300-26

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made this 10th day of November, 2026

BETWEEN: **TOWNSHIP OF WEST ORANGE**
66 Main Street
West Orange, New Jersey 07052

Hereinafter Referred to as the "Township"

AND: **HERBST-MUSCIANO, LLC**
611 Main Street, Second Floor
Boonton, New Jersey 07005

Hereinafter Referred to as the "Professional;"

W I T N E S S E T H:

WHEREAS, the Township recognizes the need for additional supplemental **Professional Design Services;** and

WHEREAS, in that connection **HERBST-MUSCIANO, LLC** is qualified to provide said services; and

WHEREAS, the Township desires to engage **HERBST-MUSCIANO, LLC,** to serve as an "Independent Contractor" to provide additional supplemental professional design services that may be designated by the Township as a fair and open contract pursuant to the provisions of N.J.S.A. 19:44A- 20.5;

NOW, THEREFORE, in consideration of the terms, conditions and stipulations hereinafter set forth, it is mutually agreed by and between the parties:

1. WORK TO BE PERFORMED

a) The Professional shall perform additional supplemental services for the Township of West Orange as specified and detailed in the proposal for services issued on October 13, 2026 (the "Proposal"), which is hereby incorporated herein and attached hereto as Exhibit A. In the event of any conflict between the Proposal and this Agreement, the terms and conditions contained within this Agreement shall be controlling.

b) Any and all work performed pursuant to this Agreement shall be performed to acceptable practices, and standards within the industry and to the satisfaction of the Township.

2. CONSIDERATION

The Township shall compensate Professional based upon the fee estimates specified in the Proposal. These fee estimates are primarily task-based and assume a reasonable project schedule and progression. If said services are projected to continue beyond the estimated time of completion, then prior to exceeding the fee estimates, Professional will identify the schedule impacts and discuss the additional fee estimates with the Township. The hourly rates charged for services shall be as specified in the Herbst-Musciano Municipal Rate Sheet attached hereto as Exhibits B, respectively.

3. PAYMENT

Payment shall be made by the Township within thirty (30) days of the receipt and approval of itemized bills and vouchers. No payments may be made in advance of Services pursuant to N.J.S.A. 40A: 5-16.

4. TERM

The term of this agreement shall commence on _____, and all construction shall be completed within ninety (90) days, unless earlier terminated in accordance with the provisions set forth in Section 16, below.

Pursuant to the exception contained in N.J.S.A. 40A:11-15 for public infrastructure projects, the contract may be awarded for a period exceeding one year in duration.

5. NEW JERSEY LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey notwithstanding any provisions of such laws relating to jurisdiction.

6. PARTIAL INVALIDITY

If any term, condition, or provision of this Agreement or the application thereof to any

person or circumstance shall, at any time, or to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which this Agreement is invalid or unenforceable, shall not be affected thereby, and each term, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, provided, however, that no such invalidity shall in any way reduce the services to be performed by the Professional for the Township.

7. NO ASSIGNMENT

The Professional shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement or its right, title or interest in or to the same or any part thereof without prior written consent of the Township and the approval of the Township's Municipal Council.

8. BINDING ON SUCCESSORS

Except as otherwise provided in this Agreement, all agreements' terms, provisions and conditions to this Agreement shall be binding on and inure to the benefit of the parties hereto, their respective personal representatives and successors.

9. MODIFICATIONS

No modification of this Agreement shall be valid or binding unless the modifications shall be in writing, approved by the Township's Municipal Council and executed by and between the Township and the Professional.

10. NO WAIVER

No waiver of any term, provision or condition contained in this Agreement or any breach of any such term, provision or condition shall constitute a waiver of any subsequent breach of such term, provision or condition by either party, or justify or authorize the non-observance on any other occasion of the same, or any other term, provision, or condition of this Agreement by either party.

11. CAPTIONS

The captions or the paragraph headings contained in this Agreement are solely for purposes of convenience and shall not be deemed part of this Agreement for the purpose of construing the meaning thereof or for any other purpose.

12. RECORDS

All records and data relating to work performed for the Township shall belong to the Township and shall be surrendered to the Township upon the expiration or termination of this Agreement, except that the Professional will retain such information as is necessary to maintain a complete work record. The Professional shall not use such information or data except for the performance of the service hereunder, without the prior written permission of the Township.

13. INSURANCE

The Professional performing work for or on behalf of the Township of West Orange shall keep in force the following types of insurance at its own expense and underwritten by a company licensed to do business in the State of New Jersey and acceptable to the Township of West Orange. The Township of West Orange reserves the right to accept, amend or modify any of the conditions listed. The Township of West Orange must be notified within three (3) days of an offense, which may result in a claim. The Professional shall not take any action to cancel any of the insurance required under this Agreement without the approval of the Township. The maintenance of insurance under this section shall not relieve the Professional of any liability greater than the insurance coverage. Any and all subcontractors retained must fully comply with the same insurance requirements as listed.

a) WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE if applicable shall be maintained in full force during the life of this contract by the professional covering all employees engaged in performance of this contract pursuant to N.J.S.A. 34:15-12(a) and N.J.A.C. 12-235- 1.6.

b) GENERAL LIABILITY INSURANCE with limits of not less than $1.000.000.00 for Bodily Injury and Property Damage Liability each occurrence and $1.000.000.00 General Aggregate will be maintained in full force during the life of the contract by the professional. The policy will include professional's protective liability insurance (also known as contingent liability insurance) with the same limits. In the event more than

one insured is named in the policy, a CROSS-LIABILITY endorsement will be included which provides that the employees of each of the named insureds are not excluded under the policy as respect to claims that are made against other named insured.

c) AUTOMOBILE LIABILITY INSURANCE with limits of not less than $1,000.000.00 Liability and Property Damage Liability Combined Single Limit, $1,000,000.00 Uninsured Motorist and Underinsured Motorist, $1,000,000.00 Owned, Hired and Non-owned Automobile, will be maintained in full force during the life of this contract by the professional.

d) PROFESSIONAL LIABILITY INSURANCE with the limits of not less than $2,000,000.00 maintained in full force during the life of the contract by the professional.

14. INDEMNIFICATION AND HOLD HARMLESS

The Contractor shall, at its sole cost and expense, defend, indemnify, and hold harmless the Township**,** including their employees, officers, agents, servants, representatives, and officials, from and against any and all claims, actions, lawsuits, penalties, fines, losses, damages, liabilities, judgments, demands, and expenses, including, but not limited to, attorney's fees and costs which arise out of the performance of this Agreement. This indemnification provision shall include, and not be limited to, non-compliance with any law, including, but not limited to any violation of the "New Jersey Prevailing Wage Act," N.J.S.A. § 34:11-56.25 and/or the "Public Works Contractor Registration Act," N.J.S.A. § 34:11-56.48 et seq.

Additionally, this indemnification provision shall apply to any and all claims, actions, judgments, penalties, liabilities, damages, losses or expenses, caused in whole or in part, by the negligence, professional error, or omission of the Contractor or any person employed by it.

The Contractor shall provide to the Township with evidence that, at all times during the term of this Agreement, it has obtained statutory professional liability and any other statutorily required coverages. No limitations on the foregoing indemnity shall impair or limit the Township's recourse to the insurance coverage set forth herein.

15. TERMINATION

The Township may terminate the Agreement upon twenty (20) days written notice to the other party. Upon such termination, the Township shall pay the Professional for all services performed hereunder up to the date of such termination in accordance with the payment terms of this Agreement as well as all reasonable costs and expenses incurred by the Professional in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.

16. ENTIRE AGREEMENT

This Agreement, including the attachments referenced herein, contains the entire Agreement of the parties hereto and may not be amended, modified, released or discharged, in whole or in part, except as specifically provided herein or in an instrument in writing executed by the parties hereto.

17. EFFECTIVE DATE OF CONTRACT

This Agreement shall not become binding upon the parties until the Township adopts a bond ordinance and/or appropriates the funds necessary for this Agreement and the Township's Treasurer certifies to the availability of funds if applicable pursuant to NJ.AC. 5:30-5.4

This Agreement has been awarded to the Professional based on the Professional's merits and abilities to provide the professional Services described herein. This Agreement was awarded through a "Fair and Open Process" pursuant to N.J.S.A. 19:44A-20.5 et seq.

18. NEW JERSEY PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, Chapter 150 of the Laws of 1963 as amended by Chapter 64 of the Laws of 1974 may apply to this Agreement. If so, the Agreement must set forth the prevailing wage rate in the locality of the Contractor for each craft or trade or classification of all workers needed to perform the Agreement during its performance period. The Contractor’s Fee Schedule is incorporated herein by reference and attached hereto as “Exhibit B.”

If required by law, the Contractor acknowledges that it has ascertained from the Commissioner of Labor and Industry of the State of New Jersey the prevailing wages in the

locality of the Contractor which shall be paid by the Contractor to workers employed in the performance of the Agreement, and a copy of such prevailing wages shall be incorporated in the Agreement and binding on the Contractor. In the event that any such prevailing wage is increased prior to the award of the Agreement, then the increased prevailing wage or wages shall apply and supersede those issued as of an earlier date.

In accordance with the New Jersey Prevailing Wage Act, the Contractor and any subcontractor shall pay to workers' wages which are not less than the prevailing wages set forth for the locality of the Contractor and made a part of the Agreement.

19. PAY TO PLAY REQUIREMENT

The Professional is advised it may have the responsibility to file an annual statement on political contributions with the New Jersey Election Law Enforcement Commission pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271 §3) if the Professional received contracts in excess of $50,000 from public entities in a calendar year. It is the Professional's responsibility to determine if filing is necessary. Additional information on this requirement is available from ELEC at 888- 313-3532 or at www.elec.state.nj.us.

By executing this Contract, the Professional certifies that it has neither made or solicited nor will make or cause to be solicited a prohibited Contribution in violation of any applicable federal, state or local laws. Any such failure to comply shall constitute a breach of the Contract.

20. FORCE MAJEURE

Neither Party shall be liable to the other, or considered in default or breach of this Agreement, for any failure or delay in performing its obligations, except for obligations to make payments already owed, if the failure or delay results from circumstances beyond the impacted Party's reasonable control. Such circumstances include, but are not limited to: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war; (d) government order or law; (e) actions, embargoes, or blockades; (f) national or regional emergency; (g) strikes, labor stoppages, slowdowns, or other industrial disturbances; (h) epidemic, pandemic, or State of Emergency declared by the State of New Jersey; and (i) other similar events beyond the impacted Party's reasonable control.

21. AVAILABILITY OF FUNDS

This is a contract which may be awarded in one fiscal year although the date on which it properly takes effect may fall in a different fiscal year. Accordingly, this contract is subject to the availability and appropriation of sufficient funds in the year in which it takes effect. N.J. Admin. Code 5:30-5.S(e).

22. CONFLICT OF INTEREST

The Professional acknowledges that the nature of the service to be performed requires that the Professional must not have or appear to have a conflict of interest with any potentially adversarial party. The Professional agrees that:

a) It will not accept any assignments, compensation, consideration or gratuities from any other party with an interest in the subject matter of this Agreement that shall conflict or shall have the appearance of conflicting with the interest of the Township relative to the purposes of this Agreement.

b) In the event that a conflict or potential conflict of interest arises, the Professional shall notify the Township in writing within three (3) days of becoming aware of the conflict or the potential conflict. Failure to provide such notice may be grounds for termination of this Agreement for cause.

c) In the event that the Township receives timely notice of an actual or potential conflict, the Township and the Professional shall attempt to reach an agreement on a course of action in response to the actual or potential conflict. If such an agreement cannot be reached, the Township has the right to terminate the Agreement for convenience.

23. INDEPENDENT CONTRACTOR

The Professional shall be and remain an independent contractor with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance or old age retirement benefits, pensions or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by the Professional for work performed under the terms of this contract

and further agrees to obey all lawful rules and regulations and to meet all lawful requirements by all duly authorized state or federal officials, and said Professional agrees to indemnify and save harmless the Township from any such contributions or taxes or liability therefore.

24. EQUAL EMPLOYMENT OPPORTUNITY

Professional acknowledges that he/she shall comply with the requirement of N.J.S.A. 10:5-31, et seq. and N.J.A.C. 17:27 as set forth in Exhibit C entitled "Affirmative Action", and submit to the State of New Jersey and/or the Township such documentation as shall be required by law as more specifically set forth in Exhibit D entitled "Mandatory Equal Employment Opportunity Language."

25. STATE REQUIRED RECORD RETENTION N.J.S.A. 52:15C-14(d) and N.J.A.C. 17:44-2.2

The Professional shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. Refusal by the Professional to provide information upon request by the State Comptroller or otherwise impede or fail to cooperate with any audit or performance review, the State Comptroller may recommend to the Township that the person be subject to termination of their contract, or temporarily or permanently debarred from contracting with the Township.

The Professional shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. Upon refusal by Professional to provide information upon request by the State Comptroller or otherwise impede or fail to cooperate with any audit or performance review, the State Comptroller may recommend to the Township that the person be subject to termination of their contract, or temporarily or permanently debarred from contracting with the Township.

26. DEFAULT

In the event the Professional fails or neglects to perform any of the conditions or

covenants set forth herein during the Term of this Agreement, the Township shall upon three (3) days written notice to the Contractor, deliver to the Contractor by Certified Mail a Notice of Default, with the opportunity to cure within three (3) days. In the event that the Contractor fails to cure such default within three (3) days of receipt of the Notice, the Township shall terminate this Agreement, and all rights, privileges, or interest herein shall cease. The Professional shall be liable to the Township for any damages or loss, including, but not limited to reasonable attorneys' fees in the event any legal action is necessary, as a result of the Default.

IN WITNESS WHEREOF, this Agreement has been executed on the day first noted above, for the purposes and the terms specified herein.

TOWNSHIP OF WEST ORANGE:

_____
By:

_____
Attest:

HERBST-MUSCIANO, LLC

_____
By:

_____
Attest:

EXHIBIT A

PROPOSAL FOR SERVICES

EXHIBIT B

HERBST-MUSCIANO MUNICIPAL RATE SHEET

EXHIBIT C

AFFIRMATIVE ACTION

EXHIBIT D

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE