

**EXHIBIT O**

**LOCAL LAW NO. 3 OF 1998**

**A LOCAL LAW RESCINDING LOCAL LAW NO. 13 OF 1980 AND AMENDMENTS THERETO, AND ENACTING IN ITS STEAD A NEW LOCAL LAW, PROVIDING FOR THE DEFENSE AND INDEMNIFICATION OF COUNTY OFFICERS AND EMPLOYEES WHILE ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT.**

Be it enacted by the County Legislature of the County of Orange, State of New York as follows:

**SECTION 1. Legislative Intent.** The purpose of this Local Law is to provide legal and financial protection for those individuals serving the County of Orange (hereinafter the "County") from lawsuits and other proceedings which may be brought against them in their individual capacity for omissions or actions taken while acting within the scope of their employment. By enactment of this Local Law, the County does not intend to establish or enlarge any direct liability of the County, or to limit or otherwise abrogate any existing right or responsibility of the County or its officers or employees with regard to indemnification or legal defense.

**SECTION 2. Rescission of Local Law No. 13 of 1980 as adopted and amended.** Local Law No. 13 of 1980, and all amendments thereto, shall be and the same hereby is fully and completely rescinded, and shall be of no further force or effect. only upon this Local Law becoming effective according to the provisions of the Constitution of the State of New York, the Municipal Home Rule Law, and all other applicable law and rules.

**SECTION 3. Definitions.** As used in this Local law, the following terms shall have the meanings indicated:

1. "Employee." Any person, whether or not compensated, holding a position by election, appointment or employment in the service of the County, or a volunteer expressly authorized by the appropriate County official to act for the benefit of the

County, including any of its Agencies, Boards or Commissions, but shall not include an independent contractor or any member of any District or Authority created by the County. The term "employee" shall include a former employee, an employee's estate, or a judicially appointed personal representative. For purposes of this Local Law, the term "employee" shall also include members, officers and other persons appointed to, or in the employment of, the Industrial Development Agency of the County.

2. "County Attorney." The duly appointed County Attorney or such Assistant County Attorney designated to act on behalf of the County Attorney.

**SECTION 4. County to provide for defense of employees.**

1. If an employee complies with the provisions of Section 6 of this Local Law, the County, through the Office of the County Attorney, or through any applicable insurance program maintained by the County, shall provide for the defense of the employee in any civil action or proceeding in any state or federal court, or any proceeding before an administrative agency, arising out of any alleged act or omission which occurred or is alleged to have occurred while the employee was acting within the scope of his or her public employment or duties. For purposes of this Local Law, the determination of whether an employee was acting within the scope of his or her employment will be made by the Chairman of the Legislature for Legislative Branch employees, and by the County Executive for Executive Branch employees, upon the advice of the Counsel to the Legislature and County Attorney respectively, consistent with then prevailing law. Notwithstanding the above, no act can be so determined to be within the scope of employment if the commission of such act resulted in a conviction of a Class A misdemeanor or higher crime under the New York State Penal Law or similar federal crime under Title 18 of the United States Code . This duty to provide for a defense shall not arise where such action or proceeding is brought by or on behalf of the County against such employee.

2. Subject to the conditions set forth in paragraph 1 of this Section, the employee shall be entitled in such action or proceeding to be represented by the County Attorney, or counsel designated by the County Attorney, at no cost to the employee. The employee shall be entitled to representation by private counsel of his or her choice in such action or proceeding at the expense of the County whenever the County Attorney determines, based upon an investigation and review of the facts and circumstances of the case and of the prevailing law, that a conflict of interest exists between the employee and the County, or whenever a Court of competent jurisdiction determines that a conflict of interest exists and that the employee is entitled to be represented by counsel of his or her choice at the expense of the County. Upon such a determination, the County Attorney shall notify the employee in writing that the employee is entitled to be represented by private counsel of his or her choice at the expense of the County. The County Attorney may require, as a condition of the payment of the fees and expenses of such private counsel, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this Section at the expense of the County, the County Attorney shall so certify this to the County Executive, County Legislature, and the Director of the County's Risk Management Division. Attorney fees and litigation expenses shall be paid to such private counsel only to the extent of appropriate and reasonable rates prevailing in Orange County, as determined by the County Attorney. Such attorney fees and litigation expenses shall be paid by the County to such private counsel from time to time while such action or proceeding is pending, upon submission by the private attorney of a detailed bill itemizing a description of the work performed, the hours worked, the rate per hour, and disbursements. However, no extraordinary disbursements or fees shall be paid to such private counsel unless prior written consent of the County Attorney was obtained.

Payment shall also be subject to the audit and warrant of the Director of the County's Risk Management Division. Such private counsel shall conform to all record keeping and notifications required by the County Attorney and/or the Director of the County's Risk Management Division.

3. Any dispute with respect to representation of multiple employees by a single counsel, the reasonableness of attorney fees, or the amount of litigation expenses, shall be resolved by a Court of competent jurisdiction upon motion or by way of a special proceeding.

4. Where the employee delivers process and a written request for a defense to the County Attorney as required by Section 6 of this Local Law, the County Attorney shall take the necessary steps on behalf of the employee, including the retention of private counsel as provided in this Section, to avoid entry of a default judgment against the employee pending a resolution of any issue pertaining to the obligation of the County to provide a defense.

**SECTION 5. County to provide for indemnification of employees.**

1. If an employee complies with the provisions of Section 6 of this Local law, the County shall indemnify and save harmless the employee in the amount of any final judgment, order or decision obtained against such employee in any civil action or proceeding in any state or federal court, or any proceeding before an administrative agency, or in the amount of any County approved settlement of any such action or proceeding, arising out of any alleged act or omission which occurred or is alleged to have occurred while the employee was acting within the scope of his or her public employment. For purposes of this Local Law, the determination of whether an employee was acting within the scope of his or her employment will be made by the Chairman of the Legislature for Legislative Branch employees, and by the County Executive for Executive Branch employees, upon the advice of the Counsel to the

Legislature and the County Attorney respectively, consistent with then prevailing law. Notwithstanding the above, no act can be so determined to be within the scope of employment if the commission of such act resulted in a conviction of a Class A misdemeanor or higher crime under the New York State Penal Law or similar federal crime under Title 18 of the United States Code. This duty to indemnify shall not arise where such action or proceeding is brought by or on behalf of the County against such employee.

2. The amount of any such judgment, order, or decision obtained against such employee, or the amount of any County approved settlement, for which the County will indemnify and save harmless an employee consistent with this Section, includes any amounts designated as compensatory, special, punitive, or other damages, including sanctions, fines, costs and attorney fees.

3. Any proposed settlement of such action or proceeding, for which indemnification by the County is sought, shall be reviewed and approved only in accordance with Local Law No. 2 of 1985. No employee will be indemnified or saved harmless by the County in accordance with this Local Law in connection with any settlement unless such settlement is so reviewed and approved.

4. Upon the entry or finalization of such final judgment, order or decision against the employee, or upon the settlement of the action or proceeding, the employee shall cause a copy of such judgment, order, decision or approved settlement to be served personally, or by certified or registered mail, within thirty (30) days of the date of entry, finalization or settlement, upon the County Attorney. If such judgment, order, decision or settlement is not inconsistent with the provisions of this Local Law, the County Executive, upon the advice of the County Attorney, shall certify it for payment. As so certified, the judgment, order, decision or settlement shall be paid upon the audit and warrant of the Director of the County's Risk Management Division.

**SECTION 6. Conditions.**

1. The duty to defend, indemnify and save harmless as set forth by this Local Law shall be conditioned upon (1) delivery by the employee to the Office of the County Attorney of the original or a true and complete copy of any notice of claim, summons, complaint, process, notice, demand or pleading as soon as possible, but in no event later than ten (10) days after the employee is served with such document or prior to the return date of such document, whichever is sooner, and (2) the full cooperation of the employee in the defense of such action or proceeding, and in the defense of any action or proceeding against the County based upon the same or related acts or omissions, and in the prosecution of any appeals thereof. The above-noted delivery of said notices of claim, summonses, complaints, processes, notices, demands or pleadings shall be deemed as a request by the employee that the County provide for his or her defense and indemnification pursuant to this Local Law.

2. Consistent with this Local Law, the determination as to whether the County will defend and/or indemnify the employee, will be based upon an investigation of the facts and circumstances of the matter. The Chairman of the Legislature or the County Executive, in accordance with this Local Law, shall make this determination within a reasonable time after the completion of such investigation. Such determination shall be final, except as provided below.

3. Such determination shall be in writing and mailed promptly by the County Attorney to the employee. If the determination is adverse in whole or in part to the employee, it shall state the facts and reasons therefor.

4. A determination favorable to the employee may thereafter be revised and/or revoked for good cause. The revised determination, or the revocation of such determination, shall be in writing and mailed by the County Attorney promptly to the employee, and shall state the facts and reasons therefor.

5. A special proceeding brought pursuant to Article 78 of the New York Civil Practice Law and Rules shall be the exclusive method by which an employee aggrieved by a determination may seek review of the determination. If, as a result of such judicial review, the employee ultimately obtains a reversal of the determination, the County shall reimburse the employee for the attorney fees and costs charged the employee in obtaining the reversal, to the extent that such fees and costs were reasonable and necessary.

**SECTION 7. Limitation of benefits.** The benefits of this Local Law shall inure only to employees as defined herein and shall neither enlarge nor diminish the rights of any other party, nor shall any provision of this Local Law be construed to affect, alter or repeal any provision of the Workers' Compensation Law.

**SECTION 8. Effect on other laws.** This Local Law shall not in any way affect the obligation of any claimant to give notice to the County under Section 50-e of New York General Municipal Law, or any other provision of any law.

**SECTION 9. Applicability.** The provisions of this Local Law shall apply to all actions and proceedings then pending on the effective date of this Local Law, pursuant to Section 12 herein, or thereafter instituted.

**SECTION 10. Construction of provisions.** Except as otherwise specifically provided in this Local Law, the provisions of this Local Law shall not be construed in any way to establish or enlarge any direct liability of, or to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon, the County or any unit, entity, officer or employee of the County, or any right to a defense and/or indemnification provided for any County officer or employee by, in accordance with, or by reason of, any other provision of county, state or federal statutory, regulatory or common law.



**SECTION 11. Savings clause.** If any provision of this Local Law, or the application thereof to any person or circumstance, is held unconstitutional or invalid in part by any Court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this Local Law or the application of any such other provision to any other person or circumstance.

**SECTION 12. Effective date.** This Local Law shall take effect immediately upon its filing in the Office of the Secretary of State as provided by law.