

COUNTY OF DUPAGE, ILLINOIS

INDEPENDENT CONTRACTOR AGREEMENT

This AGREEMENT ("Agreement") is effective as of the 1st day of December 2023 and is entered into by and between the County of DuPage, a body politic and corporate ("County") and Rock Fusco & Connelly, LLC, an Independent Contractor ("Individual").

RECITALS

WHEREAS the County desires that Individual render certain services more fully described herein; and

WHEREAS, the Individual has demonstrated expertise in providing such services, has represented that it has the requisite knowledge, skill, experience, and other resources necessary to perform such services and is desirous of providing such services for the County.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

1. **Incorporation of Recitals:** The matters recited above are hereby incorporated into and made a part of this Agreement.
2. **Term:** This Agreement is for a term commencing, December 1, 2023, through November 30, 2024 ("Term"), unless terminated sooner as provided herein.
3. **Termination**
 - 3.1 Except as otherwise set forth in this AGREEMENT, County shall have the right to terminate this AGREEMENT for any cause or without cause thirty (30) days after having served written notice upon the Contractor, except in the event of Contractor's insolvency, bankruptcy or receivership, in which case termination shall be effective immediately upon receipt of notice.
 - 3.2 Upon such termination, the liabilities of the parties to this AGREEMENT shall cease, but they shall not be relieved of the duty to perform their obligations up to the date of termination, or to pay for deliverables tendered prior to termination. There shall be no termination expenses.
 - 3.3 Upon termination of this AGREEMENT, all data, work products, reports and documents produced, because of this AGREEMENT shall become the property of the COUNTY. Further, Consultant shall provide all deliverables within fourteen (14) days of termination in accordance with the other provisions of this AGREEMENT.
4. **Scope of Services:** Individual agrees to provide the services required and, if applicable, set forth on Exhibit "A" including the deliverables set forth thereon ("Services"), in accordance with the terms and conditions of this Agreement. The County may, from time to time, request changes in the scope of Services. Any such changes, including any increase or decrease in Individual's fees, shall be documented by an amendment to this Agreement in accordance with State and County laws.
5. **Compensation and Payment:** Compensation for Services during the initial term shall be based on an hourly rate of \$245.00/hour for partners, with a total that shall not exceed, One Hundred and Fifty Thousand Dollars, (\$150,000.00), with no reimbursement for expenses. Compensation shall be based on actual services performed during the Term of this Agreement and the County shall not be obligated to pay for any services not in compliance with this Agreement. In the event of early termination of this Agreement, the County shall only be obligated to pay the fees incurred up to the date of termination. In no event shall the County be liable for any costs incurred or services performed after the effective date of termination as provided herein. Consultant shall submit invoices referencing this Agreement with such supporting documentation as may be requested by the County. Payments shall be subject to 50 ILCS 505, "Local Government Prompt Payment Act". Payment will not be made on invoices submitted later than six-months (180 days) after delivery of goods and any statute of limitations to the contrary is hereby waived.

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6. **Non-appropriation:** Expenditures not appropriated in the current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event sufficient funds are not appropriated in a subsequent fiscal year by the County for performance under this Agreement, the County shall notify Individual and this Agreement shall terminate on the last day of the fiscal period for which funds were appropriated. In no event shall the County be liable to the Individual for any amount in excess of the cost of the services rendered up to and including the last day of the fiscal period.

7. **Events of Default and Remedies.**
 - 7.1 Events of Default. Events of default include, but are not limited to, any of the following:
 - (i) Any material misrepresentation by Individual in the inducement of this Agreement or the performance of Services; (ii) Breach of any agreement, representation or warranty made by Individual in this Agreement; or (iii) Failure of Individual to perform in accordance with or comply with the terms and conditions of this Agreement.

 - 7.2 Remedies. In the event Individual defaults under this Agreement and such default is not cured within fifteen (15) calendar days after written notice is given by the County, the following actions may be taken by the County: (i) This Agreement may be terminated immediately; and (ii) The County may deem Individual non-responsible for future contract awards. The remedies stated herein are not intended to be exclusive and the County may pursue any and all other remedies available at law or equity.

8. **Standards of Performance:** Individual agrees to devote such time, attention, skill, and knowledge as is necessary to perform Services effectively and efficiently. Individual acknowledges and accepts a relationship of trust and confidence with the County and agrees to cooperate with the County in performing Services to further the best interests of the County.

9. **Assignment:** This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign this Agreement or any obligations imposed hereunder without the prior written consent of the other party.

10. **Confidentiality and Ownership of Documents.**
 - 10.1 Confidential Information. In the performance of Services, individual may have access to certain information that is not generally known to other ("Confidential information"). Individual agrees not to use or disclose to any third party, except in the performance of Services, any confidential information or any records, reports or documents prepared or generated as a result of this Agreement without the prior written consent of the County. Individual shall not issue publicity news releases or grant press interviews, except as may be required by law, during or after the performance of the Services, nor shall individual disseminate any information regarding Services without the prior written consent of the County. Individual agrees to cause its personnel, staff and/or subcontractors, if any, to undertake the same obligations of confidentiality agreed to by Individual under this Agreement. The terms of this Paragraph 10.1 shall survive the expiration or termination of this Agreement.

 - 10.2 Ownership. All records, reports, documents, and other materials prepared by Individual in performing Services, as well as all records, reports, documents, and other materials containing Confidential Information prepared or generated as a result of this Agreement, shall at all times be and remain the property of the County. All of the foregoing items shall be delivered to the County upon demand at any time and in any event, shall be promptly delivered to the County upon expiration or termination of the Agreement. In the event any of the above items are lost or damaged while in Individual's possession, such items shall be restored or replaced at Individual's expense.

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11. **Representations and Warranties of Individual:** Individual represents and warrants that the following shall be true and correct as of the effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement.
 - 11.1 **Licensed Professionals.** Services required to be performed by professionals shall be performed by professionals licensed to practice by the State of Illinois in the applicable professional discipline.
 - 11.2 **Compliance with Laws.** Individual is and shall remain in compliance with all local, state and federal laws, County of DuPage ordinances, and regulations relating to this Agreement and the performance of Services. Further, Individual is and shall remain in compliance with all County policies and rules, including, but not limited to, criminal background checks.
 - 11.3 **Good Standing.** Individual is not in default and has not been deemed by the County to be in default under any other Agreement with the County during the five (5) year period immediately preceding the effective date of this Agreement.
 - 11.4 **Authorization.** In the event Individual is an entity other than a sole proprietorship, Individual represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Individual is duly authorized by Individual and has been made with complete and full authority to commit Individual to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Individuals.
 - 11.5 **Gratuities.** No payment, gratuity or offer of employment, except as permitted by the State Officials and Employees Ethics Act, was made by or to Individual in relation to this Agreement or as an inducement for award of this Agreement.
12. **Independent Contractor:** It is understood and agreed that the relationship of Individual to the County is and shall continue to be that of an independent contractor and neither Individual nor any of Individual's employees shall be entitled to receive County employee benefits. As an independent contractor, Individual agrees to be responsible for the payment of all taxes and withholdings specified by law, which may be due in regard to compensation paid by the County. Individual agrees that neither Individual nor its employees, staff or subcontractors shall represent themselves as employees or agents of the County. Individual hereby represents that Individual's valid taxpayer identification number as defined by the United States Internal Revenue Code (social security number or federal employer identification number).
13. **Indemnification:** Individual agrees to indemnify and hold harmless the County, its members, trustees, employees, agents, officers and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages and expenses of every kind, nature and character, including costs and attorney fees, arising out of, or relating to, any and all claims, liens, damages, obligations, actions, suits, judgments, settlements, or causes of action of every kind, nature and character, in connection with or arising out of the acts or omissions of Individual or its employees or its subcontractors under this Agreement. This includes, but is not limited to, the unauthorized use of any trade secrets, U.S. patent or copyright infringement. The indemnities set forth herein shall survive the expiration or termination of this Agreement. Notwithstanding the foregoing, the Individual and County shall not be deemed to have waived any rights, protections, or immunities under 745 ILCS 10/1-10 I, *et seq.* (Local Government and Governmental Employees Tort Immunity Act).
14. **Favored Nation:** Individual shall furnish Services to the County at the lowest price that the Individual charges to other similarly situated parties. If Individual overcharges, in addition to all other remedies, the County is entitled to a refund in the amount of the overcharge, plus interest at the rate of 1% per month from the date the overcharge was paid by the County until the date refund is made. The County has the right to offset any overcharge against any amounts due to Individual under this or any other Agreement between Individual and the County, and at the County's sole option the right to declare Individual in default under this Agreement.

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15. **Insurance.**

15.1 **Automobile Insurance.** If Contractor will be driving a vehicle in the course of performing the Services, Contractor shall attach a copy of its current automobile insurance card confirming that the vehicle is covered by insurance.

15.2 **Waiver.** In consideration of the County agreeing to waive its requirement that Individual carry Commercial General Liability Insurance, Professional Liability Insurance and Worker's Compensation and Employer's Liability Insurance, Individual agrees to hold the County, its members, trustees, employees, agents, officers and officials, harmless from all liability in any claim or action made by Individual or any third party, and harmless from any judgment awarded by any court or administrative body, for personal injury, disability or death, or damage or destruction of property resulting from or connected with the Services , unless caused by the gross negligence of the County.

16. **Notices:** All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally; (ii) sent by confirmed telex or facsimile (followed by the actual document); or (iii) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt.

IF TO THE COUNTY:

Joan Olson, Chief Communications Officer
DuPage County Board Office
421 North County Farm Road
Wheaton, IL 60187

COPY TO: Mary Catherine Wells, Acting Procurement Officer DuPage
County Procurement Services Division
421 North County Farm Road
Wheaton, IL 60187-3978

COPY TO: Assistant State's Attorney – Governmental Affairs & Special Litigation Division
503 North County Farm Road
Wheaton, Illinois 60187

IF TO INDIVIDUAL:

David L. Miller
Rock Fusco, & Connelly, LLC
321 N. Clark Street, Suite 2200
Chicago, Illinois 60654

17. **Entire Agreement and Amendment:** This Agreement, including all exhibits and referenced documents, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement is of no force or effect.

18. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to any conflict of law or choice of law principles.

19. **Waiver:** No delay or omission by the County to exercise any right hereunder shall be construed as a waiver of any such right and the County reserves the right to exercise any such right from time to time as often and as may be deemed expedient.

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20. **County Approval:** If applicable, This Agreement is subject to approval of the appropriate committee(s) and County Board of the County of DuPage.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**THE COUNTY OF DUPAGE,
ILLINOIS**

INDIVIDUAL

By: _____

SIGNATURE

Mary Catherine Wells

PRINTED NAME

Acting Chief Procurement Officer

PRINTED TITLE

DATE

By: _____

SIGNATURE

JOHN J. POGG

PRINTED NAME

MANAGER

PRINTED TITLE

29 SEPT 2023

DATE

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EXHIBIT A

SCOPE OF SERVICES

County's Purchase Order #		County Resolution #	
Contract Name	Rock Fusco & Connelly, LLC	Contract Date	12/1/2023 to 11/30/2024
County's Project Manager	Joan Olson	Contractor's Project Manager	David Miller

This Scope of Services is for Contractors providing to the County certain Services pursuant to the above- referenced Contract and County Resolution.

- 1. **DESCRIPTION OF INDIVIDUAL'S WORK**
Provide consultation services related to collective bargaining matters in accordance with the terms and conditions of this Agreement.

- 2. **MILESTONE/DELIVERABLE INFORMATION:**
Provide Invoices monthly or as required.