pursuant to this Agreement shall be approved in advance by the **COUNTY**.

4. That in consideration of the foregoing, the **COUNTY** hereby agrees to compensate **ROEMER WALLENS GOLD & MINEAUX** (inclusive of normal disbursements) as follows:

- a) Four Thousand Three Hundred Dollars (\$4,300.00) per month from January 1, 2022, through December 31, 2022.
- b) Four Thousand Four Hundred Dollars (\$4,400.00) per month from January 1, 2023, through December 31, 2023.
- c) Four Thousand Five Hundred Dollars (\$4,500.00) per month from January 1, 2024, through December 31, 2024.

Payments for services are due within twenty (20) days from the date of each invoice.

5. **ASSIGNMENT:** The Contractor agrees that the Contractor shall not assign, transfer, convey, subcontract or otherwise dispose of this contract or the Contractor's responsibility to perform under this contract or the Contractor's right, title or interest in and/or to the same, nor any part thereof, nor to any monies which are or will become due and payable to the Contractor thereunder, nor the power to execute such contract to any other person, company or corporation without the prior express written consent of the **COUNTY**.

6. **APPROPRIATIONS:** It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of this Agreement and no liability on account thereof shall be incurred by the **COUNTY** beyond monies appropriated and available for the purpose thereof. In no instance will the **COUNTY** be obligated to make payments that are not appropriated and budgeted. Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by either the **COUNTY**, or are otherwise unavailable to the **COUNTY** for payment.

7. **CONTRACT MODIFICATIONS:** This agreement represents the entire and integrated agreement between the **COUNTY** and the Contractor and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both the **COUNTY** and the Contractor.

8. **SEVERABILITY:** If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

9. **CONFLICT:** In the event of any conflict between this Agreement and any other document, including exhibits, the terms of this Agreement shall prevail.

10. **ENFORCEMENT:** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

11. **VENUES AND DISPUTES:** The exclusive means of disposing of any dispute arising under this Agreement shall be decided in a New York State Court of competent jurisdiction located within

Montgomery County, New York. There shall be no right to binding arbitration. Pending final resolution of a dispute, the Contractor shall proceed diligently with performing the terms of this Agreement. The Contractor waives any dispute or claim not made in writing and received by the COUNTY within thirty (30) days of the occurrence giving rise to the dispute or claim. The claim must be in writing for a sum certain and any money requested must be fully supported by all cost and pricing information.

12. **APPLICABLE LAW:** This Agreement shall be governed by the laws of the State of New York.

13. **NON-DISCRIMINATION:** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor agrees that neither it nor its COUNTY approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation in terms, conditions or privileges of employment or make any inquiry into prospective employment which expresses, indirectly or directly any limitation specification or discrimination based on the foregoing characteristics.

14. **SEXUAL HARASSMENT:** The Contractor has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment training to all of its employees in compliance with Department of Labor regulations.

15. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

16. **INDEPENDENT CONTRACTOR:** The Parties agree that the Contractor is engaged as an independent contractor to the COUNTY. Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership, joint venture, or any other fiduciary relationship. The Contractor is not, shall not, and has no authority to act as an agent or representative of the COUNTY and has no authority to bind the COUNTY in any manner. The Contractor shall make no claim for, nor shall be entitled to, Workers' Compensation coverage, medical and unemployment benefits, Social Security or retirement membership benefits from the COUNTY. The Contractor further agrees that the COUNTY shall not be liable for any payroll deductions, including but not limited to, U.S. Social Security taxes, Federal and/or State withholding taxes. The Contractor agrees to accept exclusive responsibility and liability for complying with all applicable state and federal laws, and all codes, regulations, statutes, and ordinances governing self-employed individuals including, without limitation, obligations regarding payment of quarterly taxes, social security, disability and any other contributions based on the fees paid to the Contractor under this Agreement. Contractor agrees to reimburse, indemnify, defend and hold harmless the COUNTY to the extent that the COUNTY becomes obligated to pay any of the above taxes, contributions, or payments, or to the extent the COUNTY incurs any similar liabilities.

17. **HOLD HARMLESS:** To the extent caused by the Contractor, the Contractor shall indemnify, defend, and hold harmless the COUNTY, its affiliates, agents, officers, directors, and employees from any and all claims, liability, demands, losses arising out of injury to property or persons, including death, any causes of action, damages, lawsuits judgments, and any claim based on any statute, law, ordinance, code, or regulation arising out of, relating to, or sustained in connection with the

Contractor's provision of services under this Agreement. This includes any and all attorneys' fees costs and expenses associated with the foregoing.

18. **LIABILITY:** The COUNTY shall not be liable to the Contractor for any special, indirect, incidental, punitive, or consequential damages arising from or related to this Agreement, including bodily injury, death, loss of revenue, or profits or other benefits, and claims by any third party, even if the Contractor has been advised of the possibility of such damages. The foregoing limitation applies to all causes of action in the aggregate, including, without limitation, breach of contract, breach of warranty, negligence, strict liability, and any and all other torts.

19. **INSURANCE:** The Contractor agrees to obtain and maintain Workers Compensation and General Liability Insurance including Comprehensive Form, Premises-Operations and Broad Form Contractual with minimum limits of \$1,000,000 per incident. The required insurance policies must be endorsed to include the COUNTY as an additional insured on a primary non-contributory basis. The Certificate of Insurance Holder shall be:

Montgomery County
20 Park Street
Fonda, New York 12068

Also these policies must include the provision that the issuing company(s) will notify the Certificate of Insurance Holder by certified mail thirty (30) days prior to any change diminishing coverage, limits, cancellation or non-renewal of the insurance policies. For the duration of this contract, the issuing company(s) shall also notify the Certificate of Insurance Holder thirty days prior to the renewal of the policies. Upon any and all renewals of the subject insurances during the duration of this contract, a new Certificate of Insurance shall immediately be sent to the County. If Contractor's insurance is claims made they must keep it in place for at least six years after the completion of the contract. If insurance is on a claims made basis the Contractor shall provide proof of coverage through the termination of any applicable statute of limitations.

20. **STATUTORY COMPLIANCE:** In acceptance of this Agreement, the Contractor covenants and agrees to comply in all respects with all Federal, State and County laws, rules, regulations and ordinances which pertain hereto and to the performance hereof, including but not limited to those regarding services for municipalities including but not limited to Workers' Compensation and Employers' Liability Insurance, hours of employment, wages and human rights.

21. **LICENSES AND PERMITS:** The Contractor hereby agrees that the Contractor will obtain at his own expense those licenses and permits for the work performed under this contract that are applicable to the Contractor, if any are necessary, prior to the commencement of work.

22. **MISCELLANEOUS:**

- a. This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument.
- b. Section titles or captions contained herein are inserted only as a matter of convenience for reference and in no way define, limit, extend, or describe the scope hereof or the intent of any provision hereof.

- c. This Agreement, and any accompanying appendices, duplicates, or copies, constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, representations, and understandings of any kind, whether written or oral, between the parties, preceding the date of this Agreement.

23. In accordance with our records retention policy, we will maintain all documents, papers and other items relating to our representation of you pursuant to this retainer agreement (the "Records") for a period of four (4) years from the date we cease providing you with legal services hereunder. If you desire to maintain the Records beyond that date, you will need to retain your own copies or request the Records in writing before the end of the four (4) year period. After that time, all of the Records will be destroyed.

24. The term of this Agreement shall be from January 1, 2022, through December 31, 2024. The **COUNTY** may terminate this Agreement earlier than December 31, 2024, upon thirty (30) days' written notice from the **COUNTY** to **ROEMER WALLENS GOLD & MINEAUX**.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

COUNTY OF MONTGOMERY

By: _____
Matthew L. Ossenfort, County Executive

ROEMER WALLENS GOLD & MINEAUX LLP

By:  _____
William M. Wallens, Partner

EXHIBIT "A" NEGOTIATION SERVICES

A. Preparation for Negotiations

The need for thorough preparation prior to the commencement of actual bargaining is often overlooked. **ROEMER WALLENS GOLD & MINEAUX** believes that preparation is a key element in assuring a successful outcome to the negotiation process.

Preparation includes:

- Reviewing the existing contract and offering advice regarding suggested modifications
- Reviewing the existing work rules and practices
- Reviewing grievances filed and arbitration decisions
- Reviewing the demands presented by both Union and Management in the last negotiations
- Reviewing the history of other benefit changes over the past six years
- Reviewing the most recent settlements in similarly situated jurisdictions
- Meeting with first line supervisors to ascertain their needs - both changes to the existing contract, as well as the needed additions to the contract
- Meeting with senior officials to determine their needs and review the findings resulting from meetings with line supervisors

B. Preparation of Demands

This phase of the process is flexible and is adapted to the needs of each jurisdiction. Generally, **ROEMER WALLENS GOLD & MINEAUX** recommends that Labor Counsel prepare suggested demands and that those demands be reviewed by the **COUNTY** and modified to suit your needs.

C. Selection of Negotiating Team

ROEMER WALLENS GOLD & MINEAUX recommends that a cross-section of management representatives be appointed to the negotiating team so that the entire negotiating process can be "felt" at all levels of management. Managers appreciate the process to a much greater degree if they know and trust those who were directly involved.

D. Participation in Negotiations

The negotiations are made much easier by careful planning and research as typified in "A", "B", and "C" above. **ROEMER WALLENS GOLD & MINEAUX** will participate fully in all phases of negotiations including renegotiation preparatory sessions, face-to-face meetings at the bargaining table, management caucuses, and, if necessary, the impasse process. **ROEMER WALLENS GOLD & MINEAUX** will maintain a detailed record of the negotiations for use in future proceedings. Our services include representation through the impasse procedure.

E. Communications

Meetings with key management personnel will be scheduled throughout the negotiating process to inform them of progress in the negotiations and to recommend position modifications.

F. Drafting the Contract

All changes agreed upon in the negotiations process will be reduced to contract language which accurately reflects the agreement and is readily understood by Union and Management representatives, as well as those important persons not present at the bargaining table such as arbitrators.

G. Ratification

After a tentative agreement has been entered into, it must be presented to and approved by the appropriate Legislative body. **ROEMER WALLENS GOLD & MINEAUX** will appear before such body and make all necessary presentations to explain the proposed agreement.

H. Conduct Management Information Sessions

At the conclusion of negotiations it is extremely important that all changes be identified and explained to supervisors and managers. General information on reasons for the changes or failure to achieve desired changes must be explained so that managers are fully supportive of the new contract.